

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

In the matter of:

Son T. Tran
Shop License: 4209
Personal License Number: 21234
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2019-03

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Kassie Dubois, Board Member
Dana Pierce, Board Member
Sarah Partridge, Board Member
Joshua Craggy, Board Member

Appearances: Janice Rundles, Hearing Counsel
Kaylee Doty, Hearing Counsel
Sandra Hodgdon, Board Inspector
Son Tran, Respondent

BACKGROUND

On August 19, 2019, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Son Tran ("Respondent") had violated RSA 313-A:22 and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 302.05, 302.07, 501.02, 404.01.

The Board has the authority to grant manicuring licenses. *See* RSA 313-A:12. On or about April 18, 2007, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #21234. 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 September 1, 2017, the Respondent was granted a shop license for Pearl Nails. The Respondent holds shop license #4209.

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; RSA 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.

As set forth in the Notice of Hearing the purpose of the hearing was to determine whether Respondent:

- Engaged in professional misconduct by failing to maintain required sanitation standards and records at his shop in violation of RSA 313-A:22, II (d), RSA 313-A:22, II (g), or RSA 313-A:22, II (i), by failing to maintain required sanitation standards and records at his Shop, in violation of Bar 302.05 (q), (r), (s), (u), Bar 302.07 (c) (1), Bar 302.07 (c) (3), Bar 302.07 (c) (5), and Bar 302.07 (c) (8); and/or
- Engaged in professional misconduct by utilizing unlicensed workers in his shop to perform manicurist services, in violation of RSA 313-A:9, II (b); and/or

- Engaged in professional misconduct pursuant to RSA 313-A:22, II (c) and Bar 501.01(b) by permitting the use of a wax pot outside the scope of his license in violation of Bar 501.02 (f); and/or
- Engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by failing to post the most recent shop inspection form in violation of Bar 404.01 (n); and
- If any of the above allegations were proven, whether and to what extent the Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 313-A:22, III.

The Notice of Hearing noticed the hearing for November 18, 2019 at 10:30 a.m. The Respondent appeared as scheduled.

HEARING TESTIMONY

I. Hearing Counsel's Case

Hearing Counsel introduced seven (7) exhibits at the hearing. All seven exhibits were accepted into evidence by the Board.

1. Exhibit 1, Complaint from Sima Unetani Walker dated February 12, 2018.
2. Exhibit 2, Shop Inspection Form – Ready to License dated August 29, 2017.
3. Exhibit 3, Shop Application and Certificate of Occupancy dated April 12, 2017.
4. Exhibit 4 Shop Inspection Form dated February 22, 2018.
5. Exhibit 5, Shop Inspection Form dated January 17, 2019 with photos.
6. Exhibit 6, NH Online License Information Son T. Tran.
7. Exhibit 7, NH Online License Information for Pearl Nails.

Inspector Sandra Hodgdon (“Inspector Hodgdon”) was called as a witness and testified at the hearing. Inspector Hodgdon has six years of experience as an inspector for the Board. Inspector Hodgdon described that she conducts routine inspections and investigations on complaints.

Inspector Hodgdon identified Exhibits 2 and 3 as the original shop application to open Pearl Nails. Inspector Hodgdon confirmed the name of the owner on the shop application was the Respondent’s name. Inspector Hodgdon testified that she conducted an inspection prior to opening Pearl Nails.

Inspector Hodgdon identified Exhibit 1 as a complaint the Board received regarding Pearl Nails. Inspector Hodgdon stated the complaint identified concerns about sanitation and reuse of implements.

On or about February 22, 2018, Inspector Hodgdon conducted an inspection of Pearl Nails. *See* Exhibit 4. Inspector Hodgdon found one (1) dirty foot spa, no record of cleaning and disinfecting for eight (8) foot spas, ninety-one (91) implements and supplies that were not disinfected properly including cuticle pushers, nippers, and nail clippers, two-hundred thirty-one (231) implements and supplies that were not discarded as required, two (2) individuals were working clients without a New Hampshire license, and the unauthorized use of a wax pot. Inspector Hodgdon testified she spoke with an employee of Pearl Nails at the inspection on how to come into compliance with Board requirements. The Board imposed a fine of \$3732.00.

On or about January 17, 2019, Inspector Hodgdon conducted another inspection of Pearl Nails. *See* Exhibit 5. Inspector Hodgdon found three (3) foot spas that were not disinfected properly, twenty-eight (28) implements that were not disinfected or stored properly, sixty-nine (69) implements that were not discarded as required, and a license and the inspection report that were not posted as required. The Board imposed a fine of \$932.00.

Inspector Hodgdon testified that violations from the previous inspection had not been rectified. Inspector Hodgdon testified that she took photos at the January 17, 2019 and detailed each picture that was part of Exhibit 5. The pictures included nail files and buffers that were in the drawers with nail clippings, tools that were reused, and nail clippings and skin pieces in the nail stations. Inspector Hodgdon testified that she went over disinfection procedures with someone at Pearl Nails at the end of the inspection.

The Respondent did not have any questions for Inspector Hodgdon.

II. Respondent's Case

The Respondent apologized to the Board and testified that he does not have a lot of experience; it is his first shop. The Respondent further testified that he has tried to make everything better, stating he has explained cleaning procedures to his employees.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. In addition to making a specific finding that the above Hearing Counsel's Case (Section I) was true, the Board found the testimony of Inspector Hodgdon to be credible and the inspection reports accurate, detailed, and professional. The Board further found the notices of imposed fines to be accurate.

RULINGS OF LAW

The Board may undertake disciplinary proceedings against its licensees. *See* RSA 313-A:22.

After considering the above findings of fact, the Board makes the following rulings of law:

- On or about February 22, 2018 and January 17, 2019, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (d), RSA 313-A:22, II (g), and RSA 313-A:22, II (i), by failing to maintain required sanitation and records at his shop in violation of Bar 302.05 (q), (r), (s), (u), Bar 302.07 (c) (1), Bar 302.07 (c) (3), Bar 302.07 (c) (5), and Bar 302.07 (c) (8); and
- On or about February 22, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (g) by allowing unlicensed individuals to work in his shop in violation of RSA 313-A:9, II (b); and
- On or about February 22, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (c) by permitting the use of a wax pot outside the scope of his license in violation of Bar 501.02 (f); and
- On or about January 17, 2019, the Respondent engaged in professional misconduct by failing to post the most recent shop inspection form in violation of Bar 404.01(n).

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

The Board concluded the Respondent engaged in multiple violations of RSA Chapter 313-A and the Board's administrative regulations. Therefore, the Board voted to impose public discipline

to ensure the health and safety of the public is protected. In accordance with Bar 402.01, the Board considered multiple factors in determining what, if any, discipline to impose. The Board considered the Respondent's acknowledgment of his wrongdoing, his willingness to cooperate with the Board, and the potential harm to the public health and safety of his actions.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that within 30 days of this order, Respondent shall complete a continuing education course on bacteriology, safety, diseases and disorders, blood spill procedures, disinfection procedures, infection control, and overall cleanliness in a salon, in a school licensed by the Board, and pass a comprehensive test on topics described above with a passing grade of 75% or reater. The Respondent shall satisfactorily pass an inspection prior to shop re-opening.

IT IS FURTHER ORDERED, that the Respondent's licenses shall be subject to a period of probation for 3 years. Any violation of the Board's rules over \$100.00 within the probationary period shall automatically result in a hearing to consider imposing further discipline, including potential revocation of the Respondent's personal and shop licenses.

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". Nonpayment of a fine by the Respondent in contravention of this Order shall result in separate discipline by the Board and the denial of licensure until the fine is paid pursuant to Bar 404.12.

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.

BY ORDER OF THE BOARD

Date: March 16, 2020



Tina M. Kelley, Administrator
Authorized Representative of the
New Hampshire Board of Barbering,
Cosmetology & Esthetics