

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

In the matter of:

Chau Le
Personal License Number: 26363
Shop License Number: 3713
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2018-04

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
Sandra Hodgdon, Board Inspector
Chau Le, Respondent

BACKGROUND

On June 12, 2018, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Chau Le ("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 501.02 (e) by failing to maintain Littleton Nails and Spa ("Littleton Nails") in a sanitary and hygienic manner;

- RSA 313-A:22, II (d) by failing to maintain the Littleton Nails in a sanitary and hygienic manner;
- RSA 313-A:22, II (g) for having willful or repeated violations of the Board's statutes and rules;
- Bar 501.02 (c) for having willful or repeated violations of the Board's statutes and rules;

HEARING TESTIMONY

I. Hearing Counsel's Case

The Notice of Hearing noticed the hearing for September 10, 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 five (5) exhibits at the hearing:

- Exhibit 1, Shop Inspection Form for Littleton Nails dated September 2, 2015.
- Exhibit 2, Shop Inspection Form for Littleton Nails dated March 23, 2016.
- Exhibit 3, Shop Inspection Form for Littleton Nails dated July 13, 2017.
- Exhibit 4, Shop Inspection Form for Littleton Nails dated August 16, 2017.
- Exhibit 5, Shop Inspection Form for Littleton Nails dated June 16, 2018

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On or about September 28, 2011, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #26363. 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 July 31, 2013 the Respondent opened Littleton Nails. The Respondent holds shop license 3713.

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 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 September 2, 2015, Inspector Hodgdon conducted an inspection of Littleton Nails. See Exhibit 1. Inspector Hodgdon found Twenty-two (22) implements that were not cleaned and disinfected properly, Sang Ngu and Chau Le had expired personal licenses, Loan Nguyen did not have a valid temporary work permit, no Material Safety Data Sheets. Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent at the end of the inspection. Inspector Hodgdon noted on the inspection form that the Respondent was very upset with her for asking questions and was swearing. A fine of \$757.00 was imposed.

On March 23, 2016, Inspector Hodgdon inspected Littleton Nails. See Exhibit 2. Inspector Hodgdon found 10 implements that were not cleaned and disinfected properly, twenty-two (22)

used pumice stones, and the foot-spa logs were not updated. Inspector Hodgdon noted on the inspection forms that the Respondent was very aggravated and argumentative with her. Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent at the end of the inspection. A fine of \$60.00 was imposed.

On July 13, 2017, Inspector Hodgdon inspected Littleton Nails. See Exhibit 3. Inspector Hodgdon found the Respondent's personal license was expired and an apprentice that was not wearing a name tag and had not turned in her hour sheets. Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent at the end of the inspection. Inspector Hodgdon testified that the Respondent was cooperative at the inspection. A fine of \$125.00 was imposed.

On August 16, 2017, Inspector Hodgdon inspected Littleton Nails. See Exhibit 4. The inspector found the Respondent's personal license was still expired. Inspector Hodgdon further testified that she only went to check on the license and not to conduct a sanitation inspection. Inspector Hodgdon noted on the inspection form that she gave the Respondent another renewal form.

On June 16, 2018, Inspector Hodgdon inspected Littleton Nails. See Exhibit 5. The inspector found Tan Phat Huynh working on a client without a New Hampshire license and an apprentice not wearing a name tag. Inspector Hodgdon noted on the inspection form there were three (3) metal implements and five (5) brushes that needed to be disinfected. Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent at the end of the inspection. A fine of \$525.00 was imposed.

II. Respondent's Case

The Respondent testified that he agrees with the fine and asked for the fine to be reduced so he can make payments. The Respondent asked for 3 months to make the payments.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented showed the multiple and repeated fines to Littleton Nails. The fines listed were issued for the disinfection violations of implements not being properly discarded, sanitized, disinfected or maintained, no Material Safety Data Sheets, apprentice name tag and paperwork violations, and expired personal licenses. 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 Littleton Nails.

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 also found the Respondent to be forthright.

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 September 2, 2015:

- a. The Respondent violated BAR 501.02 (e) by failing to maintain Littleton Nails in a sanitary and hygienic manner.
 - b. The Respondent violated RSA 313-A:22, II (d) by failing to maintain Littleton Nails in a sanitary and hygienic manner and for having repeated violations of the Board's statutes or rules.
3. On or about March 23, 2016:
- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Littleton Nails in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Littleton Nails in a sanitary and hygienic manner.
3. Between September 2015 and June 2018, 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 his salon premises, Littleton 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 Respondent violated sections RSA 313-A and Bar 500 for failure to maintain his 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 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 THREE YEARS**. 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, that during the probationary period, the Respondent shall not have any apprentice under his supervision. Any apprentice currently supervised by the Respondent shall be terminated by the Respondent and shall re-enroll with another licensed shop instructor.

IT IS FURTHER ORDERED, that the Respondent 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 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 \$125.00 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.

BY ORDER OF THE BOARD

Date 12/10/18


Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics