

**STATE OF NEW HAMPSHIRE  
OFFICE OF PROFESSIONAL  
LICENSURE AND CERTIFICATION**

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**BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS**

**In Re: Ideal Nail Spa  
Shop Lic. #3846**

**Jack Le, Owner**

**Personal License #32656 (inactive)**

Docket No.: 23-BAR-005

**NOTICE OF DECISION DATED 8/28/23**

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Enclosed please find a copy of the Board's Order dated 8/28/23 relative to:

**DISCIPLINARY HEARING FINAL DECISION AND ORDER**

**MOTIONS/PETITIONS FOR RECONSIDERATION OR REHEARING:**

Pursuant to N.H. Code Admin. R. Plc 206.29(a) ("Rules") and RSA 310:14, II, motions/petitions for reconsideration or rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.29(b), the Motion/Petition shall: 1) clearly identify points of law or fact that the movant asserts the Board and/or Presiding Officer has overlooked or misapprehended; 2) contain such argument in support of the motion as the movant desires to present; and 3) be served by the movant on all other participants in accordance with Rule 206.11. Pursuant to Rule 206.29, no answer to a motion/petition for reconsideration or rehearing shall be required, but any answer or objection filed shall be delivered to the Presiding Officer's Office within 5 working days following receipt of service of the motion/petition for reconsideration. Pursuant to RSA 541:5, upon the filing of such motion/petition for rehearing or reconsideration, the Board or Presiding Officer shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the Board or Presiding Officer may prescribe.

**RIGHT TO APPEAL:**

Pursuant to RSA 310:14, III, appeals from a decision on a rehearing and/or motion for reconsideration shall be by appeal to the New Hampshire Supreme Court pursuant to RSA 541. Pursuant to RSA 541:6, within 30 days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the New Hampshire Supreme Court. Pursuant to RSA 310:14, III, no sanction shall be stayed by the Board during an appeal.

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**In Re: Ideal Nail Spa  
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Docket No.: 23-BAR-005

**FINAL DECISION AND ORDER – 07/11/23**

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**I. PARTICIPANTS:**

Board Members and Support Staff and Counsel:

Jeanne Chappell, Board Chair  
Kimberly A. Hannon, Board Member  
Joshua Craggy, Board Member  
Sarah J. Partridge, Board Member  
Donna Woodsom, Board Member  
Talia Wilson, OPLC Board Administrator  
Teresa Boyer, OPLC Board Administrator  
Attorney Elizabeth Eaton, OPLC Board Counsel

Presiding Officer:

Attorney Nikolas Frye, OPLC Hearings Examiner

Parties:

Jay Brown, Esq., Assistant Attorney General and Hearing Counsel  
Jack Le, Respondent and shop owner

**II. CASE SUMMARY/PROCEDURAL HISTORY:**

On 11/9/22 Inspectors Shannon Avery and Sandra Hodgdon, on behalf of the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”), performed a routine inspection of Jack Le’s

Ideal Nail Spa (“Respondent”). The inspection assessed 3655 violation points. On 3/13/23 the Board voted to initiate an adjudicative hearing in this matter. This Final Order and Decision follows.

**III. SUMMARY OF THE PROPOSED EVIDENCE AND EVIDENTIARY RULINGS:**

The Board received the following evidence pursuant to RSA 541-A:33 and Rules 206.22 and 206.18(d):

A. Exhibits were submitted by Hearing Counsel, numbered as follows:

1. Printout of OPLC shop license information for Ideal Nail Spa
2. Printout of OPLC license information for Phong X. Le
3. Shop Inspection Report dated November 9, 2022 4-22. Photographs from November 9, 2022 inspection

B. Exhibits were submitted by the Respondent, numbered as follows:

- A. Logbook from shop (demonstrative only)
- B. Packets of flip flops (demonstrative only)
- C. Pouch packets
- D. Colored photos taken at Ideal Nail Spa (25 total)

C. Sworn testimony was received from:

1. Shannon Avery, OPLC Inspector
2. Jack Le, Owner of Ideal Nail Spa

The Presiding Officer fully admitted all proposed exhibits during a prehearing conference, after the Respondent and Hearing Counsel stated no objection to each other’s respective exhibits.<sup>1</sup>

**IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:**

Hearing Counsel called Shannon Avery, OPLC Inspector, who was sworn in under oath and provided testimony relating to the allegations contained in the notice of hearing and Exhibits 1 through 22. The Respondent cross examined Ms. Avery. The Board had no questions. Of note, Ms. Avery testified

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<sup>1</sup> An impromptu prehearing conference was held directly before the final hearing at which the Presiding Officer explained the process; notified the parties that the law had recently changed with respect to procedure; served an amended notice of hearing on the parties; and determined the admissibility of evidence. Both parties waived the notice period established by RSA 310:10, X, after the Presiding Officer offered to reschedule the hearing. Hearing Counsel also requested the Presiding Officer amend the Amended Notice of Hearing to re-include a citation to RSA 310-A:1-m in section II.c.4. The Presiding Officer noted the omission of RSA 310-A:1-m in that issue presented was a clerical error. The Respondent had no objection, and the Amended Notice of Hearing was amended accordingly on the record.

that the Respondent, the Respondent's shop ("Ideal Nail Spa"), and the Respondent's manager, were unlicensed at the time of the 11/09/22 inspection. She stated Ideal Nail Spa was open for business and operating as a nail salon on the date of the inspection. Ms. Avery also testified that since the inspection, the Respondent, the Respondent's shop, and the Respondent's manager have failed to obtain licensure with the Board.

