

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

ANDRE NGOC TRAN, DUNG H.
NGUYEN and HOLLYWOOD NAILS,
RESPONDENTS.

FINAL DECISION AND ORDER
LS0606057BAC

Division of Enforcement Case File Number: 03 BAC 117

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

Andre Ngoc Tran
300 Main Avenue
De Pere, WI 54115

Hollywood Nails
807B Military Avenue
Green Bay, WI 54303

Dung H. Nguyen
807B Military Avenue
Green Bay, WI 54303

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 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. Hollywood Nails, 807B Military Avenue, Green Bay, WI 54303, is duly licensed as a manicuring establishment in the state of Wisconsin (license #71-2382). This license was first granted on December 29, 2003, and was current through June 30, 2005. From July 1, 2005, through September 19, 2005, the license was expired. The license is now current until June 30, 2007.

2. Dung H. Nguyen, 807B Military Avenue, Green bay, WI 54303, is listed with the Department of Regulation and Licensing (Department) as the owner of Hollywood Nails. As owner of a licensed manicuring establishment, Mr. Nguyen is

responsible for compliance with Wis. Stats. Ch. 454 and Wisconsin Administrative Code Chs. BC 2, 3 and 4.

3. Andre Ngoc Tran (Date of Birth: February 28, 1963) is a duly licensed manicurist in the state of Wisconsin (license number 85-4789). This license was first granted on February 13, 2002. From July 1, 2003, through October 15, 2003, the license was expired. From July 1, 2005, through September 21, 2005, the license was also expired. The license is now current until June 30, 2007. Mr. Tran is identified in Department records as the responsible manicurist for Hollywood Nails. The last address that Mr. Tran reported to the Department is 1410 North Road, Green Bay, Wisconsin 54313.

3. On May 14, 2004, Investigator Candace Bloedow from the Department of Regulation and Licensing visited Hollywood Nails. Investigator Bloedow found a current license for a Hollywood Nails manicuring establishment in De Pere, Wisconsin posted inside the Green Bay establishment. There was no establishment license for Hollywood Nails on Military Avenue posted. In addition, Hollywood Nails did not have the Blood Exposure Protocol posted.

4. Soon after the May 14th inspection, Mr. Nguyen informed the Department that the current license for the establishment and the Blood Exposure Protocol were posted.

5. On September 12, 2005, Investigator Bloedow telephoned Hollywood Nails. Departmental records showed that the establishment license for Hollywood Nails had expired on July 1, 2005, and had not been renewed. Investigator Bloedow was told that the establishment was open and was offered an appointment.

6. On September 14, 2005, Investigator Bloedow again visited Hollywood Nails. Investigator Bloedow found Hollywood Nails open for business. Mr. Nguyen was the only person in the establishment. The establishment's appointment book showed regular appointments for July and August, 2005, with the exceptions of July 4 and September 5. There were also several appointments for Dung Nguyen to perform manicurist services in the establishment's appointment book for June, July and August 2005. While Mr. Nguyen is the owner of Hollywood Nails, he has never been licensed by the Department. Mr. Nguyen informed Investigator Bloedow that Mr. Tran was out of state.

7. In resolution of this matter, Andre Ngoc Tran, Dung H. Nguyen and Hollywood 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. Stats. sec. 454.15.

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

3. By the conduct referred to in the above Findings of Fact, Andre Ngoc Tran, Dung H. Nguyen and Hollywood Nails have violated:

1. Wis. Stats. 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.
2. Wis. Stats. Sec. 454.08(1)(b). Except as permitted by rule promulgated under par. (a), no person may practice barbering or cosmetology, aesthetics, electrology or manicuring in an establishment unless the establishment is licensed to provide that practice under sub. (2).
3. Wis. Stats. Sec. 454.08(8). The examining board shall furnish a certificate to the owner of a licensed establishment, certifying that the establishment is licensed by the examining board. The owner shall post the certificate in a conspicuous place in the establishment.

4. Wis. Stats. Sec. 454.15(2)(i), which provides that any 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 3.01(1). Barbering and cosmetology, aesthetics, electrology and manicuring shall not be practiced outside the confines of a licensed establishment, except as provided in s. BC 2.045.
7. Wis. Admin. Code § 4.05(2). A licensed establishment shall post a written protocol describing the procedure for unintentional occupational exposure to bodily fluids described in sub. (1). The protocol shall be posted in a place conspicuous to licensees.

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Andre Ngoc Tran shall pay to the Department of Regulation and Licensing a forfeiture of ONE THOUSAND dollars (\$1,000.00) and Hollywood Nails and Dung H. Nguyen shall pay to the Department of Regulation and Licensing a forfeiture of THREE THOUSAND dollars (\$3,000.00).

IT IS FURTHER OREDERED that Andre Ngoc Tran, Dung H. Nguyen and Hollywood Nails shall jointly pay full costs in the amount of ONE THOUSAND dollars (\$1,000.00) 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

Andre Ngoc Tran, Dung H. Nguyen and Hollywood Nails are to pay the \$4,000.00 forfeiture and \$1,000.00 total costs on the following schedule:

| Payment Number | Payment Due Date | Payment Amount |
|----------------|--------------------|----------------|
| No. 1 | July 15, 2006 | \$625.00 |
| No. 2 | August 15, 2006 | \$625.00 |
| No. 3 | September 15, 2006 | \$625.00 |
| No. 4 | October 15, 2006 | \$625.00 |
| No. 5 | November 15, 2006 | \$625.00 |
| No. 6 | December 15, 2006 | \$625.00 |
| No. 7 | January 15, 2007 | \$625.00 |
| No. 8 | February 15, 2007 | \$625.00 |

IT IS FURTHER ORDERED that in the event Andre Ngoc Tran, Dung H. Nguyen and Hollywood Nails fail to timely submit any payment of the forfeiture and costs as set forth above, the establishment license of Hollywood Nails (license number 71-2382) and the manicurist license of Andre Ngoc Tran (license number 85-4789) **SHALL BE SUSPENDED**, without further notice or hearing, until Andre Ngoc Tran, Dung H. Nguyen and Hollywood 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

ANDRE NGOC TRAN, DUNG H.
NGUYEN and HOLLYWOOD NAILS,
RESPONDENTS.

STIPULATION
LS # _____

Division of Enforcement Case File Number: 03 BAC 117

It is hereby stipulated between Andre Ngoc Tran, Dung H. Nguyen and Hollywood 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 (03 BAC 117). 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 Andre Ngoc Tran, Dung H. Nguyen and Hollywood Nails in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Andre Ngoc Tran

Respondent

300 Main Avenue

De Pere, WI 54115

License number 85-4789

Date

On Behalf of Hollywood Nails

Respondent

807B Military Avenue

Green Bay, WI 54303

License Number 71-2382

Date

Dung H. Nguyen

Respondent

807B Military Avenue

Green Bay, WI 54303

Date

Claudia Berry Miran

Attorney

Division of Enforcement

Wisconsin Department of Regulation and Licensing

Post Office Box 8935

Madison, WI 53708-8935

Date