

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : FINAL DECISION AND ORDER
:
KEVIN M. PHAM AND :
LY LY NAIL AND SPA :
RESPONDENTS. : ORDER 0000169

Division of Enforcement Case File # 08 BAC 243

The parties to this action for the purpose of Wis. Stats. § 227.53 are:

Kevin M. Pham
220 Oak Street, Apt. 13
Grafton, WI 53024

Ly Ly Nail and Spa
1375 Port Washington Road
Grafton, WI 53024

Wisconsin Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53707-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin 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. Ly Ly Nail and Spa is duly licensed as a manicuring establishment in the State of Wisconsin having license # 71-3128. This license was granted on 06/04/2007 and is current through 03/31/2011.

2. Ly Ly Nail and Spa's most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) is 1375 Port Washington Road, Grafton, Wisconsin 53024.

3. Kevin M. Pham is listed as the owner of Ly Ly Nail and Spa. Department records indicate that Mr. Pham holds a manicurist license, # 85-4329. This license was first granted on 11/02/2000 and is current through 03/31/2011.

4. Mr. Pham's most recent address on file with the Department is 220 Oak Street, Apt. 13, Grafton, WI 53024.

5. As owner, Mr. Pham was and is at all times relevant to this action responsible for compliance with Wis. Stat. Ch. 454 and Wis. Admin. Code §§ BC 2, BC 3 and BC 4.

6. On or about September 2, 2008, the Department received a consumer complaint alleging sanitation violations at Ly Ly Nail and Spa. The complaint was subsequently opened for investigation.

7. On April 15, 2009, a Department consumer protection investigator conducted an inspection of Ly Ly Nail and Spa. The inspection revealed the following violations:

- One employee was practicing with an expired manicurist license. The credential had expired on March 31, 2009;
- One employee was practicing without a manicuring license;
- There were used/dirty disposable nail files and buffers in workstation drawers;
- Metal nail implements were stored loosely in workstation drawers containing nail dust; and
- There was a liquid nail acrylic on site that contained methyl methacrylate monomer.

8. An Order to Correct was issued for the above violations. The nail acrylic containing methyl methacrylate monomer was confiscated by the Department investigator during the inspection.

9. Mr. Pham provided the Department with evidence that the other nail acrylic on site did not contain methyl methacrylate monomer.

10. Mr. Pham indicated in a telephone conversation with the Department investigator that the sanitation violations had been corrected and that the unlicensed individual was no longer employed at Ly Ly Nail and Spa.

11. The individual who was found to be working with an expired credential renewed the credential on April 24, 2009.

12. In resolution of this matter, the Respondents consent to the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

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

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

3. Respondents, Kevin M. Pham and Ly Ly Nail and Spa have violated:

- a. Wis. Admin. Code § BC 2.04(1) by assisting or participating in the unlicensed practice of manicuring;
- b. Wis. Admin. Code § BC 4.10(1) by failing to properly clean manicuring instruments between clients;
- c. Wis. Admin. Code § BC 4.02(4) by failing to insure that all clean and disinfected contact equipment was placed in covered containers; and
- d. Wis. Admin. Code § BC 2.03(9) by using methyl methacrylate monomer in liquid form.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondents Kevin M. Pham and Ly Ly Nail and Spa are hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. Respondents shall pay a FORFEITURE in the amount of TWO THOUSAND THREE HUNDRED FIFTY DOLLARS (\$2,350.00) and shall pay COSTS in the amount of SIX HUNDRED TWENTY DOLLARS (\$620.00).

IT IS FURTHER ORDERED that:

3. A down payment of FIVE HUNDRED SEVENTY DOLLARS (\$570.00) shall be submitted within 90 days of the date of this order and six more payments of FOUR HUNDRED DOLLARS (\$400.00) will be due every 60 days from the date of the previous payment until the full TWO THOUSAND NINE HUNDRED SEVENTY DOLLARS (\$2,970.00) is paid in full.

4. 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
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondents' licenses. The Board in its discretion may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondents fail to timely submit any payment as ordered, then the Respondents' licenses (#71-3128 and # 85-4329) SHALL BE SUSPENDED without further notice or hearing until Respondents have complied with the terms of this Order.

6. This Order is effective on the date of its signing.

IT IS FURTHER ORDERED that file 08 BAC 243 is hereby closed.

Dated this 3 day of May, 2010.

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Leanne M. Bush