

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

In the matter of:

Hieu Kieu
Shop License: 1974
Personal License Number: 2937
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2019-08

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Kassie Dubois, Board Member
Dana Pierce, Board Member
Sarah Partridge, Board Member

Appearances: John Brown, Hearing Counsel
Sandra Hodgdon, Board Inspector
Hieu Kieu, Respondent

BACKGROUND

On June 17, 2019, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Hieu Kieu ("Respondent") had violated RSA 313-A:22 and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 302.05, 302.07, 404.01.

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

- Engaged in professional misconduct by failing to observe the requirements of any rule adopted by the Board, specifically Bar 302.05 (q) requiring shops to properly clean foot spas;

- Engaged in professional misconduct by failing to observe the requirements of any rule adopted by the Board, specifically Bar 302.07 (c) (8) requiring licensees to properly sanitize implements;
- Engaged in professional misconduct by failing to observe the requirements of any rule adopted by the Board, specifically Bar 302.07 (c) (5) requiring licensees to properly dispose of, after use, items that come in direct contact with a patron and cannot be disinfected;
- Engaged in professional misconduct by failing to observe the requirements of any rule adopted by the Board, specifically Bar 404.01 (n) requiring licensees to post their last inspection form;
- Engaged in professional misconduct by failing to observe the requirements of rules adopted by the Board, specifically 302.05 (u) requiring shops to maintain a record of cleaning and disinfecting;
- Engaged in professional misconduct by failing to observe the requirements of any rule adopted by the Board, specifically Bar 302.07 (c) (8) requiring licensees to properly sanitize implements;
- Engaged in professional misconduct by employing a person who performed manicures without a license in violation of RSA 313-A:9, II; and
- Engaged in professional misconduct by negligently or willfully performed acts in a manner inconsistent with the health and safety of persons relying on the expertise of the license by failing to comply with sanitation standards established by the Board in violation of RSA 313-A:22, II (d).

HEARING TESTIMONY

I. Hearing Counsel's Case

The Notice of Hearing noticed the hearing for August 19, 2019 at 10:00 a.m. The Respondent appeared as scheduled.

Hearing Counsel introduced four (4) exhibits at the hearing:

1. Exhibit 1, Shop Inspection Form dated February 17, 2017
2. Exhibit 2, Shop Inspection Form dated January 10, 2018.
3. Exhibit 3, Shop Inspection Form dated June 26, 2018.
4. Exhibit 3-a, Photographs related to the inspection of June 26, 2018.
5. Exhibit 4, Shop Inspection Form dated July 30, 2018.

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On or about April 29, 2014, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #2937. 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 July 20, 2016, the Respondent purchased Excel Nails. The Respondent holds shop license 1974.

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

On or about February 17, 2017, Inspector Hodgdon conducted an inspection of Excel Nails. See Exhibit 1. Inspector Hodgdon testified she spoke with a person named Kelly at the inspection. Hieu Kieu is identified on the inspection form as the owner of Excel Nails. Inspector Hodgdon testified that she found one foot spa that was not disinfected properly. Inspector Hodgdon stated that she discussed the disinfection of implements. Inspector Hodgdon further testified that a dirty foot spa can cause health and safety risks by causing infections. The Board imposed a fine of \$100.00.

On or about January 10, 2018, Inspector Hodgdon conducted an inspection of Excel Nails. See Exhibit 2. Inspector Hodgdon found two (2) foot spas that were not disinfected properly, fourteen (14) implements that were not disinfected or stored properly, eight (8) implements that were not discarded as required, and apprentice Kim Hue Mai owed paperwork to the Board for six (6) months. A warning was issued for licenses and permits not being displayed. The Board imposed a fine of \$532.00.

In the spring of 2018, Inspector Hodgdon became aware of a complaint regarding Excel Nails. Inspector Hodgdon testified that Candace Lamphere submitted a complaint on behalf of her mother, Tynne Cox (“Ms. Cox”). According to Ms. Hodgdon, Ms. Cox spent five days in the hospital with an infection in her legs following a visit to Excel Nails. The complaint prompted Inspector Hodgdon to conduct another inspection. On June 26, 2018, Inspector Hodgdon conducted

an inspection of Excel Nails. See Exhibit 3. Inspector Hodgdon found four (4) foot spas that were not disinfected properly, no record of cleaning for five (5) foot spas, twenty-five (25) implements that were not disinfected or stored properly, sixty-one (61) implements not discarded as required, and the inspection report not displayed as required. Inspector Hodgdon identified Exhibit 3-a as photographs she took at Excel Nails at the June 26, 2018 inspection. See Exhibit 3-a. Inspector Hodgdon identified some of the photos as the filters of the foot spas were full of debris and product. The remaining photos showed files that were not cleaned properly, and dirty files that were stored with clean files. The Board imposed a fine of \$1066.00.

On or about July 30, 2018, Inspector Hodgdon conducted an inspection of Excel Nails. See Exhibit 4. Inspector Hodgdon testified she found four (4) foot spas that were not cleaned and disinfected properly, no records of cleaning for five (5) foot spas, fourteen (14) implements that were not disinfected or stored properly, nine (9) implements not discarded as required, apprentice Kim Hue Mai was not wearing a name tag and owed paperwork to the Board, the inspection report was not displayed as required, and Si Nhat Le was working on a client without a New Hampshire manicuring license. The Board imposed a \$1513.00 fine.

Inspector Hodgdon testified she spoke with Kelly or an employee of Excel Nails at every inspection on how to come into compliance with Board requirements. Inspector Hodgdon further testified that she found violations at every inspection of Excel Nails and found that the compliance was getting worse with every inspection.

The Respondent did not have any questions for Inspector Hodgdon.

II. Respondent's Case

The Respondent testified that everything was their fault and the inspector was right. The Respondent also testified that he had made many changes and paid the fines. The Respondent testified they now use disposable implements and use liners for the foot spas. In response to a Board member's question, the Respondent testified that they did not pay attention to the Board requirements earlier because they were too busy and short staffed. He testified that he now has more people helping him. The Respondent also testified that he was making payments on the fine, however the last two fines have not been paid.

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 Hodgdon to be credible and the inspection reports accurate, detailed, and professional. The Board further found the notices of imposed fines to be accurate.

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

1. On or about February 17, 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 10, 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:

- On or about June 26, 2018, and July 30, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by failing to observe the requirements of a rule adopted by the Board, specifically Bar 302.05 (q) requiring shops to properly clean foot spas;
- On or about June 26, 2018, and July 30, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by failing to observe the requirements of a rule

adopted by the Board, specifically Bar 302.07 (c) (8) requiring licensees to properly sanitize implements;

- On or about June 26, 2018, and July 30, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by failing to observe the requirements of a rule adopted by the Board, specifically Bar 302.07 (c) (5) requiring licensees to properly dispose of, after use, items that come in direct contact with a patron and cannot be disinfected;
- On or about June 26, 2018, and July 30, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by failing to observe the requirements of a rule adopted by the Board, specifically Bar 404.01 (n) requiring licensees to post their last inspection form;
- On or about June 26, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by failing to observe the requirements of a rule adopted by the Board, specifically Bar 302.05 (u) requiring shops to maintain a record of cleaning and disinfecting;
- On or about July 30, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (i) by failing to observe the requirements of a rule adopted by the Board, specifically Bar 302.07 (c) (8) requiring licensees to properly sanitize implements;
- On or about July 30, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (g) by willfully violating a provision of RSA Chapter 313-A, specifically RSA 313-A:9, II which prohibits the employment of an unlicensed person to perform manicures; and
- Between June 26, 2018 and July 30, 2018, the Respondent engaged in professional misconduct pursuant to RSA 313-A:22, II (d) by negligently performing acts in a manner

inconsistent with the health and safety of persons relying on the expertise of the license by failing to comply with sanitation standards established by the Board.

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 and the potential harm to the public to warrant imposing a suspension and requiring continuing education in an area in which he was repeatedly found deficient.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicuring license #2937 and shop license# 1974 are **SUSPENDED** for a minimum period of at least fourteen days. Prior to a request to the Presiding Officer to lift this suspension, Respondent shall:

- a. 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.
- b. Satisfactorily pass an inspection prior to shop re-opening.

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 3 years. 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". Nonpayment of a fine by the Respondent in contravention of this order shall result in separate discipline by the Board and the denial of licensure until paid pursuant to Bar 404.12.

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.

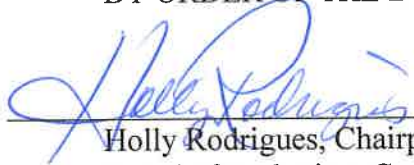
IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document; and

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

10/7/19

BY ORDER OF THE BOARD



Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics