

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/wscca>.
- 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 :

LOAN H. NGUYEN and :
MAGICAL NAILS, :
RESPONDENTS. :

FINAL DECISION AND ORDER

ORDER 0000 406

Division of Enforcement Case File Numbers 07 BAC 130

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

Loan H. Nguyen
W154N6252 Marvel Drive
Menomonee Falls, Wisconsin 53051

Magical Nails
5800 Bayshore Drive
Suite A100
Glendale, Wisconsin 53217

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 Barbering and Cosmetology Examining Board. The Barbering and Cosmetology Examining Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Magical Nails, 5800 North Bayshore Drive, Suite A100, Glendale, Wisconsin 53217, is duly licensed as a manicuring establishment in the state of Wisconsin (license number 71-3578). This license was first granted on December 10, 2009, and is current through March 31, 2011. Magical Nails is located in the Bayshore Town Center in Suite A100.

2. Magical Nails, 5800 North Bayshore Drive, Suite A100, Glendale, Wisconsin 53217, is also duly licensed as an aesthetics establishment in the state of Wisconsin (license number 69-786). This license was first granted on December 17, 2009, and is current through March 31, 2011.

3. From August 30, 2005, through December 10, 2009, Magical Nails was duly licensed as a manicuring establishment in the state of Wisconsin (license number 71-2276) and from August 30, 2005, through December 17, 2009, as an aesthetics establishment (license number 69-470). These licenses are presently in Inactive status. During that time, Magical Nails was located in a different location in Bayshore Mall prior to an extensive rebuilding of the Mall into Bayshore Town Center.

4. Loan H. Nguyen, W154N6252 Marvel Drive, Menomonee Falls, Wisconsin 53051, is duly licensed as a barbering or cosmetology practitioner in the state of Wisconsin (license number 82-84616). That license was first granted on July 12, 2005, and is current until March 31, 2011. Loan H. Nguyen is listed with the Department of Regulation and Licensing (Department) as the owner and person in charge of both Magical Nails Bayshore locations. As an owner of a licensed manicuring and a licensed aesthetics establishment, Ms. Nguyen is responsible for compliance with Wis. Stats. Ch. 454 and Wisconsin Administrative Code Chs. BC 2, 3 and 4.

5. On February 13, 2008, Departmental Investigator Ralph Draeger inspected Magical Nails at their old location in Bayshore Mall. Investigator Draeger found that 4 out of the 5 pedicure tubs had significant amount of lint-like debris in the filter screens. Investigator Draeger also found manicuring tools soaking in disinfectant in three uncovered containers.

6. On November 18, 2009, Investigator Draeger inspected Magical Nails again. The location of the establishment was in a totally different location in Bayshore complex than the February 13, 2008 inspection. Investigator Draeger found that Loan H. Nguyen did not have a manicuring establishment license for the new location. Investigator Draeger also found Tai D. Pham performing manicuring services on a customer with an expired Wisconsin manicurist license. Investigator Draeger also found three pedicure tubs with excessive lint/debris on the inside of the filter screens of the pedicure tubs and used disposable files/buffers in suspended baskets by the workstations.

7. On December 10, 2009, the new location of Magical Nails was granted a Wisconsin manicuring establishment license. On December 17, 2009, the new location of Magical Nails was granted a Wisconsin aesthetics establishment license.

8. In resolution of this matter, Loan H. Nguyen and Magical 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. 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 allowing Tai D. Pham to practice manicuring while unlicensed, as identified in Findings of Fact 6., Loan H. Nguyen and Magical Nails have violated 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, barbering 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. By not having the new location of Magical Nails licensed as a manicuring establishment, as identified in Findings of Fact 6. and 7., Loan H. Nguyen and Magical Nails have violated 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).

5. By allowing Tai D. Pham to practice manicuring while unlicensed and by allowing the sanitation violations, as identified in Findings of Fact 5. and 6., Loan H. Nguyen and Magical Nails have violated 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.

6. Wis. Stats. Sec. 454.15(2)(i) provides that any violation of Chapter 454 or of the Administrative Code promulgated under Chapter 454 is cause for discipline.

7. By allowing Tai D. Pham to practice manicuring while unlicensed and for not having the new location of Magical Nails licensed as a manicuring establishment, as identified in Findings of Fact 6. and 7., Loan H. Nguyen and Magical Nails have violated Wis. Admin. Code sec. BC 2.04(1): Licensees may not assist or participate in the unauthorized or unlicensed practice of barbering and cosmetology, aesthetics, electrology or manicuring.

8. By allowing Tai D. Pham to practice manicuring while unlicensed, for not having the new location of Magical Nails licensed as a manicuring establishment and by allowing the sanitation violations as identified in Findings of Fact 5., 6. and 7., Loan H. Nguyen has violated Wis. Admin. Code sec. BC 2.06: The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and chs. BC 2, 3 and 4.

9. By allowing Tai D. Pham to practice manicuring while unlicensed, for not having the new location of Magical Nails licensed as a manicuring establishment and by allowing the sanitation violations as identified in Findings of Fact 5., 6. and 7., Loan H. Nguyen and Magical Nails have violated Wis. Admin. Code sec. BC 2.08(1)(b): "Licensees holding current licenses or permits granted under ch. 454, Stats., shall...[b]e responsible for their own professional practice, conduct and compliance with ch. BC 2."

10. By not having the new location of Magical Nails licensed as a manicuring establishment as identified in Findings of Fact 6. And 7., Loan H. Nguyen and Magical Nails have violated Wis. Admin. Code sec. BC 3.01(1): "Barbering and cosmetology, aesthetics, electrology and manicuring shall not be practiced outside the confines of a licensed establishment."

11. By not having the new location of Magical Nails licensed as a manicuring establishment as identified in Findings of Fact 6. And 7., Loan H. Nguyen and Magical Nails have violated Wis. Admin. Code sec. BC 3.04(1): "Before a person may open a new establishment, or change the ownership of an existing establishment, or relocate and create a new establishment as specified in s. BC 3.06(2), the person shall submit an application to the board on a form specified by the board."

12. By not having the new location of Magical Nails licensed as a manicuring establishment as identified in Findings of Fact 6. And 7., Loan H. Nguyen and Magical Nails have violated Wis. Admin. Code sec. BC 3.06(2): "Change of location of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license."

13. By allowing the reuse of disposable implements, by not having covers for the disinfectant containers and by allowing dirty filters on the pedicure tubs, as identified in Findings of Fact 5., 6. And 7., Loan H. Nguyen and Magical Nails have violated Wis. Admin. Code sec. 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."

14. By not having covers on the disinfectant containers as identified in Findings of Fact 5., Loan H. Nguyen has violated Wis. Admin. Code sec. BC 4.02(5): "Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container."

15. By not having covers on the disinfectant containers as identified in Findings of Fact 5., Loan H. Nguyen has violated Wis. Admin. Code sec. BC 4.10(2): "Disinfectant used for decontamination shall be changed daily and shall be kept in a covered container."

16. By not disposing of disposable implements as set forth in Paragraph 6 of the Findings of Fact, Loan H. Nguyen and Magical Nails have violated Wis. Admin. Code sec. BC 4.10(4), Wis. Admin. Code: "Manicure instruments that cannot be cleaned and disinfected or sterilized shall be disposed of following each use."

ORDER

The manicuring establishment license of Magic Nails (license number 71-3578) and the barbering or cosmetology practitioner license of Loan H. Nguyen (license number 82-84616) are hereby **REPRIMANDED**.

IT IS ALSO ORDERED that Loan H. Nguyen shall pay to the Department of Regulation and Licensing a forfeiture of ONE THOUSAND THREE HUNDRED SEVENTY-FIVE dollars (\$1,375.00) and that Magical Nails shall pay to the Department of Regulation and Licensing a forfeiture of ONE THOUSAND THREE HUNDRED SEVENTY-FIVE dollars (\$1,375.00).

IT IS ALSO ORDERED that Loan H. Nguyen shall pay to the Department of Regulation and Licensing costs in the amount of in the amount of FIVE HUNDRED FIFTY dollars (\$500.00) and that Magical Nails shall pay to the Department of Regulation and Licensing costs in the amount of in the amount of FIVE HUNDRED FIFTY dollars (\$500.00)

Payment shall be submitted within 180 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
608-267-3817

IT IS FURTHER ORDERED that 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' respective 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 Respondent fails to timely submit payment of the costs or payment of the forfeiture as ordered, the Respondents' respective licenses may, in the discretion of the board or its designee, be **SUSPENDED**, without further notice or hearing, until Respondent has complied with the payment of the costs and forfeiture.

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

BARBERING AND COSMETOLOGY EXAMINING BOARD

By:  9-13-10
A member of the Board Date