

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 :
 :
 :
KIM HUYEN NGUYEN and A NAILS, : FINAL DECISION AND ORDER
RESPONDENTS. : LS0609114BAC

Division of Enforcement Case File Number: 06 BAC 013

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

Kim Huyen Nguyen
4136 West Southwood Drive
Franklin, Wisconsin 53132

A Nails
5423 South 76th Street
Greendale, Wisconsin 53129

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. A Nails is duly licensed as a manicuring establishment in the state of Wisconsin (license #71-2920). This license was first granted on May 5, 2006, and is current until June 30, 2007. The last address reported to the Department of Regulation and Licensing (Department) for A Nails is 5423 South 76th Street, Greendale, Wisconsin 53129. From October 25, 2001, through June 30, 2003, A Nails, at the same address, was a licensed manicuring establishment in the state of Wisconsin (71-1967), and owned by Thiem T. Tran.
2. Kim Huyen Nguyen, is duly licensed as a manicurist in the state of Wisconsin (license number 85-4881). This license was first granted on April, 22, 2002, and is current until June 30, 2007. The last address reported to the Department for Ms. Nguyen is 4136 West Southwood Drive, Franklin, Wisconsin 53132. Ms. Nguyen is listed with the Department as the owner of A Nails. As owner of a licensed manicuring establishment, Ms. Nguyen is responsible for compliance with Wis. Stats. Ch. 454 and Wisconsin Administrative Code Chs. BC 2, 3 and 4.
3. On May 4, 2006, Investigator Douglas Austin from the Department inspected A Nails. Investigator Austin observed Dat Nguyen, Huong Pham and Kim Huyen Nguyen providing manicuring services. Investigator Austin found that A Nails did not possess a current establishment license and that Dat Nguyen and Huong Pham did not possess current Wisconsin manicurist licenses. Investigator Austin also located cleaning supplies, some which were poisonous and hazardous, stored in an unlocked cabinet in the work area of A Nails. Kim Huyen Nguyen told Investigator Austin that she had purchased the establishment from her brother, Thiem T. Tran, three or four years ago.

4. Investigator Austin told Kim Huyen Nguyen that she could not continue to have the establishment open and provide services until she obtained a current manicuring establishment for A Nails. Investigator Austin informed Kim Huyen Nguyen that she could finish one customer's half-finished nails, but could not have any more customers until the manicuring establishment license was obtained. Investigator Austin left A Nails but returned approximately 30 minutes later and found Kim Huyen Nguyen providing services to two new customers.

5. In resolution of this matter, Kim Huyen Nguyen and A Nails consent 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, Kim Huyen Nguyen and A 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.
2. Wis. Stat. 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. Stat. Sec. 454.08(3). Any change of ownership shall be reported to the examining board by the new owner within 5 days after the change of ownership.
4. 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.
5. Wis. Stats. Sec. 454.15(2)(i). Violated this chapter or any rule promulgated under this chapter.
6. 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.
7. Wis. Admin. Code § BC 2.045(1). Licensees shall not provide personal care services outside of a licensed establishment except for person who are unable to leave their homes because of illness or disability or for persons who are in hospitals, nursing homes, correctional institutions or other institutions.
8. 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.
9. Wis. Admin. Code § BC 3.01(6). Poisonous substances stored in public areas shall be locked in a cabinet or closet.

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Kim Huyen Nguyen and A Nails shall jointly and severally pay to the Department of Regulation and Licensing a forfeiture of **THREE THOUSAND ONE HUNDRED** dollars (\$3,100.00).

IT IS FURTHER ORDERED that Kim Huyen Nguyen and A Nails shall jointly and severally pay full costs in the amount of **SEVEN HUNDRED** dollars (\$700.00) in this matter.

Payment shall be submitted on the following payment schedule:

Date	Amount
October 15, 2006	\$316.66
November 15, 2006	\$316.66
December 15, 2006	\$316.66
January 15, 2007	\$316.66
February 15, 2007	\$316.66
March 15, 2007	\$316.66
April 15, 2007	\$316.66
May 15, 2007	\$316.66
June 15, 2007	\$316.66
July 15, 2007	\$316.66
August 15, 2007	\$316.66
September 15, 2007	\$316.74

The full amount of the forfeiture and costs may be paid at any time prior to each due date for payment.

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 Kim Huyen Nguyen and A Nails fail to timely submit any payment of the forfeiture and costs or fail to observe all the terms and conditions of this Order, as set forth above, the establishment license of A Nails (license number 71-2920) and the manicurist license of Kim Huyen Nguyen (license number 85-4881) **SHALL BE SUSPENDED**, without further notice or hearing, until Kim Huyen Nguyen and A 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

9/11/06
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	
KIM HUYEN NGUYEN and A NAILS,	:	STIPULATION
RESPONDENTS.	:	LS #06 _____ BAC
	:	

Division of Enforcement Case File Number: 06 BAC 013

It is hereby stipulated between Kim Huyen Nguyen and A 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 (06 BAC 013). 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 Kim Huyen Nguyen and A Nails in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Kim Huyen Nguyen
Respondent
4136 West Southwood Drive
Franklin, Wisconsin 53132
License number 85-4881

Date

On Behalf of A Nails
Respondent
5423 South 76th Street
Greendale, Wisconsin 53129
License Number 71-2920

Date

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

Date