After Hearing Counsel's presentation, the Respondent was sworn in under oath and provided testimony relating to the allegations contained in the notice of hearing, Exhibits 1 through 22, and Exhibits A through D. He acknowledged that he, Ideal Nail Spa, and his manager were unlicensed by the Board at the time of the 11/09/22 inspection and Ideal Nail Spa was operating as a nail salon. He also acknowledged that he, Ideal Nail Spa, and his manager have failed to obtain licensure with the Board since the 11/09/22 inspection and the business has remained open and operating as a nail salon.

**V. DISCUSSION, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW:**

After reviewing all the evidence and considering the presentation and demeanor of all the witnesses, the Board makes the following findings of facts:

1. The Board took administrative notice of Hearing Counsel's exhibits 1-22.
2. The shop license had expired on 5/1/21. *See* Exh. 1.
3. Inspector Shannon Avery testified credibly that the shop was open at the time the license was expired.
4. The inspection form dated 11/9/22, noted the shop license was expired. *See* Exh. 3.
5. Inspector Avery testified credibly that she did not find a previous inspection form posted in the shop at the time of the 11/9/22 inspection. *Also see* Exh. 3.
6. Inspector Avery testified credibly to the findings noticed in the 11/9/22 inspection report.

Based upon the evidence presented and the findings of fact made by the Board, the Presiding Officer makes the following conclusions of law:

1. As to issue presented #1 in the notice of hearing, the Respondent did not commit professional misconduct as defined at RSA 313-A:22 II (c), (d), and/or (i) (*see, i.e.*, RSA 313-A:9, RSA 313-A:11, RSA 313-A:12, RSA 313-A:17, RSA 313-A:19, N.H. Code Admin. Rs. Bar 301.09 et seq., 302.05(y), (z) and/or 401.01(c) and (n)) by allegedly operating a shop with one or more of the following licensing related violations, as set forth in an inspection report dated 11/9/22: 1)

providing services with an expired license or work permit; 2) operating a business without appropriate license; 3) individual does not have a New Hampshire License; and/or 4) Inspection Report not displayed or obstructed.<sup>2</sup>

2. As to issue presented #2 in the notice of hearing, the Respondent did not commit professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), and/or RSA 313-A:22, II(i) (see N.H. Code Admin. Rs. Bar 1.01.11, 302.05(g), (h), (m), (q), (r), (t), 302.07(c)(1), (2), (3), (4), and/or (8), 302.07(g)(1), (2), and/or (4)) by allegedly operating a shop with one or more related health and safety violations, as set out in the inspection report 11/9/22.<sup>3</sup>
3. As to issue presented #3 in the notice of hearing, the Respondent did not commit professional misconduct as defined at RSA 313-A:22, II(g).<sup>4</sup>
4. As to issue #4 in the notice of hearing (as was orally amended on the day of the hearing to recite former RSA 310-A:1-m<sup>5</sup>), the Respondent, in violation of then effective RSA 310-A:1-m, VIII,<sup>6</sup> engaged in activity requiring shop and personal and/or managerial licensure by the Board without having an active shop license issued pursuant to RSA 313-A:19, II and an active personal license or a manager with an active personal license issued by the Board. See RSA 313-A:9, II and RSAs 313-A:11, 12, and 13.

Upon a finding of unlicensed practice made pursuant to RSA 310-a:1-m, VIII, the Board takes the following action against the Respondent:

- A. Pursuant to RSA 310-A:1-m, VIII(a), the Board orders the Respondent to immediately **CEASE AND DESIST** operating a salon as defined at RSA 313-A:1, XII without an active shop license issued by the Board pursuant to RSA 313-A:19, II and Bar Rules 301.09 et seq.
- B. Pursuant to RSA 310-A:1-m, VIII(b), the Board orders the Respondent to pay a fine in the amount of \$3,655.00 within 180 days of the below signed date of this Order.

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<sup>2</sup> The Presiding Officer makes no findings of professional misconduct because all the activity that occurred happened while the shop, owner and manager were unlicensed. See RSA 313-A:22 (“The board may undertake disciplinary proceedings: ... [u]pon written complaint of any person which charges that **a person licensed by the board** has committed misconduct under paragraph II...” RSA 313-A:22, I)(emphasis added).

<sup>3</sup> *Supra* footnote 2.

<sup>4</sup> *Supra* footnote 3.

<sup>5</sup> The Presiding Officer made a clerical error in the amended notice when omitting a citation to RSA 310-A:1-m in conjunction with RSA 310:12 (eff. 07/01/23) in issue presented #4. (The citation was in the previous notice of hearing.) Nonetheless, even if that were not the case, issue presented #1 provided sufficient notice of the factual allegations at issue with respect to unlicensed practice. See *In re Bloomfield*, 166 N.H. 475, 483-85 (2014).

<sup>6</sup> The statute also remained unpealed on the date of the hearing.

**VI. CONCLUSION AND DECISION:**

Pursuant to RSA 310-A:1-m, VIII., the Presiding Officer hereby makes the finding of unlicensed practice noted herein and the Board administers the action outlined above.

DATED: 8/28/2023

\_\_\_\_\_/s/ Nikolas K. Frye, Presiding Officer  
Nikolas K. Frye, Presiding Officer - Authorized  
Representative of the Board of Barbering,  
Cosmetology and Esthetics-  
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Professional Licensure & Certification  
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