

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

In the matter of:

Nicole Elder
Cosmetology License Number 14262

Docket No. 2019-02

DECISION AND ORDER

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

Appearances: Nicole Elder, Respondent

BACKGROUND

On or about December 6, 2018, the Board received a renewal application from Ms. Nicole Elder (“Respondent”) cosmetology license. In the renewal application, Respondent answered “yes” to question 1. To explain her conviction, the Respondent provided the Board with a copy of the Return From Superior Court - House Of Corrections, a letter from a Clinic Coordinator of Groups, a letter from the Respondent providing additional details and a letter from Parole/Probation Officer Samuel Derven. Based on the criminal conviction, the Board found a reasonable basis for commencing an adjudicatory proceeding pursuant to RSA 313-A:22 and Bar 401.02 to show cause why the Board should renew Respondent’s license. The *Notice of Hearing* was issued and the Respondent appeared before the Board as scheduled on April 15, 2016 at 9:30 am.

BACKGROUND NARRATIVE

The Board has the authority to grant cosmetology licenses. See RSA 313-A:11. On or about June 23, 2009, the Board granted the Respondent a license to practice as a cosmetologist in the State of NH. The Respondent holds cosmetology license #14262. The cosmetology license is the Respondent's personal license.

On or about December 06, 2018, the Respondent submitted a renewal application for her cosmetology license with a form from the Superior Court-House Of Corrections detailing a felony conviction for Theft By Unauthorized Taking \$1001-\$1500.00 in 2018. The Respondent also submitted a letter from her probation officer, Samuel Derven. The letter stated the following:

"Ms. Elder, This letter is in response to your request for a progress report for your probation up until this time. You were sentenced to two years of probation in Grafton Superior Court on 6/20/18 for the offense of Theft By Unauthorized Taking \$1001-\$1500, (RSA 637:3); a Class B Felony. Your scheduled termination date is 06/18/2020. Since that time, four urinalysis drug tests have been conducted; on 08/10/2018 you tested positive for fentanyl, on 10/10/2018 you tested positive for fentanyl; on 11/07/2018 you did not test positive for any illicit substances, and on 12/12/2018 you did not test positive for any illicit substances. You entered the outpatient GROUPS Laconia and have been given a prescription of buprenorphine for medically assisted treatment. You were ordered to pay restitution on this case and have made no payments to date. You are currently \$1,335.41 in arrears. Additionally, you are \$240.00 in arrears for supervision fees. As of this writing, no violations of probation have been filed with the court, nor have any jail sanctions been offered."

The Board's concern for public protection caused the Board to issue the Notice of Hearing in order for the Respondent to provide further explanation and to determine whether she had committed professional misconduct pursuant to RSA 313-A:22, II (b) and/or RSA 313-A:22, II (c).

RESPONDENT'S CASE

The Respondent testified that she is in group therapy and has taken an active role in her recovery. According to the Respondent, she has not had a positive test since she has started the

Suboxone treatment. The Respondent further testified that she has learned coping skills to deal with her addiction and is doing very well in recovery. Respondent stated that she needs a positive work environment and she has found that at Angela's Cut Above; she has worked as a receptionist there since November of 2018. The Respondent explained she has also put procedures in place while handling money at the salon to ensure everyone is accountable for their own money.

The Respondent testified she has made progress on her recovery because she wants to continue her work as a cosmetologist. The Respondent explained that she has moved in with family so she can afford to pay her restitution and care for her children. She now has a good support system in place with her family and employment and has come a long way in her recovery.

The Respondent submitted a letter Cody Gajnos, CRSW ("Mr. Gajnos"), who works at an addiction treatment center in Laconia. Mr. Gajnos stated in his letter that the Respondent has become medically stable on Suboxone and attends weekly group sessions. The letter also noted that weekly urine drug screens and monthly random pill counts are utilized as diversion measures. According to the letter, the Respondent has remained positive and maintained stable employment.

The Respondent also submitted an email from Stephanie Morris ("Ms. Morris"), Executive Secretary from the North Haverhill District Office of the Department of Corrections, stating that there have been no violations filed to date on her probation case. Ms. Morris also attached a printout of a payment contract for restitution. The payment contract states the Respondent agreed to pay monthly for supervision fees.

FINDINGS OF FACT

The Board took into consideration the testimony provided by the Respondent at the hearing. The Board found the Respondent to be forthcoming and candid. The Board finds the facts as outlined in the above Background Narrative to be true.

CONCLUSIONS 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. In 2018, the Respondent committed professional misconduct pursuant to RSA 313-A:22, II (b) by being convicted of a felony.

DISCUSSION AND CONCLUSION

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

As noted above, the Board concludes the Respondent committed professional misconduct and is therefore subject to discipline. The Board also finds the Respondent has completed her court system requirement for counseling, treatment, and educational programs as directed by the correctional authority or Probation/Parole. The Respondent has shown that no violations have

been filed with the Court for probation and a payment contract for restitution has been signed by the Respondent and Probation.

ACTION

THEREFORE, IT IS ORDERED, that the Respondent's cosmetology license be renewed with a probationary term of two (2) years.

IT IS FURTHER ORDERED, that the Respondent shall be of good professional character during the probationary term. Any violation of RSA 313-A or the Board's Administrative Rules shall result in a hearing order for further disciplinary action.

IT IS FURTHER ORDERED, that the Respondent shall provide a progress report from probation/parole every two months while the Respondent is on probation/parole. The report shall include the status of probationary requirements and an attestation Respondent is complying with all probationary requirements and verify any ongoing therapy, treatments, and/or counseling. The Respondent shall notify the Board of any violations of probation/parole in writing. The Respondent shall provide a written statement from the Department of Corrections if/when probation/parole has terminated."

IT IS FURTHER ORDERED, that the Respondent shall update the Board on any change of address in writing within 10 days of any change.

IT IS FURTHER ORDERED, that the Respondent shall provide a copy of this Order to any employer for five (5) years from the effective date of this Order.

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.

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 5/20/19


Holly Rodrigues, Chairperson
Authorized Representative of the Board