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

In the Matter of:
DT Lee Nails,
Shop Lic. #3722

Docket No.: 23-BAR-026

David Tran, Owner
Personal Lic. #28480

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 DT Lee Nails, ("Shop"), a nail salon currently licensed by the Board, and David Tran, ("Licensee"), a manicurist, 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:22, and Bar 404.04, the Board has the authority to issue disciplinary sanctions of 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 a manicurist license #28480 on 08/14/2013. Licensee's manicurist license expires on 12/31/2023.

5. The Board granted Shop at 1 Brickyard Square, Unit #17, Epping, NH 03042 shop license #3722. Licensee is the owner of record for Shop #3722.
6. On 04/19/2023, and in response to a complaint received on 03/20/2023, a Board inspector conducted a follow-up inspection of Respondents which resulted in alleged violations totaling 2,546 points. In response, the Board issued a Notice of Adjudicative Hearing.
7. Respondents stipulate to the following facts:
 - A. On 04/19/2023, a Board inspector conducted a follow-up inspection of Shop at 1 Brickyard Square, Unit #17, Epping, NH 03042.
 - B. As a result of the inspection, the inspector found multiple violations totaling 2,546 points of which:
 - i. 1,721 points were related to health and sanitation including: improperly cleaned and disinfected spa agitators, lacked a complete record of cleaning for spas, failure to have covers for disinfection containers, improperly cleaned and stored re-useable implements and appliances, improperly disposed of and stored single use implements, lacked an eyewash station and first-aid kit, and lacked required safety data sheets,
 - ii. 25 points were related to licenses and certification where the inspection report was not displayed as required and unobstructed.
 - iii. 800 points were related to having two products containing Methyl Methacrylate.
 - C. Respondent stipulates that he lacked MSDS sheets for the product "Coffee Liquid" and that active ingredients were not listed on the product container itself.
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) and (i) (*see* Bar 404.01, Bar 302.02, Bar 302.05 (m), (p), (q), (r), (t), (u), and Bar 302.07(c), (f), (g)(i), and (m)).

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 and RSA 310:12.

A. Respondents are **REPRIMANDED**.

B. Respondents are subject to **PROBATION** for a period of two (2) years commencing on the Effective Date of this *Settlement Agreement*. The following are terms of probation:

i. The following shall be a violation of probation:

a. Any failure to comply with this settlement agreement; and/or,

b. An inspection during the probationary 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).

ii. 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. 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.

- iii. The Board is putting the Respondents on notice that it may enforce this order specifically using unannounced inspections.
- iv. Respondents must immediately display, in full view of the public, a full a 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.
- v. Within thirty (30) days of the Effective Date of this agreement, Respondents' **owner and manager** (if different from owner), shall *each* participate in 10 hours of program(s) of **CONTINUING EDUCATION** in person in the areas of sanitation, sterilization, disinfection, and infection 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 and grant requests for an extension of time, 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.

- vi. Upon completion of the program of continuing education and within 10 days of said completion, Respondents must request in writing via mail or email a **FOLLOW-UP INSPECTION** appointment with a Board inspector. Terms of follow-up inspection are as follows:
- a. Respondents must pass a follow-up inspection.
 - b. 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.
 - c. Failure to pass the additional reinspection 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.

- C. Respondents are assessed an **ADMINISTRATIVE FINE** in the amount of two thousand one hundred and forty-six dollars (\$2,146.00) where all but one thousand five hundred dollars (\$1,500.00) is stayed during the period of probation. Respondent shall pay the amount of **one thousand five hundred dollars (\$1,500.00)** 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.

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.
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.

24. 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: 10/26/23

David Tran
David Tran (Owner)
Personal Lic. #28480

DT Lee Nails (Shop)
Shop #3722
Respondents

FOR THE BOARD/*

Accepted by the Board of Barbering Cosmetology and Esthetics on this 20 day of November, 2023 ("Effective Date").

Jeanne Clappell
(Signature)

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

/*Board members recused: