

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	:	
	:	FINAL DECISION AND ORDER
ELITE NAILS		
and		
NGOUA XIONG,	:	ORDER 0001460
RESPONDENTS.	:	

Division of Enforcement Case Nos. 10 BAC 026 and 10 BAC 079

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

Elite Nails
N78 W14585 Appleton Ave.
Menomonee Falls, WI 53051

Ngoua Xiong
1815 West McKinley Ave.
Milwaukee, WI 53205

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 Elite Nails is licensed in the State of Wisconsin as a Manicuring Establishment, having license number 3245-71, first issued on 11/29/2007 and current through 03/31/2013. Elite Nails' most recent address on file with the Wisconsin Department of Safety

and Professional Services (Department) is N78 W14585 Appleton Ave., Menomonee Falls, WI 53051.

2. Respondent Ngoua Xiong (dob 06/19/1985) is licensed in the State of Wisconsin as a Manicurist, having license number 6216-85, first issued on 09/23/2005 and current through 03/31/2013. Ngoua Xiong's most recent address on file with the Department is 1815 West McKinley Ave, Milwaukee, WI 53205.

3. Respondent Xiong is owner of Respondent Elite Nails. Pursuant to Wis. Admin. Code § BC 2.06, as owner, Xiong was at all times relevant to this matter responsible for compliance with Wis. Stat. Ch. 454 and Wis. Admin. Code §§ BC 2, 3 and 4.

4. On April 11, 2010, the Department received a complaint against Respondents alleging participation in the unlicensed practice of manicuring.

5. On September 3, 2010, a Division of Enforcement investigator inspected Elite Nails and observed that one woman left abruptly while performing a pedicure on a patron after the inspector identified himself and asked Respondent Xiong and this other woman to produce their identification. After Respondent Xiong spoke to the woman in her native language, the woman failed to produce her identification and left out of the back door. This woman is not licensed to practice manicuring.

6. On August 17, 2011, following receipt of another complaint, a second inspection was made. The investigator found the following sanitary violations:

- a. Two workstations had waste cans that were uncovered;
- b. Three workstations had contact equipment which were not stored in covered containers;
- c. One workstation had an unacceptable level of nail dust on it; and
- d. All four pedi-bowls had clumps of debris in the drains.

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, Respondents violated Wis. Admin. Code § BC 2.04(1) by assisting or participating in the unlicensed practice of manicuring.

3. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code §§ BC 4.01(1), BC 4.01(7) and BC 4.02(4) by not maintaining all equipment and instruments as clean to sight and touch and not placing clean and disinfected contact equipment in covered containers.

4. As a result of the above violations, Respondents are subject to discipline pursuant to Wis. Stat. §§ 454.15(2)(i) and 454.15(3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.
2. Respondents Elite Nails and Ngoua Xiong are hereby REPRIMANDED.
3. Within 90 days of the date of this Order, Elite Nails shall pay a FORFEITURE in the amount of EIGHT HUNDRED DOLLARS (\$800) and COSTS of this matter in the amount of THREE HUNDRED SIXTY DOLLARS (\$360).
4. Within 90 days of the date of this Order, Ngoua Xiong shall pay a FORFEITURE in the amount of EIGHT HUNDRED DOLLARS (\$800) and COSTS of this matter in the amount of THREE HUNDRED SIXTY DOLLARS (\$360).
5. 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

6. 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 (no. 3245-71 and 6216-85) 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.

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

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

by:


A Member of the Board

4-2-12
Date