

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

In the Matter of:

Docket Nos.: **2023-BAR-021;**
2023-BAR-029;
2023-BAR-A Little Off the Top Salon-0786

**A Little Off the Top
Shop Lic. #2596
Tanning Registration #452**

**Kimberly Wakefield, Owner
Cosmetology Lic. #5656**

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 A Little Off the Top ("Shop"), a cosmetology salon and a tanning registrant currently licensed by the Board, and Kimberly Wakefield, ("Licensee"), a cosmetologist 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, tanning salons, and schools.
2. Pursuant to NH RSA 310:12, NH RSA 313-A and Bar 404.04, the Board has the authority to issue disciplinary sanctions for violations of Board statutes and rules.
3. Pursuant to NH RSA 310:10, VIII, 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 Licensee cosmetology license #5656 on 10/16/1997. Licensee's license expires on 03/31/2024.
5. The Board granted A Little Off the Top at 234 White Mtn. HWY, Conway, NH 03818 shop license #2596 and tanning registration 452.
6. On or about 04/25/2023, a Board inspector conducted a routine inspection of Respondents shop (investigation docket #2023-BAR-A Little Off the Top Salon-0786) and tanning registration which resulted in alleged violations. The Board initiate and subsequently vacated an emergency suspension (adjudicatory proceeding docket #2023-BAR-021) concerning the tanning registration violations. Subsequently, Board Inspectors conducted multiple follow-up inspections which resulted in alleged electrical code violations. In response to the alleged electrical code violations, the Board initiated a second emergency suspension hearing (adjudicatory proceeding docket # 2023-BAR-029). An emergency suspension hearing was scheduled to occur on 08/28/2023.
7. Respondents stipulate to the following facts:
 - A. On 04/25/2023, a Board inspector conducted routine inspections of Shop for the shop license #2596 and tanning registration 452 at 234 White Mtn. HWY, Conway, NH 03818.
 - B. As a result of the 04/25/2023 shop license #2596 inspection, the inspector found multiple violations of which:
 - i. Three hundred and thirteen (313) points were related to health, sanitation and disinfection including improperly disinfected floors, walls, woodwork, and furniture, one (1) improperly cleaned and disinfected foot spa, thirty-three (33) implements improperly cleaned, disinfected, and/or stored; and

- improperly stored creams and/or other semi solid substances, namely, two (2) wax pots were uncovered.
- ii. Seventy-five (75) points were related to licenses and certifications where one (1) licensed individual had no photo as required, two (2) licenses were not displayed as required in that the displayed license was expired, and the inspection report was not displayed as required; and,
 - iii. Eight hundred (800) points were related to other violations, namely, two (2) bladed implements were available for use in the facility.
 - iv. Zero (0) points were assessed for SDS sheets that required updating.
- C. As a result of the 04/25/2023 tanning registration #452 inspection, the inspector found multiple violations of which:
- i. Ten (10) points were related to remote timers failed to be located such that consumers may not set their own exposure time;
 - ii. Fifty (50) points were related to failure to restrict only one consumer in a tanning device area at a time;
 - iii. Six hundred (600) points for failure to have six (6) operators training records available for inspection at the time of inspection; and,
 - iv. Zero (0) points were assessed for failure to display inspection report.
- D. During the 04/25/2023 inspection, Inspector Avery observed two tanning customers use the same tanning booth and observed the tanning customers setting their own exposure time.
- E. On 05/15/2023, Tyrone Wakefield testified that he would relocate the tanning booth exposure timer such that customers could not set their own exposure times.

Mr. Tyrone Wakefield testified that he was not a licensed electrician.

- F. On 07/18/2023, Board's Chief Inspector Hodgdon and Inspector Ken Vallery, Inspector for the NH Board of Electricians conducted an inspection concerning the relocation of the tanning booth timer.
- G. On 07/18/2023, Inspector Vallery cited Mr. Tyrone Wakefield for conducting an electrical installation without an appropriate license and cited numerous electrical code violations including but not limited to inappropriately wired dryer and stand-up tanning booth, use of extension cords, inappropriate availability GFCI receptacles, blocked access to the electrical panel, and blocked access to the rear egress door.
- H. On or about 07/18/2023, Inspector Vallery informed Chief Stephen Solomon of the Conway Fire Department of the electrical code violations.
- I. On 08/04/2023, Chief Solomon conducted an inspection of the Respondents and found multiple Fire Code violations including but not limited to inappropriately wired dryer and stand-up tanning booth, use of extension cords, inappropriate availability GFCI receptacles, blocked access to emergency lights, and structural changes made without a permit.
- J. On 08/08/2023, Chief Solomon sent a letter and notice of violation instructing the Respondents: "The stand up tanning booth and clothes dryer are UNSAFE TO OPERATE. You are to immediately stop using these appliances. . . . Failure to comply will result in the revocation of the certificate of occupancy and closure of business."
- K. On 08/15/2023, Inspector Hodgdon and Inspector Vallery conducted a follow-up

inspection to confirm Respondents' compliance the Conway Fire Department's Notice of Violation.

- L. On 08/15/2023, Inspector Hodgdon and Inspector Vallery observed the clothes dryer to be warm to the touch and full of wet clothes. The dryer had not been properly re-wired. Other violations included the rear egress door being blocked and continued improper use of extension cords.
8. 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(d), (g), and (i) (See Rules 302.07 et seq., Rule 404.09 et seq., and Rule 501.02(c)).
9. Respondents acknowledge that the allegations and facts set forth above constitutes grounds for the Board to impose disciplinary sanctions against their license to operate as a Board licensee in the State of New Hampshire.
10. WHEREFORE, Respondents consent to the Board imposing the following discipline, pursuant to RSA 313-A:22, III.
- A. Respondents are **REPRIMANDED**.
 - B. Respondents' shop license and tanning registration is **SUSPENDED** until all the conditions listed below are met. Upon passing an inspection by the Board's inspector and OPLC Electrical inspector, the Respondents' shop license and tanning registration shall become active:
 - i. The Respondents shall make the following corrections which shall be performed by a licensed electrician:

- a. Respondents shall be in compliance with NFPA 1:11.1.5.1. in that all extension cords shall be plugged into an approved receptacle and shall discontinue all use of extension cords in a “daisy chained” manner.
- b. Respondents shall be in compliance with NFPA 1:11.1.5.5. in that extension cords and flexible cords shall not be affixed to structures, extend through walls, ceiling, or floors, or under doors or floor coverings, or be subject to environmental damage and shall discontinue all use of extension cords run through ceilings, walls, or stapled to walls.
- c. Respondents shall be in compliance with NFPA 1:11.4.2 in that relocatable power taps shall be directly connected to a permanently installed receptacle and shall discontinue use of all multi-outlet adapters plugged into extension cords.
- d. Respondents shall be in compliance with NFPA 70:220:18 and shall ensure all salon area chairs are not overloaded.
- e. Concerning the clothes dryer, Respondent shall either 1. Have a licensed electrician disconnect and remove the clothes dryer from the premises; or 2. Come into compliance with the following:
 - i. NFPA 211:10.7.3.3 in that all clothes dryers shall be exhausted to the outside air;

- ii. NFPA 70:310.15 in that ampacities for conducted rated 0 to 2000 volts shall be as specified in the Ampacity table 310.16 through 310.21;
 - iii. NFPA 70:330.30(A) in that Type MC Cable shall be supported and secured by stables, cable ties listed and identified for securement and support, straps, hangers, or similar fittings, or other approved means designed and installed so as not to damage the cable;
 - iv. NFPA 70:210.8(b)(11) in that a ground fault circuit interrupter protection for personnel shall be provided in laundry areas, specifically the washing machine shall be plugged into a GFCI protected receptacle.
- f. Respondents shall be in compliance with NFPA 70:110.26 in that access and working space shall be provided and maintained about all electrical equipment to permit ready and safe operation and maintenance of such equipment.
- g. Concerning the stand-up tanning unit, Respondent shall either 1. have a licensed electrician disconnect the tanning unit and Respondent shall cease operation of the tanning unit; or 2. Come into compliance with the following:
- i. NFPA 70:430.102(B)(1) in that the disconnecting means for the motor (fan) shall be located within sight from the motor and machinery location;

- ii. NFPA 70:330.30(A) in that the Type MC Cable shall be supported by stables, cable ties listed and identified for securement and support, straps, hangers, or similar fittings, or other approved means designed and installed so as not to damage the cable;
 - h. Respondents shall be in compliance with NFPA 101:8.2.2.2 in that the structural changes made rectifies the gap in the building structure and completes assembly.
 - i. Respondents shall be in compliance with NFPA 101:7.9.3.1.1(1) in that emergency lighting shall be located such that functional testing may be conducted monthly.
 - ii. The Respondents shall schedule an inspection with the Conway Fire Department concerning the corrections listed above and shall pass inspection. Whether or not the Respondents pass inspection is at the discretion of the Conway Fire Department.
 - iii. Upon passing an inspection performed by the Conway Fire Department, Respondents shall schedule an inspection with the Board's inspector and with the OPLC state electrical inspector and shall pass inspection. Whether or not the Respondents pass inspection is at the discretion of the inspectors.
- C. Respondents are subject to an additional thirty (30) day **SUSPENSION**, fully stayed, subject to the terms of probation below.

D. Respondents are subject to **PROBATION** for a period of three (3) years commencing on the date the suspension pursuant to paragraph 10.B. is lifted. The following are terms of probation:

- i. Any inspection during the probation period resulting in over one hundred (100) points for violation of the Board's rules relating to sanitation, hygiene, and or safety, specifically, Shop Inspection Report Rev. 2301 sections (1) – (20); and (38) – (50) shall be a violation of probation and shall be grounds for the Board to impose any stayed fine after notice and opportunity for a hearing.
- ii. Any inspection during the probation period resulting in any electrical code violations which required correction as stated above shall be grounds for the Board to impose the stayed 30-day suspension after notice and opportunity for a hearing.
- iii. If OPLC Enforcement receives notice of a violation of probation, OPLC Enforcement may request that the Board impose any suspended/stayed disciplinary sanction(s) after a hearing as specified above. A violation of probation shall also 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.
- iv. Violation of probation shall also 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.
- v. The Board is putting the Respondents on notice that it may enforce this order specifically using unannounced inspections.
 - vi. 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.
 - vii. Respondents must **PASS A FOLLOW-UP INSPECTION** with the Board inspector as stated above.
 - a. If follow-up is failed, Respondents must remedy the violations within 7 days and upon remedy immediately request in writing via mail or email an appointment with a Board inspector for an additional reinspection;
 - b. Failure to pass the additional follow-up inspection 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.
 - viii. Within ninety (90) days of the Effective Date of this agreement, Respondents' owner shall participate in 10 hours of program(s) of **CONTINUING EDUCATION** in the areas of sanitation, sterilization,

disinfection, and infection control AND shall complete an approved full tanning certification course. 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.

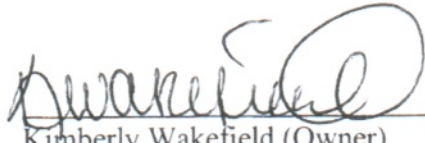
- E. Respondents are assessed an **ADMINISTRATIVE FINE** in the amount of three thousand dollars (\$3,000.00) where all but two thousand dollars (\$2,000.00) is stayed during the period of probation. Respondent shall pay the amount of two thousand dollars (\$2,000.00) in-full within ninety (90) days of the date the suspension is lifted 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.

11. 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. If a fine is past-due and remains unpaid at the time of license renewal, the Board shall not renew the Respondents' license.
12. 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.
13. The Board may consider Respondents' compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondents' licenses.
14. 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.
15. This *Settlement Agreement* shall become a permanent part of Respondents' file, which is maintained by the Board as a public document.
16. 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.
17. Respondents understand that Respondents' action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration, judicial review, or appeal.

18. Respondent agrees to support the adoption of this agreement by the Board.
19. Respondent understands that this agreement is an adverse action against Respondent's license and will be reported to all relevant jurisdictions.
20. 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*.
21. 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*.
22. 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.
23. 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.

FOR RESPONDENT

Date: 08/27/2023



Kimberly Wakefield (Owner)
License # 5656
A Little Off the Top
Shop #2596
Tanning Reg #452
Respondent

FOR THE BOARD/*

Accepted by the Board of Barbering Cosmetology and Esthetics on this 18 day of September, 2023 ("Effective Date").



(Signature)



(Print or Type Name)

Authorized Representative of the
New Hampshire Board of Barbering,
Cosmetology, and Esthetics

/*Board members recused: