

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

NGUYET THI THU PHAN
AND
PRO NAILS,
RESPONDENTS.

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:
:
:

FINAL DECISION AND ORDER

ORDER 0001252

Division of Enforcement Case No. 10 BAC 032

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

Nguyet Thi Thu Phan
5926 W. North Ave.
Milwaukee, WI 53208

Pro Nails
5926 W. North Ave.
Milwaukee, WI 53208

Wisconsin Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Nguyet Thi Thu Phan (dob 08/11/1977) is licensed in the State of Wisconsin as a barber or cosmetology practitioner, having license number 90913-82, first issued on 04/15/2010 and current through 03/31/2013. Respondent's most recent address on file with

the Wisconsin Department of Safety and Professional Services (Department) is 5926 W. North Ave, Milwaukee, WI 53208.

2. Respondent Pro Nails is licensed in the State of Wisconsin as a manicuring establishment, having license number 3458-71, first issued on 03/26/2009 and now current through 03/31/2013, but was expired from 04/01/2011 to 09/23/2011. Respondent's most recent address on file with the Department is 5926 W. North Ave., Milwaukee, WI 53208.

3. On April 27, 2010, Department received a complaint that stated complainant received a nail infection three days after a fill service at Respondent Pro Nails in which her ring finger was cut, and the infection resulted in her nail falling off.

4. On September 15, 2010, a Department investigator made an unannounced visit to Respondent Pro Nails. Two employees, Viet Anh Nguyen and Truong Vu, were providing manicuring services. Neither one held a Wisconsin manicurist license.

5. On August 4, 2011, Department investigators again visited Respondent Pro Nails. Upon identifying themselves, five individuals who were providing manicuring services got up and left the premises.

6. At the September 15, 2010, inspection, waxing services were being performed by Respondent Phan and Respondent Pro Nails did not have an aesthetics license. An aesthetics establishment license was granted on September 24, 2010.

7. Respondent Phan was practicing manicuring in an establishment that had a license in expired status for almost six months.

8. During the September 15, 2010, inspection the following was observed:

- a. No licenses or expired licenses posted.
- b. Formula 409, a poisonous substance, was out in the open in the bathroom.
- c. Formula 409 was being used to disinfect the pedicure spas.
- d. Disposable nail files and buffers were being reused and stored with metal nail implements.

CONCLUSIONS OF LAW

1. The Wisconsin Barbering and Cosmetology Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 454.15, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact paragraphs 4 and 5, Respondents violated Wis. Admin. Code § BC 2.04(1) by assisting or participating in the unauthorized or unlicensed practice of manicuring.

3. By the conduct described in Findings of Fact paragraph 3, Respondents violated Wis. Admin. Code §§ BC 2.03(1) and (5) by performing services in a manner inconsistent with basic and accepted practice standards and in accordance with all state statutes and board rules and by failing to take adequate and necessary precautions to protect the patron from health and safety hazards when performing services.

4. By the conduct described in Findings of Fact paragraphs 6 and 7, Respondent Phan violated Wis. Stat. § 454.08(1)(b) by practicing manicuring in an establishment with an expired license and practicing aesthetics in an establishment that was not licensed for aesthetics.

5. By the conduct described in Findings of Fact paragraph 8, Respondents violated Wis. Admin. Code §§ BC 3.01(6), BC 4.01(1) and (3), and BC 4.02(3) and (4).

6. As a result of the above violations, Respondents are subject to discipline pursuant to Wis. Stat. § 454.15(2)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.
2. Respondents Nguyet Thi Thu Phan and Pro Nails are hereby REPRIMANDED.

3. Within 90 days of the date of this Order, Respondent Phan shall begin paying a FORFEITURE in the amount of \$1725 and COSTS of this matter in the amount of \$550 at a rate of \$189.58 per month for one year. Within 90 days of the date of this Order, Respondent Pro Nails shall begin paying a FORFEITURE in the amount of \$1725 and COSTS of this matter in the amount of \$550 at a rate of \$189.58 per month for one year. (Total payments of \$379.16 per month.)

4. Payment of forfeiture and costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor
Division of Enforcement
Department of Safety and Professional Services
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 payment of the forfeiture and costs as ordered, Respondents' licenses (nos. 90913-82 and 3458-71) may, in the discretion of the Board

or its designee, be SUSPENDED, without further notice or hearing, until Respondents have complied with payment of the forfeiture and costs.

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

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

by: Janice M. Bauck
A Member of the Board

12-5-11
Date