

**STATE OF NEW HAMPSHIRE
BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS
CONCORD, NH 03301**

In the Matter of:
Bingo Nails
Shop Lic. #4341

Docket No.: 23-BAR-004

Ngoc Phung, Owner
Personal Lic. #32587

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 Barbering, Cosmetology, and Esthetics, the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”) and Bingo Nails, a nail salon currently licensed by the Board, and Ngoc Phung, an esthetician currently licensed by the Board, (together as “Respondents”) do hereby stipulate and agree to resolve certain allegations of violations of rules and laws regulating the profession now pending before the Board according to the following terms and conditions:

1. Pursuant to NH RSA 313-A: 21 and N.H. Code Admin. R Bar (“Bar”) 404.01, Board inspectors have jurisdiction to conduct inspections of shops and schools.
2. Pursuant to NH RSA 313-A and Bar 404.04, the Board has the authority to issue administrative fines for violations of statutes.
3. Pursuant to RSA 310-A:1-k, III, and Bar 217.02, the Board may, at any time, dispose of such allegations by settlement, and without commencing a disciplinary hearing.
4. The Board first granted Ngoc Phung an esthetician license #32587 on February 24, 2017. Ngoc Phung’s esthetician license expires on March 31, 2025.

5. The Board first granted Bingo Nails at 103 Main Street, Littleton shop license #4341 on or about October 5, 2018.
6. On or about June 10, 2022, a Board inspector conducted a routine inspection of Respondents which resulted in alleged violations totaling 4,273 points.
7. On or about December 29, 2022, OPLC Enforcement received a complaint against the Licensee alleging sanitation issues at the shop and that a dirty blade scraper had been used on a client. In response the Board issued a Notice of Adjudicative Hearing.
8. Respondents stipulate to the following facts:
 - A. On June 10, 2022, a Board inspector conducted a routine inspection of Bingo Nails at 103 Main Street, Littleton, NH 03561.
 - B. As a result of the inspection, the inspector found multiple violations totaling 4,273 points of which:
 - i. 1,198 points were related to health and sanitation including improperly disinfected tables and pedicure areas, improperly cleaned and store re-useable implements and appliances, improperly disposed of and/or storage of single use implements, and lack of required safety data sheets;
 - ii. 75 points were related to licenses and certifications where one licensed individual had no photo as required and the licenses were not displayed as required; and,
 - iii. 3,000 points were related to other violations, namely, possessing multiple bladed implements.

9. The Board finds that Respondent committed the acts described above and concludes that, by engaging in such conduct, Respondent violated NH RSA 313-A:22, II(c), RSA 313-A:22, II(d), RSA 313-A:22, II(g), and RSA 313-A:22, II(i).
10. Respondents acknowledge that the allegations and facts set forth in paragraph 8 above constitutes grounds for the Board to impose disciplinary sanctions against their license to operate as a nail salon and manicurist in the State of New Hampshire.
11. WHEREFORE, Respondents consent to the Board imposing the following discipline, pursuant to RSA 313-A:22, III.
 - A. Respondents are **REPRIMANDED**.
 - B. Respondents are subject to **PROBATION** for two years commencing on the effective date of this *Settlement Agreement*, as defined below (“Effective Date”). Any violation of the Board’s rules relating to sanitation and hygiene over 100 points within the probationary period shall constitute misconduct pursuant to RSA 313-A:22 and may form the basis for additional disciplinary sanctions after appropriate notice and opportunity for a hearing pursuant to RSA 313-A:23, RSA 541-A:30, and/or Bar 201 which may include up to and including emergency license suspension. The Board is putting the Respondents on notice that it may enforce this order specifically using unannounced inspections.
 - C. Within ninety (90) days of the Effective Date of this agreement Licensee’s shop owner *and* manager, to *each* participate in 10 hours of program(s) of **CONTINUING EDUCATION** in the areas of sanitation and disinfection control. The Respondent shall, within 10 days of completion, provide the Board with

certificate(s) of completion. **Whether any program(s) meets the requirements of this section shall be determined by the Board. Therefore, the Licensee is strongly encouraged to seek the Board's pre-approval of program(s) before taking them.** The Board has authorized the Board Chair to pre-approve courses on its behalf, so that the licensee does not have to wait until a meeting to learn whether coursework he and/or the manager wish to take is acceptable. The Licensee can submit information about proposed programs to the Board's Administrator, who shall present the same to the Board Chair for determination.

- D. Respondents must immediately display, in full view of the public, a full and complete copy of this *Settlement Agreement* near or adjacent to the shop license and past inspection forms, and continue to display a copy until the conclusion of the period of probation.
- E. Within 30 days of the Effective Date of this *Settlement Agreement*, Respondents must request in writing via mail or email a reinspection appointment with a Board inspector;
- i. Respondents must **PASS REINSPECTION**;
 - ii. If reinspection is failed, Respondents must remedy the violations and upon remedy immediately request in writing via mail or email an appointment with a Board inspector for an additional reinspection;
 - iii. Additional violations found at a failed reinspection may form the basis for additional disciplinary sanctions after appropriate notice and opportunity for a hearing pursuant to RSA 313-A:23, RSA 541-A:30, and/or Bar 201 which may include up to and including emergency license suspension.

- F. Respondents are assessed an **ADMINISTRATIVE FINE** in the amount of four thousand and two-hundred-and-seventy-three dollars (\$4,273.00). Respondent shall pay this fine in full within forty-five (45) days of the effective date of this *Settlement Agreement* by delivering a money order or bank check, made payable to “Treasurer, State of New Hampshire,” to the Board’s office at 7 Eagle Square, Concord, New Hampshire, 03301. **No separate invoice shall issue.** Payment shall include a copy of this Settlement Agreement or a note including the docket number and indicating the payment is made in compliance with a settlement agreement with the Board.
12. Respondents, specifically the shop owner, shall bear all costs required by this *Settlement Agreement* and shall be responsible for ensuring all payments are made, but Respondents shall be permitted to share such costs with third parties.
13. Respondents’ breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 313-A:22, and a separate and sufficient basis for further disciplinary action by the Board.
14. The Board may consider Respondents’ compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondents’ licenses.
15. The Board agrees that in return for Respondents executing this *Settlement Agreement* the Board will not proceed with the formal adjudicatory process based upon the facts described herein. However, the Board may consider this misconduct as evidence of a pattern of conduct 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 Respondents in the future.

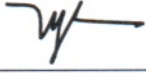
16. This *Settlement Agreement* shall become a permanent part of Respondents' file, which is maintained by the Board as a public document.
17. Respondents voluntarily enter and sign this *Settlement Agreement* and states that no promises or representations have been made other than those terms and conditions expressly stated herein.
18. Respondents understand that Respondents' action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration, judicial review, or appeal.
19. Respondent agrees to support the adoption of this agreement by the Board.
20. Respondent understands that this agreement is an adverse action against Respondent's license and will be reported to all relevant jurisdictions.
21. Respondents have had the opportunity to seek and obtain the advice of an attorney of Respondents' choosing in connection with the decision to enter into this *Settlement Agreement*.
22. Respondents are not under the influence of any drugs or alcohol and are otherwise of sound mind at the time of signing this *Settlement Agreement*.
23. Respondents 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. Respondents specifically waives any claims that any disclosures made to, or by, the Board surrounding its review of this *Settlement Agreement* have prejudiced Respondents' right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.

24. Respondents certify that he/she has read this document titled *Settlement Agreement*. Respondents understands that he/she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he/she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his/her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondents fully understand the nature, qualities and dimensions of these rights. Respondents understand that by signing this *Settlement Agreement*, he/she waives these rights as they pertain to the misconduct described herein.
25. 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 and shall become final after 30 days pursuant to Plc 205.04.

[Signatures on next page.]

FOR RESPONDENT

Date: 6/16/2023



Ngoc Phung
Ngoc Phung (Owner)
Bingo Nails
Respondent

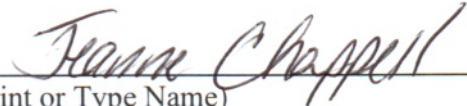
FOR THE BOARD/*

Accepted by the Board of Barbering Cosmetology and Esthetics on this 26 day of June, 2023 ("Effective Date").

Date: 6-26-23



(Signature)



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

/*Board members recused: