

**Before the
N. H. Board of Barbering, Cosmetology and Esthetics
Concord, New Hampshire**

In the matter of:

**A+ Princess Nails
Yen Thi Phan, Owner
Andy Phan, Manager**

Docket No. 2018-07

Shop License Number: 3134
Personal License Number: 30586 (Yen Thi Phan)
Personal License Number: 29388 (Andy Phan)
(Adjudicatory/Disciplinary Proceeding)

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Jeanne Chappell, Vice Chairperson
Kassie Dubois, Board Member
Kimberly Hannon, Board Member
Joshua Craggy, Board Member

Appearances: Sheri Phillips, Hearing Counsel
Beulah Green, Board Inspector
Yen Thi Phan, Respondent
Andy Phan, Respondent

BACKGROUND

On August 29, 2018, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Yen Thi Phan and Andy Phan ("the Respondents") had violated RSA 313-A:22 and Barbering, Cosmetology and Esthetics Administrative Rules ("Bar") 501.02.

As set forth in the Notice of Hearing the purpose of the hearing was to determine whether Respondents violated:

- RSA 313-A:22, II (d) by engaging in professional misconduct by operating A+ Princess Nails in a manner displaying unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health or safety of persons relying on the expertise of the licensee ;
- RSA 313-A:22, II (g) by engaging in willful or repeated violations of the provision of the practice act;
- RSA 313-A:22, II (i) for failing to observe the rules adopted by the Board;
- Bar 501.02 (e) for failing to maintain A+ Princess Nails (“A+”) in a sanitary and hygienic manner; and
- Bar 501.02 (h) for aiding, abetting, directly or indirectly, the practice of persons who were not duly licensed by the Board;

HEARING TESTIMONY

I. Hearing Counsel’s Case

The Notice of Hearing noticed the hearing for October 15, 2018 at 10:00 a.m. The Respondents appeared as scheduled.

Hearing Counsel introduced six (6) exhibits at the hearing:

- Exhibit 1, Shop Inspection Form for A+ dated November 3, 2015.
- Exhibit 2, Shop Inspection Form for A+ dated February 29, 2016.
- Exhibit 3, Shop Inspection Form for A+ dated April 13, 2016.
- Exhibit 4, Shop Inspection Form for A+ dated April 8, 2017.
- Exhibit 5, Shop Inspection Form for A+ dated November 1, 2017.
- Exhibit 6, Shop Inspection Form for A+ dated July 12, 2018.

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On or about December 1, 2016, the Board granted Yen Thi Phan (“Ms. Phan”) a license to practice manicuring in the State of New Hampshire. Ms. Phan holds manicuring license #30586. The manicuring license is the Respondent’s personal license.

On or about May 6, 2014, the Board granted Andy Phan (“Mr. Phan”) a license to practice manicuring in the State of New Hampshire. Mr. Phan holds manicuring license #29388. The manicuring license is the Respondent’s personal license.

The Board also has the authority to grant shop licensure in accordance with RSA 313-A:19. Pursuant to this authority, the Board may grant shop licensure to an individual who is the owner of the shop if this individual has a personal license as a barber, cosmetologist, manicurist or esthetician. See RSA 313-A:19, II. On or about August 2, 2015, the Respondents obtained ownership of A+ Princess Nails. The Respondents hold shop license 3134.

The Board employs inspectors. See RSA 313-A:21. At least twice a year, the inspectors are “to enter and make reasonable examination and inspection of any salon ... during business hours for the purpose of ascertaining whether or not the administrative rules of the board and the provisions of this chapter are being observed.” See RSA 313-A:21, I and III. If the inspector finds violations, the inspector may impose administrative fines. See RSA 313-A:8, XVII; 313-A:22, III; Bar 404.09; Bar 404.10. For each inspection, the inspector must file a written report of his/her findings. See RSA 313-A:21, I.

Inspector Beulah Green (“Inspector Green”) testified at the hearing. Inspector Green has six years of experience as an inspector for the Board. Inspector Green testified about all of the inspection reports, which were introduced as Exhibits 1-6. These reports are the current reports

used by Board Inspectors to conduct shop inspections. Inspector Green testified to the date of each inspection, the fines issued for each inspection, and the reason for such fines.

On or about November 3, 2015, Inspector Green conducted an inspection of A+. See Exhibit 1. Inspector Green found one (1) foot spa that was not properly cleaned and disinfected, eleven (11) implements that were not cleaned and disinfected properly, and twenty (20) implements that were not discarded as required. Inspector Green testified that she went over the fines and how to correct each violation at the end of the inspection with Mr. Phan. A fine of \$286.00 was imposed.

On February 29, 2016, Inspector Green inspected A+. See Exhibit 2. Inspector Green found nine (9) footspas that were not cleaned and disinfected properly, ninety-one (91) implements that were not disinfected properly, thirty-three (33) implements that were not discarded as required, apprentice hour sheets were not submitted as required, a wax pot was on and being used without anyone properly licensed to perform waxing services, and two individuals who were working, but not licensed in the State of NH. Inspector Green also testified that there were bagged metal implements that were in a UV box with skin pieces and debris on them. Inspector Green testified that she went over the fines and how to correct each violation at the end of the inspection with Mr. Phan. A fine of \$3,182.00 was imposed.

On April 13, 2016, Inspector Green inspected A+. See Exhibit 3. Inspector Green found one (1) footspa not cleaned and disinfected properly, six (6) pumice stones that were not discarded as required, twenty-three (23) implements that were not disinfected as required, twenty-nine (29) implements that were not discarded as required, and five (5) soiled towels not in a container. A fine of \$455.00 was imposed.

On April 8, 2017, Inspector Green inspected A+. See Exhibit 4. Inspector Green found fifteen (15) implements that were not discarded as required and three (3) individuals working that were not licensed in the State of NH. A fine of \$1590.00 was imposed.

On November 1, 2017, Inspector Green inspected A+. See Exhibit 5. Inspector Green found nineteen (19) implements that were not cleaned and disinfected properly, eighteen (18) implements that were not discarded as required, one expired personal license. Inspector Green testified that a warning was issued for one footspa which was not yet cleaned. A fine of \$272.00 was imposed.

On July 12, 2018, Inspector Green inspected A+. See Exhibit 6. Inspector Green found one (1) footspa that was not cleaned and disinfected properly, five (5) tables that were not sanitized and disinfected, thirteen (13) implements that were not disinfected properly, twenty-three (23) implements that were not discarded properly, one (1) individual working on a customer without a New Hampshire license, and an expired license. A fine of \$705.00 was imposed.

In response to Mr. Phan's questions, Inspector Green testified that she explains her findings at the end of every inspection to him. Inspector Green also testified that the Respondents could watch and follow her during the inspections. Inspector Green further testified that Mr. Phan is kind, workable, and does ask questions of her during inspections, however she does not see improvement in the shop.

II. Respondent's Case

The Mr. Phan testified that Ms. Phan does not speak English and could not testify. Mr. Phan submitted a response letter to the Board. The Board accepted the letter and the presiding officer read the letter aloud. The letter stated:

“Paragraph B mentioned about Penny Taylor who reported that her finger had been cut during a manicure. We want to clarify that was just a minor paper cut from buffer. We also offered medical assistant if needed and she was reimbursed in full. Beside, that nail technician left our salon after that. On paragraph D, Board inspector found a foot spa that was not properly cleaned and disinfected. We want to clarify that when Board inspector entered to the salon while that customer who did pedicure had just left. So we need more time to clean and disinfect. Paragraph E mentioned about there were two workers who did not have a New Hampshire license. We want to clarify that we sent the applications to change their license to New Hampshire’s few days before that the State Board already accepted and all the documents were in process and accepted license exchange. Moreover, the shop manager sent explanation letter to the State Board after that but not responded to A+ Princess Nails & Spa by any activities or any fine mentioned. Paragraph G mentioned that there were three unlicensed workers and assessed a fine. We want to clarify clearly. First person in my mother, who is just here for helping me to cleaning up and turn on water, she did not work on a customer. Second one, who had New Hampshire temporary license that was just expired and was waiting for testing again. Third one whose license in process to exchange. Moreover, the State Board already accepted changing those licenses. Wherefore A+ Princess Nail & Spa seeks the relief following A. to review and remove unreasonable fine to A+ Princess Nails & Spa B. for such relief as maybe just and equitable. However I would have no objection for conference with the Board for scheduling and clarification purposes if helpful. If you have any question regarding this matter please contact me at 603-230-4488 sincerely Andy Phan, A+ Princess Nails & Spa Manager.”

In response to the Hearing Counsel’s questions, Mr. Phan testified that he knew someone from out of state who applies for a license cannot work until they have the license, but he “let them come in but if it is busy they will soak off the nails or polish, just helping.” The Hearing Counsel showed Mr. Phan a copy of the reciprocal license application which states an individual cannot work in New Hampshire unless a license has been issued. Mr. Phan testified the workers from Massachusetts filled out this application before working and the workers were waiting for paperwork from Massachusetts. Mr. Phan also testified that he came into the Board office with brand new files to show the Director, but he still gets fined. He testified that no one was waxing, but if someone does he warms up the wax pot. He also testified that there was no waxing machine at all in the shop.

After the hearing was concluded, the Board deliberated the merits of the hearing and voted on findings.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented by Hearing Counsel showed multiple and repeated fines to A+. The fines listed were issued for the disinfection violations of footspas that were not disinfected, implements not being properly discarded, sanitized, or disinfected, soiled towels not deposited in a container, and pumice stones not discarded. In addition to the sanitation violations, these exhibits showed expired personal licenses, unauthorized use of a wax pot, and unlicensed individuals working on clients. The Board made a specific finding that the above Hearing Counsel's Case (Section I) was true. The Board found the testimony of Inspector Green to be forthright and credible, and the inspection reports accurate, detailed, and professional. The Board further found the notice of imposed fines to be accurate.

The Board was confused by sections of Mr. Phan's testimony, which appeared to be contradictory. Mr. Phan testified he understood an individual was required to have a New Hampshire license in order to work, however, he also testified that he allowed individuals licensed in Massachusetts to work in his facility when paperwork was submitted to New Hampshire but before a New Hampshire license was issued. Mr. Phan also testified that he warms up the wax pot if someone needs waxing, but that there was no wax pot in the shop. As a result of these inconsistencies, the Board found Inspector Green's testimony and inspection reports more credible than Mr. Phan's testimony.

RULINGS OF LAW

The Board makes the following rulings of law:

1. The Board may undertake disciplinary proceedings against its licensees. See RSA 313-A:22. If the Board finds sufficient misconduct pursuant to subsection II, it may impose disciplinary action pursuant to subsection III. See RSA 313-A:22.
2. On or about November 3, 2015:
 - a. The Respondents violated RSA 313-A:22 (d) by operating A+ in a manner displaying unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health and safety of person relying on the expertise of the licensee.
 - b. The Respondents violated RSA 313-A:22, II (g) by engaging in willful or repeated violations of the provisions of the practice act.
 - c. The Respondents violated RSA 313-A:22, II (i) by failing to observe rules adopted by the Board.
 - d. The Respondents violated Bar 501.02 (e) by failing to maintain A+ in a sanitary and hygienic manner.
3. On or about February 29, 2016:
 - a. The Respondent Respondents violated RSA 313-A:22 (d) by operating A+ in a manner displaying unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health and safety of person relying on the expertise of the licensee.
 - b. Respondents violated RSA 313-A:22, II (g) by engaging in willful or repeated violations of the provisions of the practice act.
 - c. The Respondents violated RSA 313-A:22, II (i) by failing to observe rules adopted by the Board.

- d. The Respondents violated Bar 501.02 (e) by failing to maintain A+ in a sanitary and hygienic manner.
- e. The Respondents violated Bar 501.02 (h) by aiding, abetting, directly or indirectly, the practice of persons who were not duly licensed.

4. On or about April 13, 2016:

- a. The Respondent Respondents violated RSA 313-A:22 (d) by operating A+ in a manner displaying unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health and safety of person relying on the expertise of the licensee.
- b. The Respondents violated RSA 313-A:22, II (g) by engaging in willful or repeated violations of the provisions of the practice act.
- c. The Respondents violated RSA 313-A:22, II (i) by failing to observe rules adopted by the Board.
- d. The Respondents violated Bar 501.02 (e) by failing to maintain A+ in a sanitary and hygienic manner.

5. On or about April 8, 2017:

- a. The Respondents violated RSA 313-A:22 (d) by operating A+ in a manner displaying unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health and safety of person relying on the expertise of the licensee.
- b. The Respondents violated RSA 313-A:22, II (g) by engaging in willful or repeated violations of the provisions of the practice act.
- c. The Respondents violated RSA 313-A:22, II (i) by failing to observe rules adopted by the Board.

d. The Respondents violated Bar 501.02 (e) by failing to maintain A+ in a sanitary and hygienic manner.

e. The Respondents violated Bar 501.02 (h) by aiding, abetting, directly or indirectly, the practice of persons who were not duly licensed.

6. On or about November 1, 2017:

a. The Respondents violated RSA 313-A:22 (d) by operating A+ in a manner displaying unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health and safety of person relying on the expertise of the licensee.

b. The Respondents violated RSA 313-A:22, II (g) by engaging in willful or repeated violations of the provisions of the practice act.

c. The Respondents violated RSA 313-A:22, II (i) by failing to observe rules adopted by the Board.

d. The Respondents violated Bar 501.02 (e) by failing to maintain A+ in a sanitary and hygienic manner.

7. On or about July 12, 2018:

a. The Respondents violated RSA 313-A:22 (d) by operating A+ in a manner displaying unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health and safety of person relying on the expertise of the licensee.

b. The Respondents violated RSA 313-A:22, II (g) by engaging in willful or repeated violations of the provisions of the practice act.

c. The Respondents violated RSA 313-A:22, II (i) by failing to observe rules adopted by the Board.

d. The Respondents violated Bar 501.02 (e) by failing to maintain A+ in a sanitary and hygienic manner.

e. The Respondents violated Bar 501.02 (h) by aiding, abetting, directly or indirectly, the practice of persons who were not duly licensed.

DISCUSSION AND CONCLUSION

The Board has authority to undertake disciplinary action against a licensee, after a hearing and a finding that the licensee has committed misconduct as described above or has engaged in acts that pose a threat to public health or safety. RSA 313-A:22; Bar 402.01.

The Board has determined that the Respondents engaged in professional misconduct by failing to maintain the salon premises, A+ Princess Nails, in a sanitary and hygienic manner. The Board relied on the exhibits presented as evidence and testimony given by a State Inspector to conclude that the Respondents violated sections RSA 313-A and Bar 500 for failure to maintain the salon premises in a sanitary and hygienic manner. The fines imposed at each inspection demonstrate a repeated, willful violation of the Board's Administrative Rule requirements for proper sanitation and proper licensing.

The Board found inspection reports that were introduced into evidence to be valid, unbiased and accurate. The Board concluded that the Board Inspectors routinely give direction to the Respondent on how to correct violations at the time of each inspection. The Board concluded that there was no deviation of the standard practice here.

The Board did appreciate the kindness and willingness of the Respondents to cooperate, however, as Inspector Green testified, there was no improvement in the inspections even after specific direction. The Board concluded that the Respondents violated RSA 313-A and the Board's administrative rules and therefore voted to impose public discipline to ensure the health and safety of the public is protected.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal licenses #30586 and 29388 and the shop license #3134 shall be subject to a **PROBATIONARY PERIOD OF FIVE YEARS**. During the probationary period, the Respondents shall not have any fines over the amount of \$100.00. Any fines over the amount of \$100.00 shall automatically result in a disciplinary hearing for revocation of the Respondent's personal and shop licenses.

IT IS FURTHER ORDERED, that the Respondents shall pay all fines/monies owed to the Board within 90 days of this Order in a single payment by a certified bank check or money order payable to "Treasurer, State of New Hampshire". Failure to pay these fines within 90 days of the effective date of this Order may result in legal action necessary to enforce this obligation.

IT IS FURTHER ORDERED, The Respondents shall enroll within 60 days a course on bacteriology, safety, diseases and disorders, blood spill procedures and infection control, pedicure tubs and overall cleanliness in a salon and sanitation in a school licensed by the Board, or an online course pre-approved by the Board. The Respondents shall complete comprehensive testing on topics described above at the Board office with a passing grade of 75% or greater. The Respondents shall complete the course within 90 days of enrollment.

IT IS FURTHER ORDERED, that an administrative fine of \$500.00 shall be imposed. The Respondents shall pay the fine within 90 days of the effective date of the order in a single payment

by certified bank check or postal money order payable to the "Treasurer State of NH". Failure to pay these fines within 90 days of the effective date of this order may result in legal action necessary to enforce this obligation.

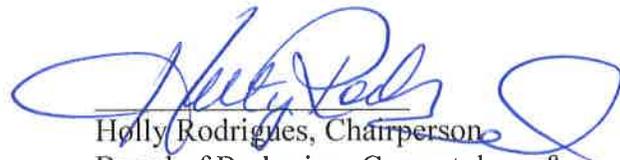
IT IS FURTHER ORDERED, that the Respondents failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,:22 II (c)and a separate and sufficient basis for further disciplinary action against the licensees.

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondents file, which are maintained by the Board as a public document; and

IT IS FURTHER ORDERED, that this Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

Date 2/11/73

BY ORDER OF THE BOARD


Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics