

**Before the
N. H. Board of Barbering, Cosmetology, and Esthetics
Concord, New Hampshire**

In the matter of:

Ryan Le
Shop License: 2372
Personal License Number: 14824
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2019-02

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Jeanne Chappell, Vice Chairperson
Kimberly Hannon, Board Member
Joshua Craggy, Board Member

Appearances: Janice Rundles, Hearing Counsel
Beulah Green, Board Inspector
Ryan Le, Respondent

BACKGROUND

On April 15, 2019, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Ryan Le ("Respondent") had violated RSA 313-A:22 and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 501.02 and 201.02.

As set forth in the Notice of Hearing the purpose of the hearing was to determine whether Respondent:

- Engaged in professional misconduct by negligently or willfully failing to maintain his shop in a sanitary manner, which is inconsistent with the health and safety of persons relying on his expertise, in violation of RSA 313-A:22, II (d);

- Engaged in professional misconduct by willfully and repeatedly violating the provisions of Chapter 313-A, in violation of RSA 313-A:22, II (g); and
- Engaged in professional misconduct by failing to observe the requirements of rules adopted by the Board, specifically Bar 501.02 (e), requiring that his shop be maintained in a sanitary and hygienic manner, and Bar 201.02 (k), requiring that all licenses cooperate in a lawful investigation of the Board;

HEARING TESTIMONY

I. Hearing Counsel's Case

The Notice of Hearing noticed the hearing for June 17, 2019 at 9:30 a.m. The Respondent appeared as scheduled. Hearing Counsel introduced six (6) exhibits at the hearing:

1. Exhibit 1, Complaint filed by Phoenix Mayet dated July 18, 2017.
2. Exhibit 2, Shop Inspection Form dated July 27, 2017.
3. Exhibit 3, Shop Inspection Form dated January 19, 2018.
4. Exhibit 4, Shop Inspection Form dated June 1, 2018.
5. Exhibit 5, NH Online Licensing Information – California Nails.
6. Exhibit 6, NH Online Licensing Information – Ryan Le.

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On or about September 18, 2002, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #14824. The manicuring license is the Respondent's personal license. The Board also has the authority to grant shop licensure in accordance with RSA 313-A:19. Pursuant to this authority, the Board may grant shop licensure to

an individual who is the owner of the shop if this individual has a personal license as a barber, cosmetologist, manicurist or esthetician. See RSA 313-A:19, II. On or about January 7, 2008, the Respondent opened California Nails. The Respondent holds shop license 2372.

The Board employs inspectors. See RSA 313-A:21. At least twice a year, the inspectors are “to enter and make reasonable examination and inspection of any salon ... during business hours for the purpose of ascertaining whether or not the administrative rules of the board and the provisions of this chapter are being observed.” See RSA 313-A:21, I and III. If the inspector finds violations, the inspector may impose administrative fines. See RSA 313-A:8, XVII; 313-A:22, III; Bar 404.09; Bar 404.10. For each inspection, the inspector must file a written report of his/her findings. See RSA 313-A:21, I.

Inspector Beulah Green (“Inspector Green”) testified at the hearing. Inspector Green has seven years of experience as an inspector for the Board. Inspector Green described that she conducts routine inspections and investigations on complaints.

On or about July 18, 2017, the Board received a written complaint from a customer regarding California Nails in Newington. See Exhibit 1. Inspector Green testified that according to the complaint, the pedicure spas were not cleaned and the implements were used from one customer to the next and not disinfected in between. Inspector Green identified the Respondent as the owner of California Nails and the person she explained findings to at each inspection.

On or about July 27, 2017, Inspector Green conducted an inspection of California Nails. See Exhibit 2. The inspection report showed the record of cleaning had not been updated since 9/17/16, employees were throwing away nail files when Inspector Green announced herself, ten (10) implements were not cleaned and disinfected properly and seventeen (17) implements not discarded as required. Inspector Green testified that she wrote the following on the inspection form:

“after every pedicure disinfect pedi [sic] spa and log on the record of cleaning”. Inspector Green testified that she verbally explained the instructions to the Respondent at the inspection but he was not a good listener and he is very argumentative. The Board imposed a fine of \$262.00.

On or about January 19, 2018, Inspector Green conducted an inspection of California Nails. See Exhibit 3. Inspector Green testified that Inspector Sandra Hodgdon was with her during this inspection. The inspection report showed the record of cleaning had not been updated since 9/17/16, three (3) implements that were not disinfected properly, twelve (12) implements not discarded, and two expired licenses for Helen Ngo. Inspector Green testified that she wrote the following on inspection form: “record of cleaning not updated since 9/17/16, same as the last inspection. Went over thoroughly last visit. He still does not agree with the state rules on this issue”. Inspector Green further testified that the Respondent verbally stated that he did not agree with the rules for cleaning pedicure spas. The Board imposed a fine of \$290.00.

On or about June 1, 2018, Inspector Green and Inspector Hodgdon conducted an inspection of California Nails. See Exhibit 4. The inspection report showed Inspector Green found the record of cleaning has not been updated since 9/17/16, seven (7) implements that were not disinfected properly, sixteen (16) implements that were not discarded as required, and three (3) pumice stones not discarded. Inspector Green testified that she wrote on the inspection form “3rd inspection, still not logged, went over record of cleaning. Still not complying with states rules, refuses to. Went over it again. DO NOT REUSE PUMICE”. Inspector Green testified that the Respondent told her he did not agree with the rules for pumice stones. Inspector Green testified that the Board rules require disinfection of the pedicure spa and filter after each pedicure and a record of the cleaning to be kept. The Board imposed a fine of \$238.00.

The Respondent asked Inspector Green why he had fined her for 90 implements when he only had 45. Inspector Green testified in response that the inspection report states 7, 16, 3, 12, 10, 17, not 90, and that she cannot speak about inspections that are not in front of her in this hearing. Inspector Green also testified that she explained to the Respondent that each bowl and filter needed to be cleaned and stated he blatantly refused to.

II. Respondent's Case

The respondent stated he had to sign all of the inspection forms. The Respondent testified that he has made big changes by using a tub liner and a box to keep implements in for every customer. The Respondent testified that he cleans his implements in the blue required solution for at least 15 minutes to half an hour.

Respondent also testified that he does not clean but uses the liners, which he brought to show the Board. The Respondent testified that he puts the liners over the bowl and fills it with water and it is very clean and it is the best way. The Respondent testified he cleans with water. The Respondent testified that he does not do pedicures and the lady that works for him does the pedicures. The Respondent testified he did not know about pumice stones and he did not tell Inspector Green that he disagreed with the rules.

The Respondent stated he did not know how to renew a license without getting a letter. The Respondent later testified that he received the renewal letter but did not know how to renew online.

The Respondent testified that the first inspector did not give him any fines, but the new inspector was hard on him. In response to Hearing Counsel's questions, the Respondent testified he did not call the Board Administrator to discuss the fines, he paid them.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. In addition to making a specific finding that the above Hearing Counsel's Case (Section I) was true, the Board found the testimony of Inspector Green to be credible and the inspection report accurate, detailed, and professional. The Board further found the notice of imposed fines to be accurate.

The Board found the Respondent's testimony to be argumentative. The Respondent was informed by the Presiding Officer that he was allowed to ask Inspector Green questions during her testimony. The Respondent would not ask a question, he instead argued to the Board about the fines. The Presiding Officer asked him nine (9) times if he had a question for the witness. The Respondent stated he had a question, but instead continued to testify, speaking over the Presiding Officer and the witness.

The Board also found that the Respondent was not following the Board's procedures for cleaning and disinfecting pedicure spas. The Respondent testified that he used liners because he thought they were the best way and only rinsed the tubs with water, which is inconsistent with the Board's current rules. See Bar 302.05.

The Board also found the Respondent's testimony regarding not understanding what the pumice stones were not credible. Inspector Green testified that she verbally explained to the Respondent, in person during the inspection, that pumice stones had to be thrown away after use. Inspector Green testified that she wrote in capital letters on the inspection form not to reuse pumice stones because the Respondent stated to her that he did not agree with not being able to reuse pumice stones.

In accordance with Bar 402.01(d)(2), the Board considered the Respondent's prior disciplinary record, including number and type of prior instances of misconduct. The Board found the Respondents prior disciplinary record to be the following:

1. On or about July 27, 2017:
 - a. The Respondent engaged in professional misconduct by violating RSA 313-A:22, II (d) by failing to maintain his shop in a sanitary manner, which is inconsistent with the health and safety of persons relying on his expertise.
 - b. The Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by violating Bar 501.02 (e) by failing to maintain his shop in a sanitary and hygienic manner.
2. On or about January 19, 2018;
 - a. The Respondent engaged in professional misconduct by violating RSA 313-A:22, II (d) by failing to maintain his shop in a sanitary manner, which is inconsistent with the health and safety of persons relying on his expertise.
 - b. The Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by violating Bar 501.02 (e) by failing to maintain his shop in a sanitary and hygienic manner.
3. On or about June 1, 2018:
 - a. The Respondent engaged in professional misconduct by violating RSA 313-A:22, II (d) by failing to maintain his shop in a sanitary manner, which is inconsistent with the health and safety of persons relying on his expertise.

- b. The Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by violating Bar 501.02 (e) by failing to maintain his shop in a sanitary and hygienic manner.

RULINGS OF LAW

The Board may undertake disciplinary proceedings against its licensees. See RSA 313-A:22. If the Board finds sufficient misconduct pursuant to subsection II, it may impose disciplinary action pursuant to subsection III. See RSA 313-A:22. After considering the above findings of fact, the Board makes the following rulings of law:

- The Respondent engaged in professional misconduct pursuant to 313-A:22, II (g) by willfully and repeatedly violating the provisions of Chapter 313-A.

DISCUSSION AND CONCLUSION

The Board has authority to undertake disciplinary action against a licensee, after a hearing and a finding that the licensee has committed misconduct as described above or has engaged in acts that pose a threat to public health or safety. RSA 313-A:22; Bar 402.01.

The Board concluded the Respondent violated RSA 313-A and therefore voted to impose public discipline to ensure the health and safety of the public is protected. In accordance with Bar 402.01, the Board considered multiple factors in determining what, if any, discipline to impose. The Board considered the Respondent's prior disciplinary record, including his willful and repeated failure to maintain his shop in a sanitary manner and the Respondent's failure to observe the rules of the Board during multiple inspections. Among other factors, the Board also found the seriousness of the infractions, the Respondent's repeated lack of acknowledging wrongdoing, his unwillingness

to cooperate during multiple inspections, and the potential harm to the public to warrant imposing a suspension and requiring continuing education in an area that he was repeatedly found deficient.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicuring license #14824 and shop license# 2372 are **SUSPENDED FOR A PERIOD OF 30 DAYS**. In the 30 day suspension period, the Respondent shall complete a continuing education course on bacteriology, safety, diseases and disorders, blood spill procedures, disinfection procedures, infection control, and overall cleanliness in a salon, in a school licensed by the Board, and pass a comprehensive test on topics described above with a passing grade of 75% or greater.

IT IS FURTHER ORDERED, that if/when the Respondent's personal manicuring license and shop license are reinstated, the Respondent's licenses shall be subject to a period of probation for 4 years and 11 months. Any violation of the Board's rules over \$100.00 within the probationary period shall automatically result in a hearing to consider revocation of the Respondent's personal and shop licenses.

IT IS FURTHER ORDERED, that an inspection shall be conducted prior to the shop re-opening.

IT IS FURTHER ORDERED, that the Respondent shall pay all fines/monies owed to the Board within 60 days of this Order in a single payment by a certified bank check or money order payable to “Treasurer, State of New Hampshire”. Failure to pay these fines within 60 days of the effective date of this Order may result in legal action necessary to enforce this obligation.

IT IS FURTHER ORDERED, that Respondent pay the reasonable cost of investigation and prosecution of this proceeding, pursuant to RSA 332-G:11, in an amount of \$500.00.


IT IS FURTHER ORDERED, that the Respondent’s failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,:22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent’s file, which is maintained by the Board as a public document; and

IT IS FURTHER ORDERED, that this Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

Date 7-2-19

BY ORDER OF THE BOARD


Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics