

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

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**BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS**

**In Re: Tyson Nails & Spa,  
Shop Lic. #4250**

**Shop Owner: Ty Mai;  
Personal License #34161**

**Manager: Son T. Nguyen  
Personal License #31599**

Docket No.: 22-BAR-028

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

**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:

John Garrigan, Esq., Assistant Attorney General and Hearing Counsel  
Ty Mai, Licensee and shop owner

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

On 05/05/22, the Office of Professional Licensure and Certification (“OPLC”), acting on behalf of the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board"), conducted a routine

inspection of Tyson Nails & Spa (“Licensee”), during which the inspector assessed 1,534 violation points for various health, safety, sanitation, and licensing concerns. After investigation and discussion, the Board voted on 09/19/22 to commence this adjudicative proceeding. 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. Sandra Hodgdon *Confidential Memorandum*, dated June 13, 2022 (Bates #HC001-002, 044-045);
2. Shop Inspection Report, dated May 5, 2022 (Bates #HC003-004);
3. Shop inspection photographs, dated May 5, 2022 (Bates #HC005-026);
4. Shop license application, dated December 8, 2017 (Bates #HC027-030);  
*Note: Portions of this exhibit containing private personal information have been redacted pursuant to RSA 91-A:5, IV.*
5. Shop Inspection Report, dated December 18, 2017 (Bates #HC031);
6. Shop Inspection Report, dated May 12, 2018 (Bates #HC032);
7. Shop Inspection Report, dated August 25, 2018 (Bates #HC033);
8. Shop Inspection Report, dated August 29, 2018 (Bates #HC034);
9. Shop Inspection Report, dated December 31, 2018 (Bates #HC035);
10. Shop Inspection Report, dated February 6, 2019 (Bates #HC036);
11. Shop Inspection Report, dated July 15, 2020 (Bates #HC042);
12. Tyson Nails & Spa fine payment history (Bates #HC043).

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

The Licensee submitted no exhibits.

C. Sworn testimony was received from:

1. Sandra Hodgdon, OPLC Inspector
2. Ty Mai, Owner of Tyson Nails & Spa

The Presiding Officer fully admitted all proposed exhibits during a prehearing conference, after the Licensee stated no objections.<sup>1</sup>

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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.

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

As a preliminary matter, Hearing Counsel noted Licensee Son T. Nguyen failed to appear. The Board takes administrative notice of its file in this matter, which includes a recitation of the efforts to notify Son T. Nguyen of the final hearing in this matter.<sup>2</sup> The Board still heard the case relating to Son T. Nguyen pursuant to Rule 206.25(d).

Hearing Counsel called Sandra Hodgdon, 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 12. On direct examination, she testified that the factual allegations contained in “Hearing Counsel’s Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions” were true and accurate to the best of her knowledge and belief.

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 and Exhibits 1 through 12. He testified that “these are all correct findings that Sandra [Hodgdon] found” when referencing the inspection report dated 05/05/22. Nonetheless, he clarified that he has made significant improvements to the business since the inspection and has signed up for a 07/15/23 course related to infection control.

**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 adopts Hearing Counsel’s Proposed Findings of Fact at Paragraphs 1-8:
  1. Tyson Nails & Spa (“Tyson”) is located at 120 Rt. 105, Grantham, NH. *Exh 2.*
  2. Tyson’s shop license was first granted on December 18, 2017. *Exh 4.*

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<sup>2</sup> The original notice of hearing was sent 05/19/23 by certified mail, return receipt requested and regular mail to the address the Licensee Nguyen has on file with the Board. The certified mail came back to OPLC as undeliverable on 06/01/23. On 06/03/23 the notice of hearing was emailed to the Licensee Nguyen’s email address on file with the Board. On 06/14/23 the regular mail came back as undeliverable.

