

**State of New Hampshire  
Board of Barbering, Cosmetology and Esthetics  
Concord, New Hampshire 03301**

In the Matter of:

Vivian Mai; Precious Nails

**License No.: 15548; Expires: 10/31/19**

**Shop License No.: 3857; Expires: 10/31/19**

(Misconduct Allegations)

**SETTLEMENT AGREEMENT**

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of cosmetology and esthetics, the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”) and Vivian Mai (“Respondent”), owner of the Precious Nails salon, licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 313-A:22, I, and Board Administrative Rule Bar 217.01, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by barbers, cosmetologists, and estheticians. Pursuant to Bar 217.02 (c), the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to operate Precious Nails (“Shop”) in the State of New Hampshire on or about March 8, 2016. The Shop license number is 3857. Respondent holds individual manicuring and esthetician license number 15548. In addition, Respondent’s original Shop license application listed Tom Vu as the manager of the Shop. Tom Vu has a current manicuring license, number 26515. Respondent’s Shop is located in Derry, New Hampshire.

3. On February 14, 2018, the Board received a complaint from a customer of the Shop (“Complainant”), stating that she believed she had contracted a nail fungus after having an acrylic manicure at the Shop. In response to this, Board Inspectors conducted two inspections, on March 29 and July 3, 2018, to follow up on this complaint, and check the sanitary conditions and disinfection practices in Respondent’s Shop. Several violations were found and fines were issued.
4. The Board’s investigation revealed and Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that Respondent engaged in professional misconduct, in violation of RSA 313-A:22, II (c), and/or (d), and/or (g), and/or Bar 302.07 (1) and/or (2) and/or (3) and/or (5) and/or (8) and/or Bar 501.02 (e) by the following facts:
  - A. On or about mid-January of 2018, Complainant visited Respondent’s Shop and had acrylic nails applied. Within two weeks of this appointment, Complainant developed what she believed to be a fungal infection, which ultimately caused her to lose three of her natural nails.
  - B. In response to the complaint that Complainant forwarded to the Board, Inspector Beulah Green conducted an inspection of the Shop on March 29, 2018. Inspector Green found, among other things, that implements and appliances were not being cleaned, disinfected, and stored properly. The Shop was fined \$346.00.
  - C. On July 3, 2018, Inspector Green, along with Inspector Sandra Hodgden, visited the Shop again to perform a follow-up inspection. Numerous

violations were found, all having to do with improper disinfection and storage of implements, and also with improper re-use and/or failure to properly dispose of implements that cannot be disinfected. The Shop was fined \$405.00. In the course of this inspection, Inspector Hodgden was slapped in the upper arm by an employee of the shop named “Tom,” who also stated “You write too much.”

D. Two previous routine inspections had been done at the Shop, on September 9, 2016, and November 29, 2017. During both inspections, numerous violations, many relating to disinfection, storage, and disposal of implements used in manicures and pedicures, were found, and fines were imposed.

5. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 313-A:22, II (c), and/or (d), and/or (g), and/or Bar 302.07 (1), (2), (3), (5), and/or (8), and/or Bar 501.02 (e).
6. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent’s license to conduct business in her Shop and as a manicurist and esthetician in the State of New Hampshire.
7. Respondent consents to the Board imposing the following discipline, pursuant to RSA 313-A:22, III:
  - A. Respondent is **REPRIMANDED**.

- B. Respondent's Shop license is **SUSPENDED** for a period of one year. Said suspension is stayed for one year, and shall not be imposed if all terms of this *Settlement Agreement* are complied with and there are no further violations related to sanitation or disinfection, and/or or any failure to cooperate with the Board or Board Inspectors. In the event of any further such violations, the license suspension shall be summarily imposed.
- A. Respondent's Shop will be subject to **UNANNOUNCED RANDOM INSPECTIONS** for a period of one year from the effective date of this *Settlement Agreement*.
- C. Respondent is required to meaningfully participate and complete a **CONTINUING EDUCATION COURSE** on bacteriology, safety, infection control, and sanitation at a school licensed by the Board, or an online course approved by the Board. Respondent shall pass a comprehensive test on the required subjects with a grade of 75% or greater. The course and test shall be completed within ninety (90) days from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing this course, Respondent shall notify the Board and provide written proof of completion.
- D. Respondent is assessed an **ADMINISTRATIVE FINE** in the amount of five-hundred dollars (\$500). Respondent shall pay this fine in full within thirty (30) days of the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to

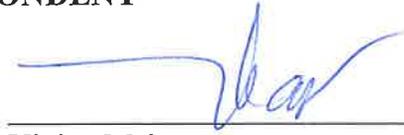
“Treasurer, State of New Hampshire,” to the Board’s office at 121 South Fruit Street, Concord, New Hampshire.

8. Respondent’s breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 313-A:22, II, and a separate and sufficient basis for further disciplinary action by the Board.
9. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
10. This *Settlement Agreement* shall become a permanent part of Respondent’s file, which is maintained by the Board as a public document.
11. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein. Respondent further agrees that she has not been subject to any coercion, undue influence, or duress in connection with her decision to sign this Agreement.
12. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.

13. Respondent understands that her action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
14. Respondent has had the opportunity to seek and obtain the advice of an attorney of their choosing in connection with her decision to enter into this agreement.
15. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced her right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
16. Respondent is not under the influence of any drugs or alcohol at the time she signs this *Settlement Agreement*.
17. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.
18. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

**FOR RESPONDENT**

Date: 2-25-19

  
\_\_\_\_\_  
Vivian Mai  
Respondent

Date: \_\_\_\_\_

\_\_\_\_\_  
Counsel for Respondent (if any)

**FOR THE BOARD/\***

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 4/15/19

  
\_\_\_\_\_  
(Signature)

Holly Rodriguez  
\_\_\_\_\_  
(Print or Type Name)  
Authorized Representative of the  
New Hampshire Board of Barbering, Cosmetology,  
and Esthetics

/\* \_\_\_\_\_, Board members, recused.

