

**BEFORE THE MISSOURI STATE BOARD
OF COSMETOLOGY AND BARBER EXAMINERS**

In the Matter of the Application of)
)
NGOC HUY VIET NGUYEN, OWNER)
CALIFORNIA NAILS)
)
Applicant.)

**ORDER OF THE MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS ISSUING A PROBATIONARY
COSMETOLOGY ESTABLISHMENT LICENSE TO
NGOC HUY VIET NGUYEN, CALIFORNIA NAILS**

The Missouri State Board of Cosmetology and Barber Examiners (the "Board") hereby issues its **ORDER** granting a **PROBATIONARY COSMETOLOGY ESTABLISHMENT LICENSE**, License No. 2010012523, to Ngoc Huy Viet Nguyen (Nguyen), California Nails pursuant to the provisions of § 324.038, RSMo. As set forth in § 324.038.2, RSMo, Nguyen/California Nails may submit a written request to the Administrative Hearing Commission seeking a hearing and review of the Board's decision to issue a probated student license. Such written request must be filed with the Administrative Hearing Commission within 30 days of delivery or mailing of this Order of the Board. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman State Office Building, Room 640, Jefferson City, MO 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should Nguyen/California Nails files a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.



I.

Based upon the foregoing, the Board hereby states:

FINDINGS OF FACT

1. The Board is an agency of the state of Missouri created and established pursuant to § 329.015, RSMo Cum. Supp. 2009, for the purpose of licensing all persons engaged in the practice of barbering and cosmetology in this state. The Board has control and supervision of the licensed occupations and enforcement of the terms and provisions of Chapters 328 and 329, RSMo (as amended).

2. Nguyen currently seeks a cosmetology establishment license to operate California Nails, located at 2300 Bernadette Drive, #100, Columbia, MO as a cosmetology establishment.

3. Nguyen's social security number is xxx-xx-0558. Nguyen holds a cosmetologist license, license number 2006001101. Nguyen is the owner of California Nails.

4. On or about October 13, 2009, the Board received Nguyen's Application for Establishment Registration (Application). The Application stated it was for a cosmetology establishment and it was a change of ownership. Nguyen submitted the \$100.00 change of ownership fee.

5. The Board received a Purchase Agreement on November 5, 2009 regarding California Nails. Nguyen purchased California Nails on October 16, 2008.

6. However, on or about October 24, 2008, the Board inspected California Nails. Nguyen had not filed for licensure based on change of ownership. The establishment license was for three operators but seven were working at the time of the inspection. Additionally, there were two sanitation violations pursuant to 20 CSR 2090-11.010: the implements and instruments

were not cleansed after each use and the drawers were not clean and free of unsanitized instruments. These two violations were corrected during the inspection.

7. On September 28, 2009, the Board inspected California Nails. Nguyen had not filed for licensure based on change of ownership. The establishment license was for three operators but five were working at the time of the inspection. Nguyen was present at the time of the inspection but was not performing services. Nguyen informed the inspector that he "just cleans the establishment." There were two sanitation violations pursuant to 20 CSR 2090-11.010: the implements and instruments were not cleansed after each use and the drawers were not clean and free of unsanitized instruments. These two violations were corrected during the inspection. Finally, there was a hot waxing pot and supplies in the establishment which an operator removed and placed in her vehicle during the inspection.

8. On or about December 17, 2009, the Board inspected California Nails. Nguyen had filed for licensure based on change of ownership on November 5, 2009. There were five operators present at the time of the inspection. The report indicated that pursuant to 20 CSR 2085-10.020(2), California Nails did not have a current establishment license because licensure based on a change of ownership must be received by the Board within forty-five days of the change in ownership. Nguyen did not notify the Board until more than a year after the change. Additionally, there were multiple sanitation violations of regulations 20 CSR 2085-11.020: the implements and instruments were not cleansed after each use, the drawers were not clean and free of unsanitized instruments and there were credo blades present. And violations of 20 CSR 2085-10.010 and 11.020 related to licensure. The inspector informed Nguyen that there was not a valid establishment license at the time of the inspection.

9. On or about January 8, 2010, the Board inspected California Nails. The owner was recorded as Nguyen. There were two operators present at the time of the inspection. California Nails still did not have a valid establishment license. Additionally, there were three sanitation violations pursuant to 20 CSR 2085-11.020: the implements and instruments were not cleansed after each use and the drawers were not clean and free of unsanitized instruments. There were also Credo blades and a hot wax pot and supplies for waxing in the establishment. The inspector assessed a \$100.00 fine to apply from the December, 2009 inspection and informed Nguyen that California Nails did not pass inspection.

10. On or about February 23, 2010, the Board sent California Nails a violation notice. The Notice identified three violations: 1) a wax pot and waxing supplies were present which require a current cosmetology or esthetician license; 2) the establishment was open and providing services without a valid establishment license; and 3) credo blades are no longer acceptable for use pursuant to 20 CSR 2085-11.020(2)(L)(1). The Notice informed Nguyen to correct the violations immediately.

II.

CONCLUSIONS OF LAW

11. The Board has authority to deny or refuse a license application pursuant to § 329.140.1, RSMo 2000, which provides:

The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

12. The Board has cause to deny or refuse Nguyen/California Nails' application for a cosmetology establishment license pursuant to § 329.140.2, RSMo 2000, which provides:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

- ...
- (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;
 - (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any professional licensed or regulated by this chapter;
 - (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
 - (7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

...

- (10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

...

- (13) Violation of any professional trust or confidence[.]

13. Pursuant to 20 CSR 2085-10.020(2):

(2) Change of Location or Ownership. If at any time during the license period the establishment location, name, and/or ownership changes, the owner(s) of the establishment shall submit an application for a new establishment license to the board within forty-five (45) days after the ownership or location change and the applicable change of location and/or ownership fee. The original license of the establishment shall become void as to the new location and/or new owners upon expiration of the forty-five (45)-day period and shall be returned to the board. No barber or cosmetology services shall be performed or offered to be performed under the new ownership or at the new location after the forty-five (45)-day period expires until the establishment is issued a license by the board for the new owners and/or new location.

(A) New Ownership. It is the responsibility of the new owner(s) to submit the establishment application to the board accompanied by the change of ownership fee.

(E) An establishment license shall not be issued until the establishment passes a board inspection, the establishment is in compliance with all applicable sanitation rules and the application is approved by the board.

14. Pursuant to 20 CSR 2085-11.020:

(2) Sanitation Requirements:

(A) Protection of the Patron

(5) Implements and instruments shall be sanitized after use on each patron.

(D) Disinfecting and Storing Implements.
All implements (instruments or tools) used in cosmetology establishments and schools, including scissors, clips, blades, rods, brushes, combs, etc. shall be thoroughly cleansed after each use. All implements which may come in contact directly or indirectly with the skin of the patron shall be disinfected with an Environmental Protection Agency (EPA)-registered disinfectant, which may be a spray solution. The label on the disinfectant shall show that it is EPA-registered with demonstrated bactericidal (disinfectant), virucidal, and fungicidal activity and shall be used according to the manufacturer's instructions. All implements shall be completely immersed in the solution or, if not capable of immersion, thoroughly dipped in the solution for a period of not less than five (5) minutes. Implements shall either be stored in the solution or removed and stored in a dust-tight cabinet, covered container, or drawer at all times when not in use. The dust-tight cabinet, covered container, or drawer shall be kept free of other items not capable of being disinfected. Implements shall be permitted to air dry.

...

(L) Prohibited Practices. To prevent the risk of injury or infection—

1. A licensee shall not use or offer to use in the performance of cosmetology services, or possess on the premises of a licensed establishment, any razor-type callus shaver designed or intended to cut growths of skin on hands or feet such as corns and calluses including, but not limited to, a credo blade or similar type instrument. Any licensee using a razor-type callus shaver prohibited by this rule at a licensed establishment or in the performance of any cosmetology, manicuring, or esthetician services shall be deemed to be rendering services in an unsafe and unsanitary matter. Establishment licensees shall ensure that razor-type callus shavers are not located or used on the premises of the establishment; and

2. Violation of this rule shall constitute grounds for discipline under section 329.140.2(15), RSMo.

15. As a result of Nguyen operating California Nails without a valid establishment license in violation of 20 CSR 2085-10.020, operating California Nails with continuing sanitation violations in violation of 20 CSR 2085-11.020, and maintaining credo blades in violation of 20 CSR 2085-11.020(2)(L), the Board has cause to deny or refuse Nguyen's application for an establishment license pursuant to § 329.140.1, RSMo, and § 329.140.2(4), (5), (6), (7), (10) and (12), RSMo.

16. As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1, RSMo, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

17. The Board issues this Order in lieu of denial of Nguyen/California Nails' application for a cosmetology establishment license. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Based on the foregoing, Ngoc Huy Viet Nguyen is granted a cosmetology establishment license for California Nails, which is hereby placed on **PROBATION** for a period of three (3) years from the effective date of this Order, subject to the terms and conditions set forth below.

IV.

TERMS AND CONDITIONS

During the aforementioned probation, Nguyen/California Nails shall be entitled to a cosmetology establishment license subject to the following terms and conditions:

- A. During the disciplinary period, Nguyen and California Nails shall comply with all provisions of Chapter 329, RSMo (as amended), all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. During the disciplinary period, Nguyen/California Nails shall keep the Board informed of his/its current work and home telephone numbers. Nguyen/California Nails shall notify the Board in writing within ten days (10) of any change in this information.
- C. During the probationary period, Nguyen/California Nails shall timely renew his/its cosmetology establishment license granted hereby and shall timely pay all fees required for licensure and comply with all other Board requirements necessary to maintain said license in a current and active state.
- D. During the probationary period, Nguyen/California Nails shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- E. During the disciplinary period, Nguyen/California Nails shall appear in person for interviews with the Board or its designee upon request.

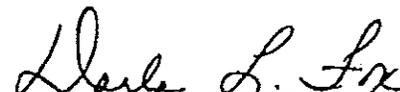
- F. Nguyen/California Nails shall submit written reports to the Board on or before January 1 and July 1 during each year of the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Order. The first such report shall be received by the Board on or before July 1, 2010.
- G. If, at any time during the probationary period, Nguyen/California Nails changes his/its address from the state of Missouri, or ceases to maintain his/its cosmetology establishment license current or active under the provisions of Chapter 329, RSMo (as amended), or fails to keep the Board advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- H. The Board retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Board. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board as provided by Chapter 536, RSMo (as amended).
- I. Unless otherwise specified by the Board, all reports, documentation, notices, or other materials required to be submitted to the Board shall be forwarded to: Missouri State Board of Cosmetology and Barber Examiners, P.O. Box 1335, Jefferson City, Missouri 65102.
- J. Any failure by Nguyen/California Nails to comply with any condition of discipline set forth herein constitutes a violation of this Order.

This Order does not bind the Board or restrict the remedies available to it concerning any violation by Respondent of the terms and conditions of this Order, Chapters 324 and 329, RSMo (as amended), or the regulations promulgated thereunder.

The Board will maintain this Order as an open, public record of the Board as provided in Chapters 329, 610, and 324, RSMo (as amended).

SO ORDERED, EFFECTIVE THIS 22nd DAY OF APRIL, 2010.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Darla Fox, Acting Executive Director

**BEFORE THE MISSOURI
STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS**

STATE BOARD OF COSMETOLOGY)	
AND BARBER EXAMINERS,)	
)	
Petitioner,)	
)	License number: 2010012523
v.)	
)	
NGOC HUY VIET NGUYEN, OWNER,)	
CALIFORNIA NAILS,)	
)	
Respondent.)	

**ORDER OF THE MISSOURI
STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS
REGARDING THE PROBATIONARY ESTABLISHMENT LICENSE OF
NGOC HUY VIET NGUYEN, OWNER OF CALIFORNIA NAILS**

On or about April 22, 2010, the Board of Cosmetology and Barber Examiners ("Board"), in lieu of denial, issued Ngoc Huy Viet Nguyen, owner of California Nails ("Salon"), a cosmetology establishment license (license number 2010012523) subject to three years probation as set out in the Order of the Missouri Board of Cosmetology and Barber Examiners Issuing a Probationary Cosmetology Establishment License to Ngoc Huy Viet Nguyen, California Nails ("Probation Order").

On November 8, 2010, at approximately 2:00 p.m., the Board held a hearing pursuant to notice and § 621.110 and § 324.042, RSMo 2000, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri 65102, for the purpose of determining whether there had been violation(s) of the probationary terms set forth in the Probation Order. The Board was represented by Legal Counsel Tina Crow Halcomb. Respondent received proper notice and opportunity to appear and appeared in person without legal counsel. After being

present and considering all of the evidence presented during the hearing, the Board issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Board hereby states:

I.

FINDINGS OF FACT

1. The Board is an agency of the state of Missouri created and established pursuant to § 329.015, RSMo Cum. Supp. 2009, for the purpose of licensing all persons engaged in the practice of barbering and cosmetology in this state. The Board has control and supervision of the licensed occupations and enforcement of the terms and provisions of Chapters 328 and 329, RSMo.¹

2. Respondent, Ngoc Huy Viet Nguyen is a natural person and is the owner of California Nails, located at 2300 Bernadette Drive, Suite 300, Columbia, Missouri 65203.