3. Tyson is owned by manicurist licensee Ty Mai. *Exh 4.*
4. Tyson is managed by licensee Son T. Nguyen. *Exh 4.*
5. On May 5, 2022, Inspector Sandra Hodgdon performed a routine inspection at Tyson.
6. Inspection Hodgdon observed and recorded the following health and safety violations (*Exh 1, Exh 2, Exh 3*):
  - a. Floors, walls, woodwork, and furniture were dirty and unsanitary;
  - b. Four (4) pedicure spas were dirty with debris and slime, and no record of cleaning;
  - c. Three (3) manicure tables were not cleaned or disinfected.
  - d. Four (4) pedicure areas were not cleaned or disinfected;
  - e. Thirty-two (32) reusable implements were not cleaned, disinfected, or stored properly;
  - f. Forty-two (42) implements were not discarded or stored properly after use;
  - g. Creams and solids were not removed from containers properly and the containers were not covered;
  - h. Ten (10) dirty towels not deposited in a container after use;
  - i. First aid supplies depleted;
  - j. No safety data sheets;
  - k. Inspection report was not properly displayed;
  - l. Licenses not properly posted, specifically the current shop license, Hoa Tran's, and Ty Mai's licenses were not posted.
  - m. Owner Son T. Nguyen had an expired license (expired 7/31/2021).
7. Inspector Hodgdon found a total of 1,534 points of violations. *Exh 2.*
8. Tyson has had seven prior inspections since it opened in 2017, resulting in the following fines and actions:
  - a. 12/18/2017: shop was licensed. The owner, Son T. Nguyen, held a manicure license, and Ty Mai was not a licensee. *Exh 5.*
  - b. 5/12/2018: A routine inspection was performed, resulting in a fine of \$1,598.00. *Exh 6*
  - c. 8/25/2018: A follow up inspection was performed, resulting in a fine of \$869.00. *Exh*
  - d. 8/29/2018: A follow up inspection was performed, resulting in a fine of \$788.00. *Exh*
  - e. 12/31/2018: A follow up inspection was performed, resulting in a fine of \$445.00. *Exh*
  - f. 2/6/2019: A complaint inspection was performed, resulting in a fine of \$108.00. *Exh 1*
  - g. 7/15/2020: A routine inspection was performed, resulting in a fine of \$182.00. This fine remains unpaid. *Exh 11, Exh 12.*

Hearing Counsel's Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions, Pars. 1-8.

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

1. Licensees Tyson Nails & Spa and Ty Mai committed professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), and RSA 313-A:22, II(i) (see Bar Rules 404.09, 302.05, and/or 302.07) by operating a shop with the related health and safety violations, as set out in the inspection report, dated 05/05/22.
2. Licensees Tyson Nails & Spa and Ty Mai committed professional misconduct as defined at RSA 313-A:22, II(c), 313-A:22, II(d) and RSA 313-A:22, II(i) (*see* Bar Rule 404.09)) by operating a shop without posting the most recent inspection report, without posting some personal licenses, without posting the current shop licenses, and allowing an employee to work with an expired license, all as required and as set out in the inspection report, dated 05/05/22.
3. Licensees Tyson Nails & Spa and Ty Mai committed professional misconduct as defined at RSA 313-A:22, II(g) (See Bar Rule 404.09) by operating a shop with violations as set out in an inspection report, dated 05/05/2022 after having previously been found to have committed similar conduct on multiple other occasions.
4. On 07/11/23, Licensee Son T. Nguyen failed to attend the hearing pursuant to Rule 206.25(d), despite having received a notice of hearing that complies with RSA 313-A:23, Bar Rule 206.02(a) and (b), and the due process requirements of the New Hampshire and federal constitutions. *See, i.e., In re Bloomfield*, 166 N.H. 475, 483 (2014) and *Jones v. Flowers*, 547 U.S. 220, 225-26 (2006).
5. Licensee Son T. Nguyen did **NOT** commit professional misconduct as defined at RSA 313-A:22, II(i) (See Rule 404.09(j)) by working with an expired license on 05/05/22 because he was not a licensee of the Board at that time as required by RSA 313-A:22, I ("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 and which specifies the grounds therefor.**" RSA 313-A:22, I(b)).
6. Licensee Son T. Nguyen, not being actively licensed pursuant to RSA 313-A:11 and Bar 300 et seq. or Bar 400 et seq. or otherwise authorized to practice as a manicurist as defined at RSA 313-A:1, IX, practiced as a manicurist on 05/05/22 in violation of RSA 310-A:1-m, VIII. *See Bloomfield*, 166 N.H. at 483.

Upon a finding of misconduct made pursuant to RSA 319-C:12, II, the Board imposes the following disciplinary action against the Licensee:

1. Pursuant to RSA 313-A:22, III(b), and upon a finding of professional misconduct, the Board **SUSPENDS** Tyson's shop license and Ty Mai's personal license until the following occurs:
  - a. Pursuant to RSA 313-A:22, III(d), the Licensee Ty Mai participates in (10) hours of program(s) of continuing education in the areas of sanitation, sterilization, and infection control within thirty (30) days of the signed date of this order.
  - b. Pursuant to RSA 313-A:22, III(d), the continuing education shall be completed through electronic means or "in person". To document successful completion of the program(s), the Licensee shall provide the Board with written documentary proof issued/authored by the program offering the course(s).
  - c. Pursuant to RSA 313-A:22, III(b), the Licensee shall come into compliance with all matters noted in the inspection report dated 5/5/2022, including but not limited to licensing, sanitation, and sterilization issues.
  - d. Pursuant to RSA 313-A:22, III(b), the Licensee's shop passes an inspection conducted by a Board inspector. The Licensee shall schedule this inspection with the Board inspector to occur after the Licensee has fulfilled sections a through c above, at a time that is convenient for the Board inspector.
2. Pursuant to RSA 313-A:22(III)(b) and upon a finding of professional misconduct, the Board Tyson and Ty Mai's licenses shall be subject to a period of **PROBATION** for three (3) years commencing from the date of the Board's final order. 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 a separate and sufficient basis for further disciplinary action by the Board against the Licensees Ty Mai and Tyson. The Board shall enforce this order specifically using unannounced inspections.
3. Pursuant to RSA 313-A:22(III)(e) and Rule 404, and upon a finding of professional misconduct under section (II), the Board imposes an **ADMINISTRATIVE FINE** of \$1,534.00 against Tyson and owner Ty Mai, representing the cumulative point value for the 1,534 violation points noted in the 5/5/2022 inspection report. This administrative fine shall be paid within 180 days of the Board's final order. There are no mitigating factors for the Board to decrease this fine pursuant to Bar 404.11(b) given that the shop has multiple failed inspections and zero passed routine, investigation, follow-up, or complaint inspections over the course of its existence.
4. Pursuant to RSA 313-A:22(III)(e) and Rule 404, and upon a finding of professional misconduct under section (II), the Board affirmatively imposes an **ADMINISTRATIVE FINE** of \$50.00 against Son T. Nguyen for working as a with an expired license on May 5, 2022. No mitigating circumstances exist sufficient to decrease this fine pursuant to Bar 404.11(b). This administrative fine shall be paid within 30 days of the Board's final order.
5. Pursuant to RSA 332-G:11, the Board assesses Ty Mai, as the owner of Tyson, the reasonable **COST OF INVESTIGATION AND PROSECUTION** of this disciplinary proceeding in the amount of \$500.00. This fine shall be paid within 30 days of the Board's final order.

6. Pursuant to Rule 404.12(c) and Administrative Rule Plc 213.03(c), any renewal of Licensees' licenses shall be denied until their respective outstanding fines are paid in full.
7. In determining what sanctions to impose, the Board considered RSA 313-A:22 and the factors enumerated in Rule 402.01(d). Pursuant to RSA 313-A:22 and Rule 402.01(d), the Licensees are subjected to the above-referenced discipline as the minimum sanctions that the Board believes will, based on the facts and circumstances of this particular case, both protect the public and deter Licensees and any other licensees from engaging in such misconduct in the future.
8. Per Order of the Board, if reasonably practical, a copy of this Order shall be served on the Licensee Shop and Licensee Ty Mai, in-hand, by OPLC staff. A copy of this order shall also be sent to the Licensees by certified mail, return receipt requested, first class mail, and by also by email (if reasonably practical).

**VI. CONCLUSION AND DECISION:**

Pursuant to RSA 319-C:12, and Rule 405 et seq., the Presiding Officer hereby makes the findings of professional misconduct noted herein and the Board administers the discipline outlined above.

DATED: 7/26/2023

\_\_\_\_\_/s/ Nikolas K. Frye, Presiding Officer  
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