

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
STEVEN T. PHAM and REGAL : FINAL DECISION AND ORDER
NAILS, RESPONDENTS. : LS0606055BAC

Division of Enforcement Case File Number: 04 BAC 081

The parties to this action for the purposes of Section 227.53 of the Wisconsin statutes are:

Steven T. Pham
1991 Anita Court
Appleton, Wisconsin 54913

Regal Nails
3701 East Calumet Street
Appleton, Wisconsin 54915

Barbering and Cosmetology Examining Board
Post Office Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
Post Office Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Barbering and Cosmetology Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Regal Nails, 3701 East Calumet Street, Appleton, Wisconsin 54915, is duly licensed as a manicuring establishment in the state of Wisconsin (license #71-2532). This license was first granted on August 26, 2004, and was current through June 30, 2007.
2. Steven T. Pham, date of birth March 15, 1967, is duly licensed as a manicurist in the state of Wisconsin, (license number 85-4951). This license was first granted on June 28, 2002, and is current through June 30, 2007. The last address reported to the Department of Regulation and Licensing (Department) by Mr. Pham is 1991 Anita Court, Appleton, Wisconsin 54913.
3. Steven M. Pham is also listed with the Department as the owner of Regal Nails. As owner of a licensed manicuring establishment, Mr. Pham is responsible for compliance with Wis. Stat. Ch. 454 and Wisconsin Administrative Code Chs. BC 2, 3 and 4.
4. On January 31, 2006, Investigator Douglas Austin from the Department inspected Regal Nails.

Investigator Austin found Jason Hue Tran providing manicuring services to a customer. Jason Hue Tran is not licensed in the state of Wisconsin as a manicurist. In addition, Investigator Austin found used emery boards and used buffing blocks kept in drawers of workstations. Investigator Austin found a large box containing several hundred used emery boards kept in the back of the establishment.

5. In addition, Investigator Austin observed that individual practitioners did not wash their hands between customers and found that the tops of the counters at the work stations were coated with what appeared to be nail dust. Mr. Pham told Mr. Austin on January 31st that the disinfectant was changed once per week.

6. On February 24, 2006, Investigator Austin again visited Regal Nails. Investigator Austin observed again that individual practitioners did not wash their hands between customers and found that the tops of the counters at the work stations were still coated with what appeared to be nail dust. While no used emery boards were found, Investigator Austin found used buffing blocks at three of the work stations. Investigator Austin observed Mr. Pham direct one of his manicurist to throw away a buffing block before Investigator Austin could inspect the manicurist's work station.

7. In resolution of this matter, Steven T. Pham and Regal Nails consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Barbering and Cosmetology Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. sec. 454.15.

2. The Wisconsin Barbering and Cosmetology Examining Board is authorized to enter into the attached stipulation pursuant to Wis. Stat. sec. 227.44(5).

3. By the conduct referred to in the above Findings of Fact, Steven T. Pham and Regal Nails have violated:

1. Wis. Stat. Sec. 454.04(1)(d). No person may engage in manicuring unless the person has received training in the areas of service provided and holds a current manicurist license, barber or cosmetologist license, manager license, temporary permit or training permit issued by the examining board or is an apprentice under s. 454.10 or a student in a manicuring or barbering or cosmetology course of instruction.
4. Wis. Stat. Sec. 454.15(2)(i). Violation of Chapter 454 or of the Administrative Code promulgated under Chapter 454 is cause for discipline.
5. Wis. Admin. Code §. BC 2.04(1). Licensees may not assist or participate in the unauthorized or unlicensed practice of barbering and cosmetology, aesthetics, electrology or manicuring.
6. Wis. Admin. Code § BC 4.01(1). All areas of an establishment and the equipment, tools and implements for services shall be maintained in a clean, sanitary and safe condition.
7. Wis. Admin. Code § BC. 4.01(2). Licensees shall wash their hands thoroughly with soap and running water prior to serving each patron and following removal of gloves.
8. Wis. Admin. Code § BC. 4.01(3). Powder puffs, sponges, and emery boards and other contact equipment that cannot be cleaned with soap or detergent and water shall be disposed of following each use.
9. Wis. Admin. Code § BC 4.02(5). Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container

10. Wis. Admin. Code § BC 4.10(2). Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container.
11. Wis. Admin. Code § BC 4.10(4). Manicure instruments that can't be cleaned and disinfected or sterilized shall be disposed of following each use.

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Steven T. Pham and Regal Nails shall jointly and severally pay to the Department of Regulation and Licensing a forfeiture of TWO THOUSAND SEVEN HUNDRED dollars (\$2,700.00).

IT IS FURTHER ORDERED that Steven T. Pham and Regal Nails shall jointly and severally pay full costs in the amount of SIX HUNDRED SEVENTY FIVE dollars (\$675.00) in this matter.

All payments shall be submitted within 90 days from the date of this order. Payment shall be made by ***certified check or money order***, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Post Office Box 8935
Madison, WI 53708-8935
608-261-7904

IT IS FURTHER ORDERED that in the event Steven T. Pham and Regal Nails fail to timely submit any payment of the forfeiture and costs as set forth above, the establishment license of Regal Nails (license number 71-2532) and the manicurist license of Steven T. Pham (license number 85-4951) **SHALL BE SUSPENDED**, without further notice or hearing, until Steven T. Pham and Regal Nails have complied with the terms of this Order.

This Order shall become effective upon the date of its signing.

BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Jeannie M. Bush
A member of the Board

6/5/06
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

STEVEN T. PHAM and REGAL
NAILS, RESPONDENTS.

STIPULATION

LS # _____

Division of Enforcement Case File Number: 04 BAC 081

It is hereby stipulated between Stephen T. Pham and Regal Nails (hereafter “Respondents”), and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement (04 BAC 081). Respondents consent to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondents understand that by the signing of this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Respondents have been provided an opportunity to obtain legal counsel prior to signing this stipulation.

4. Respondents agree to the adoption of the attached Final Decision and Order by the Barbering and Cosmetology Examining Board (hereafter “Board”). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the attached order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Barbering and Cosmetology Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondents or their attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondents are informed that should the Board adopt this stipulation, the Board’s Final Decision and Order is a public record and will be published in accordance with standard Department policy.

8. The Division of Enforcement joins Steven T. Pham and Regal Nails in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Steven T. Pham

Respondent
1991 Anita Court
Appleton, Wisconsin 54913
License number 85-4951

Date

Regal Nails

Respondent
3701 East Calumet Street
Appleton, Wisconsin 54915
License number 71-2532

Date

Claudia Berry Miran

Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
Post Office Box 8935
Madison, WI 53708-8935

Date