3. Respondent holds a cosmetology establishment license issued by the Board, license number 2010012523.

4. On or about April 22, 2010, the Board issued a Probation Order issuing the Salon a cosmetology establishment license (license number 2010012523) subject to three years probation.

5. During the probationary period set out in the Probation Order, the Salon was entitled to operate as a cosmetology establishment under Chapter 329, RSMo, provided the Salon adhered to all of the terms and conditions of the respective Probation Order.

6. The Probation Order states, on page 8, section IV.A, as a term and condition, that Respondent "shall comply with all provisions of Chapter 329, RSMo (as amended), all

¹ Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri (RSMo) 2000, as amended.

applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws.”

7. The Probation order further provides, on page 9, section IV.H, that the Board retains jurisdiction to hold a hearing at any time to determine whether a violation of the Probation Order has occurred and if so, whether to impose further discipline.

8. The inspection report dated June 2, 2010, submitted by the Board and admitted into evidence, indicated three different types of sanitation violations under 20 CSR 2085-11.020 including (#10) failure to cleanse implements and instruments after each use (dirty files and buffers), (#12) failure to cleanse equipment (dirty pedicure tub drain), and (#29) failure to maintain drawers in clean and sanitized manner. The inspector did not testify at the hearing.

9. Respondent testified that the inspector would not let him view the inspection report while it was being prepared. Respondent testified that during the inspection, the inspector refused to listen to him or to answer his questions. Respondent further testified that once the inspection report was finished, that the inspector rudely pushed the inspection report at him while pointing her finger in his face. Respondent also testified regarding his regular sanitation practices and that the dirty files and buffers were remedied while the inspector was still present.

10. The Board set this matter for probation violation hearing and served notice of the hearing upon Respondent in a proper and timely fashion.

II.

CONCLUSIONS OF LAW

11. This Board has jurisdiction over this proceeding pursuant to §§ 621.110 and 324.042, RSMo, and pursuant to the terms of the Probation Order.

12. Pursuant to § 324.042, RSMo.

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

13. State regulation 20 CSR 2085.11-020 provides, in pertinent part:

(1) Physical Facilities.

...

(B) Floors, Walls, Ceilings, Equipment, and Contents. For areas where all classified occupations of cosmetology are practiced, including retail cosmetic sales counters, all floors, walls, ceilings, equipment, and contents shall be constructed of washable materials and must be kept clean and in good repair at all times. Commercial-type carpet may be used.

...

(2) Sanitation Requirements.

(A) Protection of the Patron.

...

5. Implements and instruments shall be sanitized after use on each patron.

...

(D) Disinfecting and Storing Implements.

All implements (instruments or tools) used in cosmetology establishments and schools, including scissors, clips, blades, rods, brushes, combs, etc. shall be thoroughly cleansed after each use. All implements which may come in contact directly or indirectly with the skin of the patron shall be disinfected with an Environmental Protection Agency (EPA)-registered disinfectant, which may be a spray solution. The label on the disinfectant shall show that it is EPA-registered with demonstrated bactericidal (disinfectant), virucidal, and fungicidal activity and shall be used according to the manufacturer's instructions. All implements shall be completely immersed in the solution or, if not capable of immersion, thoroughly dipped in the solution for a period of not less than five (5) minutes. Implements shall either be stored in the solution or removed and stored in a dust-tight cabinet, covered container, or drawer at all times when not in use. The dust-tight cabinet, covered container, or drawer shall be kept free of other items not capable of being disinfected. Implements shall be permitted to air dry.

14. The Board has determined Respondent to be credible in his testimony before the Board.

15. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the Board, the Board has determined that evidence of a violation by Respondent of the Board's April 22, 2010 Probation Order was not demonstrated by a preponderance of the evidence. Accordingly, it is the **ORDER** of the Board that **NO PROBATION VIOLATION** is found and **NO ADDITIONAL DISCIPLINE** may be imposed upon Respondent's cosmetology establishment license at this time.

Respondent's cosmetology establishment license shall remain on probation as set forth in the Board's April 22, 2010 Probation Order.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 329, 610 and 324, RSMo (as amended).

SO ORDERED, EFFECTIVE THIS 15 DAY OF December, 2010.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS


Emily Carroll, Executive Director