

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 :
 :
LUU PHUONG NGUYEN : FINAL DECISION AND ORDER
and SUPER NAILS, : LS0702057BAC
RESPONDENTS. :

Division of Enforcement Case File Number 04 BAC 025

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

Luu Phuong Nguyen
95 North Moorland Road, A-15
Brookfield, Wisconsin 53005

Super Nails
95 North Moorland Road, A-15
Brookfield, Wisconsin 53005

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

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

PROCEDURAL HISTORY

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. Luu Phuong Nguyen (Date of Birth is December 9, 1958) is duly licensed as a manicurist in the state of Wisconsin (license #85-2714). This license was first granted on December 6, 1996, and is current through June 30, 2007. The last address reported to the Department of Regulation and Licensing (hereinafter Department) by Mr. Nguyen is 95 North Moorland Road, A-15, Brookfield, Wisconsin 53005.
2. Super Nails is duly licensed as a manicuring establishment in the state of Wisconsin (license #71-973). This license was first granted on July 25, 1997, and is current through June 30, 2007. The last address reported to the Department for Super Nails is 95 North Moorland Road, A-15, Brookfield, Wisconsin 53005. Mr. Nguyen is listed with the Department as the current owner of Super Nails. As owner Mr. Nguyen is and was at all times relevant to this action responsible for compliance with Wis. Stat. Ch. 454 and Wisconsin Administrative Code Chs. BC 2, 3 and 4.
3. On July, 1, 1998, Luu Phuong Nguyen and Super Nails were disciplined by the Barbering and Cosmetology Examining Board (Case 97 BAC 222) for reusing emery file bits without disinfecting them prior to each use and for using a

disinfectant that did not contain a tuberculocidal agent.

4. On May 8, 2002, Luu Phuong Nguyen was disciplined by the Barbering and Cosmetology Examining Board (Case 01 BAC 065) for allowing an unlicensed person to provide manicuring services at Super Nails.

5. On April 3, 2006, Luu Phuong Nguyen and Super Nails were disciplined by the Barbering and Cosmetology Examining Board (Case 03 BAC 057) for allowing an unlicensed person to provide services at Super Nails, for not having individual manicurist licenses posted, for reusing nail and pedicure files, for using contaminated disinfectant, for failing to dispense powder and liquid acrylic in such a manner as to prevent contamination of the unused portion of the substance and for failing to sanitize manicure containers between clients.

6. An inspection of Super Nails by Investigator Kelley Sankbeil of the Department on June 14, 2006, found that individual manicurist licenses were not posted in the establishment, that manicurists were reusing disposable files, that the disinfectant used in the establishment appeared to be contaminated, that powder and liquid acrylic were not being dispensed in such a manner as to prevent contamination of the unused portion of the substance, that rusty nail nippers were being used and that the establishment had a set up to provide waxing services, even though the establishment was not licensed to provide waxing services.

7. Luu Phuong Nguyen was present during the June 14, 2006, inspection. Mr. Nguyen refused to sign the Notice of Compliance at the time.

8. On July 12, 2006, the Notice of Compliance was returned to the Department. It had been signed by Mr. Nguyen on July 10, 2006. Mr. Nguyen indicated that the licenses were now posted, that small containers were now being used for powder and liquid acrylic, that the disinfectant was being changed daily and that new files were being used. Mr. Nguyen denied that waxing services were being provided and that no employee was working at the station that had the rusty nipper.

9. In resolution of this matter, Luu Phuong Nguyen and Super 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 conduct referred to in the above Findings of Fact, Luu Phuong Nguyen and Super Nails, have violated:

1. Wis. Stats. sec. 454.04(1)(a). Except as permitted under pars. (b) and (d), no person may engage in barbering or cosmetology unless the person has received training in the areas of service provided and holds a current barber or cosmetologist license, manager license, temporary permit issued by the examining board or is an apprentice under s. 454.10 or a student in a barbering or cosmetology course of instruction.
2. Wis. Stat. sec. 454.06(7). The examining board shall furnish a certificate to each license, certifying that the holder is licensed to practice barbering or cosmetology, aesthetics, electrology or manicuring or is a licensed manger. The licensee shall post the certificate in a conspicuous space in the licensed establishment.
3. 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).
4. Wis. Stat. sec. 454.15(2)(c). Engaged in conduct in the practice of barbering or cosmetology, aesthetics, electrology or manicuring which evidences a lack of knowledge or ability to apply professional principles or skills.

5. Wis. Stat. sec. 454.15(2)(i). Violated this chapter or any rule promulgated under this chapter.
6. Wis. Admin. Code § BC 4.01(3). Powder puffs, sponges and emery board and other contact equipment that cannot be cleaned with soap or detergent and water shall be disposed of following each use.
7. Wis. Admin. Code § BC 4.01(4). All liquids, creams, powders and semi-solid substances shall be dispensed from a container in a manner which will prevent contamination of the unused portion of the substance.
8. Wis. Admin. Code § BC 4.02(5). Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container.
9. Wis. Admin. Code § BC 4.10(2). Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container.
10. Wis. Admin. Code § BC 4.10(4). Manicure instruments that cannot be cleaned and disinfected or sterilized shall be disposed of following each use.

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Luu Phuong Nguyen and Super Nails shall jointly and severally pay to the Department of Regulation and Licensing a forfeiture of TWO THOUSAND THREE HUNDRED dollars (\$2,300.00). Luu Phuong Nguyen and Super Nails shall also jointly and severally pay costs in the amount of SEVEN HUNDRED dollars (\$700.00) in this matter.

Payment 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, Wisconsin 53708-8935
608-261-7904

IT IS ALSO ORDERED that Luu Phuong Nguyen and Super Nails cease and desist from the practice of barbering or cosmetology until such time as they are licensed as a barbering or cosmetology practitioner and a barbering or cosmetology establishment.

IT IS FURTHER ORDERED that in the event that Luu Phuong Nguyen and Super Nails fails to comply with all the terms of the Order as set forth above, the manicurist license of Luu Phuong Nguyen (#85-2714) and the manicuring establishment license of Super Nails (#71-973) **SHALL BE SUSPENDED**, without further notice or hearing, until Luu Phuong Nguyen and Super 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

2/5/07
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

LUU PHUONG NGUYEN :
and SUPER NAILS, :
RESPONDENTS. :

STIPULATION
LS# _____

Division of Enforcement Case File Number 04 BAC 025

It is hereby stipulated between Luu Phuong Nguyen and Super Nails (herein after “Respondents”), personally on his own behalf and on behalf of Super Nails, 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 025). 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; 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 are aware of their right to seek legal representation and have been provided an opportunity to obtain legal advice 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 (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 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 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 Luu Phuong Nguyen and Super Nails in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Luu Phuong Nguyen

Date

Respondent

95 North Moorland Road, A-15

Brookfield, Wisconsin 53005

License Number 85-2714

Super Nails

Date

Respondent

95 North Moorland Road, A-15

Brookfield, Wisconsin 53005

License Number 71-973

Claudia Berry Miran

Date

Attorney

Division of Enforcement

Post Office Box 8935

Madison, Wisconsin 53708-8935