

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

In the matter of:

Merriel Whitworth f/k/a Merriel Patterson  
Cosmetology License Number 5065  
Shop License Number 1351  
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2019-06

**DECISION AND ORDER**

By the Board: Holly Rodrigues, Chairperson and Presiding Officer  
Jeanne Chappell, Board Member  
Kimberly Hannon, Board Member  
Joshua Craggy, Board Member  
Kassie Dubois, Board Member  
Dana Pierce, Board Member  
Sarah Partridge, Board Member

Appearances: Caitlin Poole, Hearing Counsel

**BACKGROUND**

The New Hampshire Board of Barbering, Cosmetology, & Esthetics (“Board”) received information that Merriel Whitworth f/k/a Merriel Patterson (“Ms. Whitworth” or “Respondent”) had not made fine payments as ordered by the Board on March 12, 2018. In 2018, the Board ordered the Respondent to pay fines totaling \$2,079.00 by making payments of at least \$50.00 per month.

A Notice of Hearing was issued on August 19, 2019, and set a hearing for September 23, 2019 at 1:00 pm. The Notice of Hearing was sent to Ms. Whitworth via certified mail addressed to the last address she provided to the Board in accordance with RSA 313-A:23 and the Board’s administrative rule, Bar 206.03(a). Ms. Whitworth did not appear; therefore, the hearing was held *in absentia*.

The Board accepted the following exhibits at the hearing:

- Exhibit 1, Decision and Order dated March 12, 2018.

### **BACKGROUND NARRATIVE**

The Board has the authority to grant cosmetology licenses. See RSA 313-A:11. In 1992, the Board granted the Respondent a license to practice as a cosmetologist in the State of NH. The Respondent holds cosmetology license #5065. 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 December 1994, the Respondent was granted a shop license. The Respondent holds shop license 1351.

On or about March 12, 2018, the Respondent appeared for a disciplinary hearing. Discipline imposed in the Decision and Order issued by the Board following the hearing included:

- The \$800.00 fine suspended in a previous settlement agreement was **REINSTATED**;
- The Respondent was ordered to pay the one-thousand dollar (\$1,000.00) fine imposed on September 9, 2016;
- The Respondent was ordered to pay monthly payments of \$50.00 towards the fine payments (which totaled **\$2,079.00**) until the total fine amount was paid. The total fine included a \$329.00 fine from an earlier settlement agreement, \$50.00 of which was paid

to equal \$279.00; an \$800.00 fine that had been suspended in the earlier settlement agreement, but was reinstated; and a \$1,000.00 fine imposed on September 9, 2016.

- That failure to pay these fines would cause additional legal/collection proceedings including court proceedings necessary to enforce this obligation.
- The Respondent's failure to comply with any term of the conditions imposed by the March 12, 2018 Order would constitute professional misconduct pursuant to RSA 313-A:22, II (c) and a separate and sufficient basis for further disciplinary action against the Respondent.

#### **HEARING COUNSEL'S CASE**

Hearing Counsel called Board Director Kathryn Wantuck ("Ms. Wantuck") as a witness to testify at the hearing. Ms. Wantuck is charged with monitoring compliance with Board Orders, including collecting fines that are to be paid to the Board. Ms. Wantuck testified that the Board issued a previous Order to the Respondent. Ms. Wantuck identified Exhibit 1 as a cover letter issued on March 22, 2018, and Decision and Order issued by the Board on March 12, 2018. See Exhibit 1. Ms. Wantuck testified that the total amount in the Order the Respondent owed was \$2,079.00. Ms. Wantuck further testified that the Respondent made three (3) payments. The payments made were on April 11, 2018, for \$50.00; April 23, 2018, for \$50.00; and August 1, 2018, for \$100.00. Ms. Wantuck testified the Respondent still owed \$1, 879.00. Ms. Wantuck further testified that she had spoken to the Respondent on March 5, 2019, has left the Respondent two (2) voicemail messages, and a Board inspector wrote on an inspection report dated January 3, 2019 that fine payments were still owed. According to Ms. Wantuck, Ms. Patterson did not

state she was having difficulty making payments nor did she request any modification or reduction of the amount ordered to be paid. Ms. Wantuck confirmed Ms. Patterson signed for the certified mail receipt for the notice of hearing issued by the Board.

After Ms. Wantuck's testimony, Hearing Counsel recommended suspending the Respondent's license until she comes into compliance. Hearing Counsel also stated for the record that Merriel Patterson is also known as Merriel Whitworth.

### **RESPONDENT'S CASE**

The Respondent did not appear for her hearing.

### **FINDINGS OF FACT**

The Board took into consideration the testimony provided at the hearing. The Board found Ms. Wantuck's testimony to be credible and the exhibit presented to be accurate. As a result, the Board adopts the facts laid out in the Background Narrative and Hearing Counsel's Case as its findings.

### **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. The Respondent engaged in professional misconduct by failing to to make monthly payments towards her fine, in violation of an order of the Board, in violation of RSA 313-A:22, II (c) and Bar 501.02 (c);

### **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. RSA 313-A:22; Bar 402.01.

In determining whether and to what extent it should impose disciplinary sanctions, the Board considered the seven factors outlined in Bar 402.01(d). Specifically, the Board considered the licensee's prior disciplinary record including number and type of of prior instances of misconduct. The Board also considered Bar 404.10(b), which states that the fine failure to comply with an order of the Board shall be \$500.

### **DISCIPLINARY ACTION**

**THEREFORE, IT IS ORDERED**, that the Respondent is fined an additional \$500 for failing to comply with the Board's March 12, 2018 Order in accordance with Bar 404.10(b);

**IT IS FURTHER ORDERED** that Respondent's personal cosmetology and shop licenses are **SUSPENDED** until the Respondent pays all monies owed to the Board. This includes the remaining balance of the \$2,079.00 fine imposed on March 12, 2018, which is \$1,879.00. It also

includes the \$500 fine imposed pursuant to Bar 404.10(b), above, and the \$500 cost of investigation and prosecution imposed below;

**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, due within 30 days of the effective date of this Order.

**IT IS FURTHER ORDERED**, that the Respondent's failure to pay the above fines in contravention of this Order shall result in separate discipline by the Board and the denial of licensure until paid pursuant to Bar 404.12.

**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 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

10/7/19



Holly Rodrigues, Board Member  
Authorized Representative of the Board