

**STATE OF NEW HAMPSHIRE**  
**BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS**  
**121 SOUTH FRUIT ST**  
**CONCORD, NEW HAMPSHIRE 03301**

In the matter of:

Duy Nguyen  
Shop License Number: 3352  
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2018-05

**DECISION AND ORDER**

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

Appearances: John Brown, Hearing Counsel  
Kathryn Wantuck, Board Director  
Sandra Hodgdon, Board Inspector  
Duy Nguyen, Respondent

**BACKGROUND**

On August 13, 2018, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Duy Nguyen ("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 RSA 313-A:22 II (d) and/or (i) by failing to maintain The Stone House Salon & Spa ("Stone House") in a sanitary and hygienic manner;

- Bar 501.02 (e) by failing to maintain Stone House in a sanitary and hygienic manner;
- RSA 313-A:22, II (g) by willfully or repeatedly violating the statutes related to Barbering, Cosmetology, and Esthetics;
- Bar 501.02 (h) by allowing a person to practice in his salon without a proper license.

## **HEARING TESTIMONY**

### **I. Hearing Counsel's Case**

The Notice of Hearing noticed the hearing for November 5, 2018 at 9:30 a.m. The Board canceled the meeting scheduled for November 5, 2018. The hearing was rescheduled and noticed for December 10, 2018. The Respondent appeared as scheduled.

Hearing Counsel introduced eight (8) exhibits at the hearing:

- Exhibit 1, printout of Stone House online license confirmation.
- Exhibit 2, Confidential Notice from the Board to Duy Nguyen dated August 17, 2015.
- Exhibit 3, Shop Inspection Form for Stone House dated August 15, 2013.
- Exhibit 4, Shop Inspection Form for Stone House dated August 29, 2013.
- Exhibit 5, Shop Inspection Form for Stone House dated June 30, 2014.
- Exhibit 6, Shop Inspection Form for Stone House dated May 30, 2015.
- Exhibit 7, Shop Inspection Form for Stone House dated June 22, 2016.
- Exhibit 8, Shop Inspection Form for Stone House dated November 27, 2017.

The Board may grant shop licensure to an individual who is the owner of the shop, even if this individual does not have a personal license as a barber, cosmetologist, manicurist or esthetician. See RSA 313-A:19, IV. On or about June 12, 2012, the Respondent was issued shop license #3352.

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 Board 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.

Board Director Kathryn Wantuck (“Ms. Wantuck”) testified at the hearing. Ms. Wantuck has 11 years of experience as Director for the Board. Ms. Wantuck identified Exhibit 1 as the online licensing search results for The Stone House Salon and Spa (“Stone House”). See Exhibit 1. Ms. Wantuck testified that the shop license was current and the owner was the Respondent. Ms. Wantuck identified Exhibit 2 as a Letter of Concern issued to the Respondent on or about August 17, 2015. See Exhibit 2. Ms. Wantuck read the second and third paragraphs of the letter:

“The Board’s present concern relates to the inspection reports. The last three inspections have revealed multiple violations for not disinfecting the foot spas or implements properly and allowing individuals without a New Hampshire license to work in your facility. The Board requires you and all of your employees to follow the administrative rules for sanitizing and disinfecting pedicure chairs, implements, and tools. Any tool or implement used on a client must be disinfected with an EPA registered hospital-grade disinfectant before being used on someone else. Items that cannot be disinfected must be thrown away after use. Pedicure chairs must be disinfected after each client following a specific procedure, please see enclosed rules for procedure information. Please contact the Board office if you have questions on the required procedures. It is your responsibility as owner to ensure all employees are properly licensed and in compliance with the Board’s requirements. A follow up inspection will be conducted to ensure compliance. It is Board policy to conduct a disciplinary hearing after three inspections reveal sanitation violations. Disciplinary sanctions include fines, continuing education, and suspension, restriction, or revocation of licensure.”

Inspector Sandra Hodgdon (“Inspector Hodgdon”) testified at the hearing. Inspector Hodgdon has six 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. Inspector Hodgdon also testified that the Respondent was owner of the salon during all of the inspections.

On August 15, 2013, Inspector Hodgdon conducted an inspection of Stone House. See Exhibit 3. Inspector Hodgdon found three (3) footspas that were not properly disinfected, nineteen (19) implements that were not cleaned and disinfected properly, and ten (10) implements that were not discarded as required. Inspector Hodgdon further testified that an individual named Chau Trinh, who does not have a New Hampshire license, was at the salon but was not working on a client. Inspector Hodgdon also testified that she explained all of her findings and how to correct the findings to the Respondent or an employee of the shop at the end of the inspection. A fine of \$474.00 was imposed.

On August 29, 2013, Inspector Hodgdon inspected Stone House. See Exhibit 4. Inspector Hodgdon found an individual named Chau Trinh working on a client without a New Hampshire manicuring license. Inspector Hodgdon testified that she explained to the staff at Stone House instructions on how to maintain compliance with Board requirements. The Board imposed a fine of \$500.00.

On June 30, 2014, Inspector Hodgdon inspected Stone House. See Exhibit 5. Inspector Hodgdon found two (2) footspas that were not properly disinfected no record of cleaning for four (4) footspas, fifty-three (53) implements that were not cleaned or disinfected properly, five (5) implements that were not discarded as required, an apprentice who had not submitted hour sheets as required, and an individual working on a client without a New Hampshire license. Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent or an employee at the end of the inspection. The Board imposed a fine of \$1173.00.

On May 30, 2015, Inspector Hodgdon inspected Stone House. See Exhibit 6. Inspector Hodgdon found one (1) footspa that was not disinfected properly, no record of cleaning for four (4) footspas, twenty-seven (27) implements that were not disinfected properly, two (2) implements that were not discarded as required, and two bottles of methylmethacrylate monomer (MMA). Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent or an employee at the end of the inspection. The Board imposed a fine of \$1174.00.

On June 22, 2016, Inspector Hodgdon inspected Stone House. See Exhibit 7. Inspector Hodgdon found one footspa that was not disinfected properly. Inspector Hodgdon testified that a full inspection could not be done because the salon was so busy. Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent or an employee at the end of the inspection. The Board imposed a fine of \$100.00.

On November 27, 2017, Inspector Hodgdon inspected Stone House. See Exhibit 8. Inspector Hodgdon found twenty three (23) implements that were not disinfected properly, four (4) implements that were not discarded as required, and one (1) individual, Hoang Dinh, working with an expired license. Inspector Hodgdon further testified that she explained all of her findings and how to correct the findings to the Respondent or an employee at the end of the inspection. A fine of \$212.00 was imposed. The Respondent asked Inspector Hodgdon if Hoang Dinh had renewed her license and stated he cannot keep track of all of ten employees and it is the licensees fault. In response to the Respondent's question, Inspector Hodgdon stated she did not know if Hoang Dinh had renewed the license. The Respondent then stated she had renewed and should be all set.

Inspector Hodgdon testified that she conducted six (6) inspections over four (4) years' time and did not see improvement in the inspections.

In closing, Hearing Counsel stated there were a number of violations within all of the inspections, five (5) out of the six (6) inspections had sanitation issues which indicates negligent acts over a course of four (4) years. Three (3) out of six (6) inspections indicate expired or unlicensed individuals. Hearing Counsel also stated that Bar 501.02 (h) indicates that it is the responsibility of the employee to ensure proper licensure. Hearing Counsel further stated that Inspector Hodgdon gave ample testimony to conclude that there have been violations of all of the statutes and rules addressed in the notice of hearing.

## **II. Respondent's Case**

The Respondent gave an opening statement which he stated he is trying his best to make sure this does not happen again.

In his closing statement, the Respondent affirmed everything the Hearing Counsel said was true. The Respondent testified that from the day he opened to now, there were a lot of changes and he is trying to follow the rules and that over the last year there has been a lot of improvement. The Respondent also testified he has hired a manager to run the shop. The Respondent further testified he is the owner, but he is not there and does not run 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 showed the multiple and repeated fines to Stone House. The fines listed were issued for the disinfection violations of implements not being properly discarded, sanitized, disinfected or

maintained, footspas not properly disinfected, no record of cleaning for footspas, apprentice paperwork violations, unauthorized use of MMA, and an expired license. In addition to making a specific finding that the above Hearing Counsel's Case (Section I) was true, the Board found that individuals without a New Hampshire license were allowed to work in Stone House.

The Board found the testimony of Ms. Wantuck to be credible and accurate. 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 Respondent to be forthright and direct.

The Board made a specific finding that the Respondent has previously committed professional misconduct between 2013 and 2017 due to fines issued as detailed below:

- On or about August 15, 2013, the Respondent was fined \$474.00.
- On or about August 29, 2013, the Respondent was fined \$500.00.
- On or about June 30, 2014, the Respondent was fined \$1173.00.
- On or about May 30, 2015, the Respondent was fined \$1174.00.
- On or about June 22, 2016, the Respondent was fined \$100.00.

The Respondent subsequently paid the fines upon written notice.

### **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 27, 2017:

- a. The Respondent violated BAR 501.02 (e) by failing to maintain Stone House in a sanitary and hygienic manner.
- b. The Respondent violated RSA 313-A:22, II (d) and (i) by failing to maintain Stone House in a sanitary and hygienic manner.
- c. The Respondent violated RSA 313-A:22, II (g) by willfully or repeatedly violating the statutes related to Barbering, Cosmetology, and Esthetics.

### **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, Stone House, 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 the Respondent has engaged in repeated, willful violation of both the Board's Administrative and statutory requirements for the profession, including 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 shop license #3352 is subject to a **PROBATIONARY PERIOD OF FIVE 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 shop license.

**IT IS FURTHER ORDERED**, that the Respondent shall pay all fines/monies owed to the Board within 60 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 60 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 30 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 and 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 and testing within 60 days of enrollment.

**IT IS FURTHER ORDERED**, that Respondent pay the reasonable cost of investigation and prosecution of this proceeding, pursuant to RSA 332-G:11, in an amount of \$500.00.

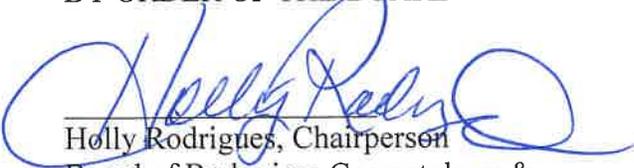
**IT IS FURTHER ORDERED**, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,;22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

**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 4/15/19

BY ORDER OF THE BOARD

  
Holly Rodrigues, Chairperson  
Board of Barbering, Cosmetology &  
Esthetics