

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, 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.

2. Dinh currently resides at 12209 S. Foxridge Dr., Olathe, Kansas 66062.

3. On or about December 9, 2014, Dinh applied by reciprocity for a Class MO manicurist operator license.

4. Dinh holds a Kansas Nail Technician license, license number 18887. The Kansas Board of Cosmetology issued Dinh's license on or about October 24, 2008. Dinn's Kansas license expires October 31, 2016.

5. On or about February 12, 2014, the Kansas Board of Cosmetology revoked Dinh's Nail Technology Establishment license, license number 6715. Dinh's Kansas establishment license was revoked for allowing unlicensed practice in his shop in violation of K.S.A. 65-1909(a)(1) which prohibits the employment of unlicensed individuals to engage in an activity for which a license is required. Dinh was previously issued a Summary Order on May 9, 2013 for allowing unlicensed practice in his Kansas shop.

II.

CONCLUSIONS OF LAW

6. The Board has authority to deny or refuse a license application pursuant to § 329.140, RSMo, which provides:

1. 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.

7. The Board has cause to deny or refuse Dinh's application for a Class MO manicurist operator license pursuant to § 329.140, RSMo, which provides:

1. 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.

2. 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:

...

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

...

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

8. Section 329.030, RSMo, states, in relevant part, that it is unlawful for any person in this state to engage in the occupation of cosmetology or to operate an establishment or school of cosmetology, unless such person has first obtained a license as provided by this chapter.

9. State Regulation 20 CSR 2085-10.060, states in relevant part:

(1) Pursuant to Chapters 328 and 329, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permitholder is an employee of the establishment or holds a current and active renter establishment license issued by the board[.]

...

(3) Prohibited Practices Within An Establishment. In a licensed establishment, only persons properly licensed by the board shall be allowed to perform barbering, hairdressing, manicuring, or esthetician services on any person within the establishment. The provisions of this section shall apply even if services are being provided for no compensation. For purposes of this section, barbering, hairdressing, manicuring, or esthetician services shall be defined as follows:

...

(D) "Manicuring"—Cutting, trimming, polishing, coloring, tinting, cleaning, or otherwise beautifying a person's fingernails, applying artificial fingernails, massaging, cleaning a person's hands and arms; pedicuring, which includes cutting, trimming, polishing, coloring, tinting, cleaning, or otherwise beautifying a person's toenails, applying artificial toenails, massaging, or cleaning a person's legs and feet.

10. As a result of Dinh's conduct as stated in paragraph 5 above, the Board has cause to deny or refuse Dinh's application for a cosmetology operator license pursuant to §§ 329.140.1

and 329.140.2(8) and (13), RSMo, in that Dinh was engaged and licensed in Kansas in a profession regulated in the State of Missouri by this chapter and was disciplined by the Kansas Board of Cosmetology upon grounds for which revocation or suspension is authorized in the State of Missouri and for which the Board has cause to deny Dinh's application for a Class MO manicurist operator license.

11. 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.

12. The Board issues this Order in lieu of denial of Dinh's application for a Class MO manicurist operator license. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

13. Based on the foregoing, Dan Dinh is granted a Class MO manicurist operator license, which is hereby placed on **PROBATION** for a period two (2) years, subject to the terms and conditions set forth below.

IV.

TERMS AND CONDITIONS

14. During the aforementioned probation, Dinh shall be entitled to a Class MO manicurist operator license subject to the following terms and conditions:

- A. During the disciplinary period, Dinh shall comply with all provisions of Chapter 329, RSMo, 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, Dinh shall keep the Board informed of his current work and home telephone numbers. Dinh shall notify the Board in writing within ten days (10) of any change in this information.
- C. During the probationary period, Dinh shall timely renew his Class MO manicurist operator 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, Dinh 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, Dinh shall appear in person for interviews with the Board or its designee upon request.
- F. Dinh 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 January 1, 2016.
- G. If, at any time during the probationary period, Dinh changes his address from the state of Missouri, or ceases to maintain his Class MO manicurist operator license current or active under the provisions of Chapter 329, RSMo, 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.
- 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 1062, Jefferson City, Missouri 65102.

- J. Any failure by Dinh to comply with any condition of discipline set forth herein constitutes a violation of this Order.

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

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

SO ORDERED, EFFECTIVE THIS 8TH DAY OF JULY, 2015.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

Emily R. Carroll

Emily R. Carroll, Executive Director