

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

In the matter of:

Kim Ho
Cosmetology License Number: 13207
Shop License Number: 3000
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2018-02

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: John Brown, Hearing Counsel
Kathryn Wantuck, Board Director
Beulah Green, Board Inspector
Kim Ho, Respondent
Holly Philbrick, Grace Spa Cosmetology Manager
Chi Tran, Acting Manager at Grace Spa

BACKGROUND

On June 11, 2018 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Kim Ho ("the Respondent") 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 Respondent violated:

- Bar 302.05 (q) by failing to properly clean and disinfect foot spas at Grace Spa & Nails Salon (“Grace Spa”);
- Bar 501.02 (e) by failing to maintain the salon in a sanitary and hygienic manner;
- RSA 313-A:22, II (c) and/or (d) by failing to maintain the salon in a sanitary and hygienic manner and for having repeated violations of the Board’s statutes and rules;
- RSA 313-A:22, II (g) and/or (i) for having willful or repeated violations of the Board’s statutes and rules;
- Bar 501.02 (h) by having an unlicensed worker working on a client

HEARING TESTIMONY

I. Hearing Counsel’s Case

The Notice of Hearing noticed the hearing for August 13, 2018 at 9:30 a.m. The Respondent appeared as scheduled. After the hearing was concluded, the Board deliberated the merits of the hearing and voted on findings.

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

- Exhibit 1, Shop Inspection Form for Grace Spa dated May 7, 2013.
- Exhibit 2, Shop Inspection Form for Grace Spa dated April 11, 2014.
- Exhibit 3, Shop Inspection Form for Grace Spa dated May 30, 2015.
- Exhibit 4, Shop Inspection Form for Grace Spa dated June 30, 2016.
- Exhibit 5, Shop Inspection Form for Grace Spa dated August 14, 2017

The Board has the authority to grant cosmetology licenses. See RSA 313-A:11. On or about April 1, 2008, the Board granted the Respondent a license to practice cosmetology in the State

of New Hampshire. The Respondent holds cosmetology license #13207. The cosmetology 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 8, 2008 the Respondent opened Grace Spa. The Respondent holds shop license 3000.

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.

The Director for the Board, Kathryn Wantuck ("Ms. Wantuck"), testified at the hearing. Ms. Wantuck has ten years of experience as Director for the Board. Ms. Wantuck testified Kim Ho was a licensee of the Board and the owner of Grace Spa.

Inspector Sandra Hodgdon ("Inspector Hodgdon") testified at the hearing. Inspector Hodgdon has five years of experience as an inspector for the Board. Inspector Hodgdon testified about all of the inspection reports. These reports are the current reports used by Board Inspectors to conduct shop inspections. Inspector Hodgdon testified to the date of each inspection, the fines issued for each inspection, and the reason for such fines.

On or about May 7, 2013, Inspector Hodgdon conducted an inspection Grace Spa. See Exhibit 1. Inspector Hodgdon found four (4) footspas that were not cleaned and disinfected

properly, 7 implements that were not cleaned and disinfected properly, wax sticks that was not kept in a closed container. A fine of \$442.00 was imposed.

On April 11, 2014, Inspector Hodgdon inspected Grace Spa. See Exhibit 2. Inspector Hodgdon found seven (7) footspas that were not disinfected properly, 6 implements that were not cleaned and disinfected properly, 5 implements or nail files that were not discarded properly, the inspection report not displayed as required, and no Material Safety Data Sheets. A fine of \$801.00 was imposed.

On May 30, 2015, Inspector Hodgdon inspected Grace Spa. See Exhibit 3. Inspector Hodgdon found there were no record of cleaning for eight (8) footspas, 16 implements that were not cleaned and disinfected properly, 1 implement that was not discarded properly, and the inspection report not displayed as required. The inspector imposed a \$327.00 fine.

On June 30, 2016, Inspector Hodgdon inspected Grace Spa. See Exhibit 4. Inspector Hodgdon found one footspa that was not cleaned and disinfected properly, 18 implements that were not cleaned or disinfected properly, and 4 implements that were not discarded properly. The inspector imposed a \$232.00 fine.

On August 14, 2017, Inspector Hodgdon inspected Grace Spa. See Exhibit 5. The inspector found an individual working without a New Hampshire license. The individual was performing a service on a client at the time the inspector came in. A warning was issued for six (6) implements that were not disinfected properly. The inspector imposed a \$500.00 fine. Inspector Hodgdon testified that the Respondent, a licensee in the salon, or the manager, was informed of the violations at each inspection. Inspector Hodgdon further testified that instructions were given how to correct each violation.

In response to questions from Holly Philbrick (“Ms. Philbrick”), manager at Grace Spa, Inspector Hodgdon testified that she spoke with an individual, including Ms. Philbrick at each inspection and left a copy of the inspection report at the salon.

II. Respondent’s Case

Ms. Philbrick testified on behalf of the Respondent stating she did not feel the instructions were always understood if the inspector was speaking with a licensee of the shop. Ms. Philbrick reiterated that there was language barrier issue. Chi Tran (“Mr. Tran”) testified at the hearing. Mr. Tran testified that they changed their pedicure chairs to keep everything more sanitized and they have improved over time. They have tried to comply with the rules. Mr. Tran explained that an employee of Grace Spa had the unlicensed worker in for a job interview when the inspector came in. Mr. Tran further explained that the unlicensed worker is not currently working at Grace Spa, but has obtained her license.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented showed the multiple and repeated fines to Grace Spa. The fines listed were issued for the disinfection violations of implements not being properly discarded, sanitized, disinfected or maintained, implements and appliances not sanitized, disinfected, and stored properly, pedicure tubs not cleaned and disinfected and no Material Safety Data Sheets. In addition to making a specific finding that the above Hearing Counsel’s Case (Section I) was true, the Board found that an individual without a New Hampshire license were allowed to work in Grace Spa.

The Board found the testimony of Inspector Hodgdon to be credible and the inspection reports accurate, detailed, and professional. The Board further found the notice of imposed fines to be accurate. The Board found the testimony of Ms. Wantuck to be credible and accurate.

The Board also found Ms. Philbrick and Mr. Tran to be cooperative and professional.

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 May 7, 2013:

- a. The Respondent violated BAR 302.05 (q) by failing to properly clean and disinfect foot spas at Grace Spa.
- b. The Respondent violated BAR 501.02 (e) by failing to maintain Grace Spa in a sanitary and hygienic manner.
- c. The Respondent violated RSA 313-A:22, II (c) and/or (d) by failing to maintain Grace Spa in a sanitary and hygienic manner and for having repeated violations of the Board's statutes or rules.

3. On or about April 11, 2014:

- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Grace Spa in a sanitary and hygienic manner.
- b. The Respondent BAR 302.05 (q) by failing to properly clean and disinfect foot spas at Grace Spa.

- c. The Respondent violated BAR 501.02 (e) by failing to maintain Grace Spa in a sanitary and hygienic manner.
4. On or about May 30, 2015:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Grace Spa in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Grace Spa in a sanitary and hygienic manner.
5. On or about June 30, 2016:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Grace Spa in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Grace Spa in a sanitary and hygienic manner.
 - c. The Respondent violated BAR 302.05 (q) by failing to properly clean and disinfect foot spas at Grace Spa.
6. On or about August 14, 2017:
 - a. The Respondent violated Bar 501.02 (h) by having an unlicensed worker working on a client.
7. Between May 2013 and August 2017, the Respondent violated RSA 313-A:22, II (g) by willful or repeated violations of the provisions of RSA 313-A.

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 Respondent engaged in professional misconduct by failing to maintain her salon premises, Grace Spa, 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 Respondent violated sections RSA 313-A and Bar 500 for failure to maintain her 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 salon owners, managers and employees 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 relied on the inspector testimony that Grace Spa employees voiced understanding of her explanations of the violations and how to correct them.

The Board concluded the Respondent 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 cosmetology license #13207 and the shop license #3000 shall subject to a **PROBATIONARY PERIOD OF ONE YEAR**. During the probationary period, the Respondent 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, The Respondent 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 Respondent shall complete comprehensive testing on topics described above at the Board office with a passing grade of 75% or greater. The Respondent shall complete the course within 90 days of enrollment.

IT IS FURTHER ORDERED, that an administrative fine of \$500.00 shall be imposed. The Respondent 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.

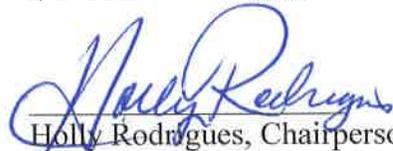
IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A, 22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file, which is 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 10/15/18

BY ORDER OF THE BOARD



Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics