

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

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

In Re:
Sunshine Nails,
Shop License #2611

Luu Kim Cao,
Personal Lic. # 25524

Docket No.: 22-BAR-0011, and 22-BAR-0020

FINAL DECISION AND
ORDER- 11/28/22

III. ATTENDEES:

Jeanne Chappell, Board Chair
Kimberly A. Hannon, Board Member
Sarah Partridge, Board Member
Joshua Craggy, Board Member
Tracey Pappas, Board Administrator
Talia Wilson, Board Administrator
Sheri Phillips, Esq., Board Counsel
Shane D. Goulet, Esq., OPLC Hearings Officer
Luu Kim Cao, Licensee and Shop Owner
John Garrigan, Esq., OPLC Prosecutor
Sandra Hodgdon, Inspector for OPLC

II. CASE SUMMARY/PROCEDURAL HISTORY:

22-BAR-0011: On 03/21/22, the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”) reviewed an 03/02/22 inspection report indicating 1,106 violation points had been assessed against Sunshine Nails (“Licensee”) for multiple hygiene and safety related violations found on the premises. After referring the matter to OPLC Division of Enforcement for further investigation and the investigation being conducted, the Board voted to commence this adjudicative proceeding on 07/18/22.

22-BAR-0020: On 06/02/22, the New Hampshire Office of Professional Licensure and Certification (“OPLC”), acting on behalf of the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”), conducted a follow-up inspection of Sunshine Nails (“Licensee”) in relation to a complaint received on 05/19/22 alleging an employee of the Licensee had caused damage to the complainant’s foot while providing nail and callus services to her. During the inspection, OPLC assessed 4,584 violation points for multiple hygiene, safety, and license related violations found on the premises. After further investigation by OPLC, the Board voted to commence this adjudicative proceeding on 08/15/22.

After providing the Licensee with notice on both matters docketed above, the adjudicatory hearing was held on 11/28/22. This Final Order follows on both docketed cases.

III. SUMMARY OF THE EVIDENCE:

The Board received the following evidence pursuant to RSA 541-A:33 and Rule 213.03:

- a. (11) Exhibits were submitted by Hearing Counsel, regarding 22-BAR-0011, numbered as follows:

Prosecution’s Exhibits

- 1. 05/04/2022 Hodgdon, Confidential Memorandum
- 2. 03/02/2022 Shop Inspection Report
- 3. 03/02/2022 Inspection Photographs
- 4. Sunshine Nails payment history
- 5. 12/29/14 Licensee certification and questionnaire
- 6. Sunshine Nails Board Complaint, (2017)
- 7. 12/31/2014 Shop Inspection Report
- 8. 08/03/2016 Shop Inspection Report
- 9. 06/29/2017 Shop Inspection Report
- 10. 01/02/2020 Shop Inspection Report
- 11. 08/11/2020 Shop Inspection Report

- b. (13) Exhibits were submitted by Hearing Counsel, regarding 22-BAR-0020, numbered as follows:

Prosecutions Exhibits

- 1. Sandra Hodgdon’s Confidential Memorandum, dated 06/06/2022
- 2. Lisa Nikitas’ Complaint, picture, and supplemental statements, dated 05/19/22

3. Licensees' Response to Complaint, dated May 23, 2022
4. 06/02/2022 Shop Inspection Report
5. Shop Inspection Pictures
6. 03/02/2022 Shop Inspection Report
7. Sunshine Nails Fine Payment History
8. 12/29/14 Licensee certification and questionnaire
9. 08/03/2016 Shop Inspection Report
10. 06/29/2017 Shop Inspection Report
11. Sunshine Nails Board Complaint, (2017)
12. 01/02/2020 Shop Inspection Report
13. 08/11/2020 Shop Inspection Report

c. Testimony was received from:

1. Lisa Nikitas, Complainant
2. Sandra Hodgdon, Inspector
3. Luu Kim Cao, (by and through her assigned translator) Licensee / Shop Owner

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee appeared for the hearing through its authorized representative/shop owner, Luu Kim Cao. Pursuant to Rule 211.02(a), Hearing Counsel has the burden of proving its case by a preponderance of the evidence. Based upon representations of the Licensee regarding an identified language barrier, she was assigned a Vietnamese translator to aid her in the proceeding. The above referenced dockets were merged and adjudicated together by agreement of the parties. The Presiding Officer admitted Hearing Counsel's (24) combined Exhibit's by agreement of the parties. Despite the merging of the two docketed matters, the Exhibits between dockets 22-BAR-0011 and 22-BAR-0020 were considered independently by the Board. Hearing Counsel called two witness'. The Licensee testified in response. The credible evidence presented at the hearing allows the Board to find the following facts.

Lisa Nikitas, Complainant

Lisa Nikitas was sworn and testified to her experience at Sunshine Nails on May 14, 2022, which led to her filing a complaint against the Licensee on May 19, 2022. *See* Exhibit 2. Ms. Nikitas testified that she went to Sunshine Nails for a pedicure and received exfoliating treatment from one of the

technicians on both heels. Ms. Nikitas testified that the technician utilized an implement which appeared to be a bladed “grater” to perform the procedure. She represented that the technician’s use of the “grater” resulted in injury to both heels and resulting pain. Ms. Nakitas testified that after the injury was sustained, she received inadequate first aid from the technician who utilized alcohol, antiseptic, and napkins. Ms. Nakitas further identified her injury by directing the Board to the photographs found within Exhibit 2. She stated the injury she sustained at Sunshine Nail’s took approximately three weeks to fully heal.

Sandra Hodgdon, OPLC Inspector

Sandra Hodgdon was sworn and testified that she is an inspector for OPLC Enforcement and to her training and experience in working for the State of New Hampshire and in operating a salon. Inspector Hodgdon testified to the Exhibit’s admitted in both matters before the Board. Under Docket 22-BAR-0011, Inspector Hodgdon testified that she performed an inspection at Sunshine Nails on March 2, 2022, which resulted in accessing the shop 1,106 violation points. *See* Exhibits 1, 2, 3. She testified that the violations included one (1) dirty foot spa, one (1) “filthy” wax pot, seventy (70) implements which were not cleaned and disinfected properly, fifty-six (56) files that were not discarded after use, and inadequate first aid supplies and safety data.

Under Docket 22-BAR-0020, Sandra Hodgdon testified to her review of Ms. Nikitas’ complaint and supporting documentation. Inspector Hodgdon testified that she performed an inspection of Sunshine Nails on June 2, 2022, to follow up on Ms. Nikitas’ complaint. She testified that her inspection resulted in accessing the shop 4,584 violation points. *See* Exhibit’s 4, and 5. She testified that the identified violations included, but were not limited to, nine (9) dirty manicure stations, thirty-three (33) implements which were improperly stored, one-hundred [and] eight (108) implements being reused and not disposed of properly, eight (8) spa chairs which were not documented for cleaning, three (3) dirty pedicure chair

agitators, one (1) wax heater containing dirt and debris, and five (5) rasp files. The “rasp” files were described as bladed files that are prohibited from use in N.H. shops and salons for any service.

Luu Kim Cao, Licensee and Shop Owner

Ms. Cao, Licensee Shop Owner, was sworn in under oath and testified by and through her interpreter. She testified that Ms. Nikitas was a long-time customer and that she has historically been very pleased with the services received from Sunshine Nails. She testified that she apologized to Ms. Nikitas and tried to help her following the injury sustained on May 14, 2022.

Ms. Cao represented that she knows what “she is supposed what to do.” She testified that she knows the “rules” and has fired all employees who do not follow the rules. Ms. Cao stated that she does not contest the inspection reports dated 03/2/2022 and 06/02/2022, but represented to the Board that she has made specific remedial efforts since reviewing the identified concerns.

V. DISCUSSION AND FINDINGS OF FACTS / CONCLUSIONS OF LAW:

After reviewing all the evidence, accounting for the presentation and demeanor of all the witnesses, and drawing all reasonable inferences therefrom the Board finds, by a preponderance of the evidence, that the Licensee committed professional misconduct. The Exhibits and witness testimony adequately support the conclusions that 1) the 03/02/22, and 06/02/2022 shop violations noted by Ms. Hodgdon at Sunshine Nails occurred; 2) Ms. Nakita’s injury sustained at Sunshine Nails on 05/14/2022 resulted from a technician’s improper use of prohibited implements which were found to be in use at Licensee’s shop; and 3) the Licensee requires further education and training regarding sanitization, disinfection, sterilization, and first aid. As part of this decision, the Board makes the following specific findings of fact and conclusions of law:

- A. On or about 03/02/22, 05/14/2022, and 06/02/2022, Licensee, Lu Kim Cao was the holder of the shop license for Sunshine Nails in Londonderry, New Hampshire.

B. Pursuant to RSA 313-A:22(II)(c), (d), and (i) and Rule 404.09, 302.05, and/or 302.07, Licensee engaged in professional misconduct by, on 03/02/22, operating a shop with multiple undisputed code violations. The total assessed points for those violations is 1,106. *See* Exhibits 1, 2, 3 (22-BAR00011), and testimony of Sandra Hodgdon.

C. Pursuant to RSA 313-A:22(II)(c), (d), and (i) and Rule 404.09, 302.05, and/or 302.07, Licensee engaged in professional misconduct by, on 06/02/22, operating a shop with multiple undisputed code violations. The total assessed points for those violations is 4,584. *See* Exhibits 1, 4, 5 (22-BAR-0020), and testimony of Sandra Hodgdon.

D. Pursuant to RSA 313-A:22(II)(c), (d), and Rule 404.09, 302.05, and/or 302.07, Licensee engaged in professional misconduct by, on 05/14/22, operating a shop which maintained and allowed for the use of prohibited implements which caused injury to the complainant. *See* Exhibits 2, 3 (22-BAR-0020), testimony of Sandra Hodgdon, and Lisa Nikitas.

E. Upon finding that professional misconduct occurred the Board considered the Licensee's prior conduct. *See* Exhibit's 4-11 (22-BAR-0011), Exhibits 7-13 (22-BAR-0020), and testimony of Sandra Hodgdon.

F. Pursuant to RSA 313-A:22(III)(b), and upon a finding of professional misconduct under section (II), the Board hereby **SUSPENDS** Licensee's shop license #2611 and personal license #25524 until the following occurs:

- a. Pursuant to RSA 313-A:22(III)(d) and upon a finding of professional misconduct under section (II), the Board directs the Licensee shop owner to participate in (10) hours of program(s) of continuing education in the areas of sanitation, sterilization, and disinfection control within thirty (30) days of the signed date of this order. In addition, the Licensee shall participate in first aid education. The first aid education shall be attended by the licensee "in person". The continuing education may 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). **Whether any program(s) meets the requirements of this section shall be determined by the Board. Therefore, the Licensee is strongly encouraged to seek the Board's pre-approval of program(s) before taking them.** The Board has authorized the Board Chair to pre-approve courses on its behalf, so that the Licensee does not have to wait until a meeting to learn whether coursework he wishes to take is acceptable. The Licensee can submit information about proposed programs to the Board's Administrator, who shall present same to the Board Chair for determination.
- b. The Licensee shall come into compliance with all matters noted in the inspection reports dated 03/02/2022, and 06/02/2022; including but not limited to licensing, sanitation, and sterilization issues.

c. 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 D.(a) and D.(b) above, at a time that is convenient for the Board inspector.

G. Pursuant to RSA 313-A:22(III)(b) and upon a finding of professional misconduct under section (II), Licensee's license is subject to a period of **PROBATION** for three years commencing from the below signed date of this 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 Licensee. The Board is putting Licensee on notice that it may enforce this order specifically using unannounced inspections.

H. 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 \$5,690.00, representing the cumulative point values for the violations noted in the 03/02/22 and 06/02/22 inspection reports. Said administrative fine is assessed after hearing pursuant to Rule 404.11 on Dockets 22-BAR-0011, and 22-BAR-0020.

I. Pursuant to RSA 332-G:11, the Board affirmatively assesses Licensee Luu Kim Cao, as the owner of shop license #2611, the reasonable cost of investigation and prosecution of this disciplinary proceeding in the amount of \$500.00.

J. The \$5,690.00 administrative fine shall be paid within 180 days of the below signed date of this final order.

K. The \$500.00 fine shall be paid within 30 days of the below signed dated of this final order.

L. Pursuant to RSA 313-A:22(g), if Licensee fails to comply with any terms or conditions imposed by this Final Decision, said failure shall constitute misconduct pursuant to RSA 313-A:22, and a separate and sufficient basis for further disciplinary action by the Board against the Licensee.

M. In determining what sanctions to impose, the Board considered RSA 313-A:22 and the factors enumerated in Rule 402.01(d).

N. Pursuant to RSA 313-A:22 and Rule 402.01(d), the Licensee is subjected to the above-referenced discipline as the minimum sanction that the Board believes will, based on the facts and circumstances of this particular case, both protect the public and deter Licensee and any other licensees from engaging in such misconduct in the future.

O. Per Order of the Board, if reasonably practical, a copy of this Order shall be served on the Licensee, in-hand, by OPLC staff. A copy of this order shall also be sent to

the Licensee by certified mail, return receipt requested, first class mail, and by also by email (if reasonably practical).

VI. CONCLUSION AND DECISION:

Pursuant to RSA 313-A:22 and Rule 402, the Board hereby **SUSPENDS** Licensee's licenses, and subjects it to further discipline as outlined above.

DATED: 12/12/2022

/s/ Shane.D. Goulet, Esq.
Shane D. Goulet, Esq. Hearings Officer
Authorized Representative of the
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