

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

BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS

**In Re: The New Place Nails
Shop License #5052 (expired)**

Owner: Tri Le (unlicensed)(via Zoom)

Manager: Cuong V. Hoang,

Manicure License #31491

Docket No.: 23-BAR-036

NOTICE OF DECISION DATED 3/22/2024

Enclosed please find a copy of the Board's Order dated 3/22/2024 relative to:

DISCIPLINARY HEARING FINAL DECISION AND ORDER

PETITIONS FOR REHEARING:

Pursuant to N.H. Code Admin. Rs. Plc 206.31(b), 206.33 ("Rules") and RSA 310:14, II, petitions for rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.31(c) and (d), the Petition shall: 1) clearly identify the respondent, by name and license number, and the docket number of the matter for which the petition is being filed, for rehearing in a disciplinary or non-disciplinary remedial proceeding; 2) clearly state whether the petitioner is seeking to have the decision reversed or modified and, if modified, the specific modification(s) sought; 3) clearly identify the specific findings of fact or conclusions of law, or both, that the petitioner asserts are erroneous; 4) contain such argument in support of the petition as the petitioner desires to present, including an explanation of how substantial justice would be done by granting the relief requested; and 5) be served by the petitioner on all other participants in accordance with Plc 206.11. Pursuant to Rule 206.31(e), the petitioner or petitioner's representative shall sign the petition. Pursuant to Rule 206.31(f), such signature shall constitute attestation that: 1) the signer has read the petition for rehearing; 2) the signer is authorized to file the petition for rehearing; 3) to the best of the signer's knowledge, information, and belief, there are good grounds to support the petition for rehearing; and 4) the petition for rehearing has not been filed solely or primarily for purposes of delay or harassment in any pending or contemplated administrative, civil, or criminal proceeding. Pursuant to Rule 206.31(g), no answer to a petition for 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 petition for rehearing. Pursuant to RSA 541:5, upon the filing of such petition for rehearing, 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. The Presiding Officer and/or Board shall rule upon a Motion for Rehearing in accordance with Rule 206.32. Pursuant to Rule 206.32(e), a decision on reconsideration shall be issued after fully considering the petition and any

responses thereto, which reconsideration shall include a hearing on the factual issues identified in the motion if the board determines a hearing to be necessary to a full consideration of the facts.

RIGHT TO APPEAL:

Pursuant to RSA 310:14, III, appeals from a decision on a petition for rehearing 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. *See also* Rule 206.33.

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**FINAL ORDER AND DECISION ORDER –
02/20/24**

I. PARTICIPANTS:

Board Members and Support Staff and Counsel:

Sarah J. Partridge, Board Member
Donna Woodsom, Board Member
Sara Joe, Board Member

Teresa Boyer, OPLC Board Administrator
Carson Hansford, OPLC Board Administrator

Elizabeth Eaton, OPLC Board Counsel

Presiding Officer:

Attorney Nikolas Frye, OPLC Hearings Examiner

Parties:

Marissa Schuetz, Esq., Hearing Counsel
The New Place Nails/Tri Le, Respondent and shop owner

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 12/19/22 the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”), reviewed a complaint filed against Tri Le’s The New Place Nails (“Respondent”), alleging a customer got

multiple infections after having a manicure/pedicure treatment at the Respondent’s facility. After investigation – including an inspection of the Respondent’s premises, which resulted in 2,430 violation points for alleged health, sanitation, licensing, and apprentice issues – the Board voted on 9/18/23 to initiate an adjudicative proceeding. On 09/18/23 the Board voted to initiate a disciplinary adjudicative proceeding 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:

Exhibit 1	October 20, 2022 Complaint	HC001
Exhibit 2	August 18, 2023 Shop Inspection Report	HC003
Exhibit 3	August 23, 2023 Report of Investigation	HC026

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

None.

C. Sworn testimony was received from:

1. Sandra Hodgdon, OPLC Chief Board Inspector (called by Hearing Counsel)
2. Tri Le, Respondent and shop owner (called by Respondent)

Exhibits were fully admitted by the Presiding after a prehearing conference.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The hearing was then held pursuant to RSA 310:10 with the burden of proof, by a preponderance of the evidence, placed upon Hearing Counsel. *See* Rule 206.07(e). The issues before the Board were:

- (1) Whether or not the Respondent violated RSA 313-A:22, II(c), RSA 313-A:22, II(d), and/or RSA 313-A:22, II(i) (*see* Rules 302.05, 302.07, 501.01, 501.02) by allegedly operating a shop with one or more of the related sanitation, health, and/or safety violations, as set out in the inspection report and/or memorandum dated 8/23/2023.

- (2) Whether or not the Respondent violated RSA 313-A:22, II(c) and/or RSA 313-A:22, II(i) (*see* Rules 301.04, 301.05, 302.07, 404.01, 501.01, 501.02, RSA 313-A:17, RSA 313:19, IV and/or RSA 313-A:9) by allegedly operating a shop without a licensed owner or manager, and/or one or more of the related apprenticeship or licensing violations, as set out in the inspection report and/or memorandum, dated 8/23/2023.
- (3) Whether the Licensee violated RSA 313-A:22, II(c), and/or RSA 313-A:22, II(d), RSA 313-A:22, II(g) (See Rules Bar 401.01(b) and Bar 404.09(k)) by allegedly operating a shop with an expired license.
- (4) If the Board makes a finding of misconduct pursuant to issues 1, 2, and/or 3 above, whether and to what extent the Respondent should be subject to discipline pursuant to RSA 313-A:22, III, Bar 402, Bar 404, and/or RSA 310:12.

NOH at II.(c).

The Board then heard evidence related to these inquiries as summarized below.

HEARING COUNSEL'S CASE-IN-CHIEF:

Sandra Hodgdon, OPLC Chief Board Inspector:

Sandra Hodgdon testified that after receiving a consumer complaint in October of 2022, she conducted an inspection of The New Place Nails location in August of 2023 and assessed 2,430 violation points. According to her testimony, the complaint alleged the complainant had developed infections on two of her fingers after receiving a manicure at the Licensee's shop. Ms. Hodgdon next testified to the various sanitation, hygiene, and safety issues she noted during her inspection. Additionally, she mentioned that she found one personal license at the shop without a photograph attached to it; two apprentices not wearing a name tag; two apprentices not being supervised by a licensee of the Board; 7 apprentices with attendance records and test scores not current with the Board; and one apprentice that was terminated but the Board had not been notified. Ms. Hodgdon's testimony also revealed that there was no manager on site during the inspection.

According to Ms. Hodgdon's testimony, the shop license for the facility would have expired on 10/01/23 because the Licensee's birth month was in September. Hearing Counsel had the Board take

administrative notice of its licensing file for the Licensee with respect to the date for expiration of the shop license in 2023 and the date upon which the Licensee filed its renewal application.

RESPONDENT’S CASE-IN-CHIEF:

Tri Le, shop owner for New Place Nails

The Respondent took full responsibility for the observations Ms. Hodgdon made during her inspection in August of 2023. He explained he has a cleaner now that comes every week and does a deep clean of the premises. He said he wants to have a sanitary place and promised to do better. On cross examination, the Respondent acknowledged that the business was operating during the period it was unlicensed. He stated he did not realize that the shop license was expired and submitted an application as soon as he learned it was.

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 pursuant to RSA 310:10, VII:

- a. At all times relevant, The New Place Nails (“Shop”) was owned by Mr. Tri Le (“Owner”), who does not hold a personal license. The Shop manager listed on the notice of hearing, Cuong V. Hoang (“Manager”), has held manicure license #31491.
- b. Around November, 2022, the enforcement division of OPLC received a complaint alleging a client was injured during a manicure/pedicure resulting in infection.
- c. As a result of the complaint, Chief Inspector Hodgdon conducted an inspection which resulted in 2,430 violation points. The violations related to both sanitation and licensing issues.
- d. Licensee does not contest the results of the inspection. The Owner ensured the Shop was properly licensed shortly after the inspection with a licensed manager on file.
- e. The Owner complied with the investigation and acknowledged wrongdoing. Additionally, the Owner acknowledged the potential harm to the public health and safety.
- f. The Manager did not participate in any prehearing activities or the hearing on February 20, 2024.

Based upon the findings of fact made by the Board, the Presiding Officer makes the following conclusions of law pursuant to RSA 310:10, IV and VI:

1. Hearing Counsel established, by a preponderance of the evidence, that the Respondent New Place Nails (owner Tri Le) engaged in 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* Bar Rules 302.05, 302.07, 501.01, 501.02) by operating a shop with the sanitation, health, and safety violations set out in the inspection report and memorandum dated 08/23/2023. The Board’s findings of fact support this legal conclusion as follows. The Board found that Ms. Hodgdon assessed violation points at the Respondent’s shop (*see* FOF¹ b) and that the Respondent did not contest the results of the inspection. *See* FOF c. One of the results of this inspection was a finding by Ms. Hodgdon that the shop was licensed at the time of the inspection. *See* Exh. 2 at HC003.² Consequently, the Presiding Officer reads the Board’s finding of fact that “[t]he Owner [Tri Le] ensured the Shop was properly licensed shortly after the inspection with a licensed manager on file” as meaning Tri Le obtained and registered a properly licensed individual to act as manager for the active shop license #5052 shortly after the inspection occurred. Because Respondent New Place Nails had an active shop license at the time of the inspection, it is subject to the rules of professional misconduct. *See* RSA 313-A:22, II and Plc Rule 202.09.
2. For the same reasons as stated in conclusion of law #1 above, Hearing Counsel established, by a preponderance of the evidence, that the Respondent New Place Nails engaged in professional misconduct as defined at RSA 313-A:22, II(c) and RSA 313-A:22, II(i) (*see* Bar Rules 301.04, 301.05, 302.07, 404.01, 501.01, 501.02, RSA 313-A:17, RSA 313:19, IV and RSA 313-A:9) by operating a shop without a licensed owner or manager and engaging in all other apprenticeship and licensing related violations set out in the inspection report and memorandum, dated 8/23/2023.
3. The findings of fact do not establish that the Respondent New Place Nails and its owner Tri Le violated RSA 310:13 as was argued by Hearing Counsel. The matter should be dismissed.
4. The findings of fact do not establish, and Hearing Counsel failed to establish, by a preponderance of the evidence, that Respondent Cuong V. Hoang engaged in professional misconduct or unauthorized practice as alleged in the Notice of Hearing. The findings of fact do not state that Mr. Hoang was present at the shop for the inspection; acting in a manager capacity at the shop during the inspection (even if not properly registered as such); or was licensed on the date of the inspection. *See* FOF d. Indeed, the findings of fact establish that Mr. Hogan became the manager *after* the inspection took place. *See* FOF d.

Upon a conclusion of misconduct made pursuant to RSA 313-A:22, II, the Board imposes the following sanctions pursuant to RSA 310:10, VII and RSA 310:12:

¹ FOF is short for finding of fact.

² Ms. Hodgdon identifies the shop as actively licensed with license #5052.

1. Pursuant to RSA 310:12, I(a), the Respondent The New Place Nails (owner Tri Le) is **REPRIMANDED**.
2. Pursuant to RSA 310:12, I(d)(2), the Respondent The New Place Nails (owner Tri Le) shall participate in 10 hours total of **CONTINUING EDUCATION** in sanitation and disinfection control, including at least 3 hours addressing first aid.
3. Pursuant to RSA 310:12, I(d)(1), the Respondent The New Place Nails (owner Tri Le) is subject to a **REINSPECTION** of the shop premises.
4. Pursuant to RSA 310:12, I(e) and RSA 332-G:11, the Board assesses an **ADMINISTRATIVE FINE** of \$1,500.00, to include cost of investigation, payable to the State of New Hampshire through the Office of Professional Licensure and Certification.

VI. ORDERS AND DECISION:

1. Pursuant to RSA 313-A:22, II and RSA 310:12, the Board and Presiding Officer respectively make the findings of fact and conclusions of law made herein, and the Board imposes the above sanctions.
2. Pursuant to RSA 310:13, the Board and Presiding Officer respectively make the findings of fact and conclusions of law made herein, and the Presiding Officer dismisses the action involving unauthorized practice.

DATED: 3/22/2024

_____/s/ Nikolas K. Frye, Presiding Officer_____
Nikolas K. Frye, Administrative Law Judge
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301