BEFORE THE MISSOURI
STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS

STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS, Petitioner,	)	
v.	)	Case No. PV13-1102CB
QUI DO d/b/a SUNNY'S NAIL Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISCIPLINARY ORDER

At its regularly scheduled meeting on October 26, 2014 at approximately 1:00 p.m., and pursuant to notice described in the Findings of Fact, the Missouri State Board of Cosmetology and Barber Examiners ("Board") took up the probation violation complaint alleging that Sunny's Nail, Qui Do, Owner (collectively, "Respondent"), has failed to comply with the terms of his probation of his cosmetology establishment license, license number 2003012015, and his "Class MO – manicurist" license, license number 112140.

The board appeared at the hearing through its attorney Scott Evans. Respondent appeared at the hearing in person without legal counsel. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the board's legal advisor at the hearing, during deliberations.

Findings of Fact

1. The Missouri State Board of Cosmetology and Barber Examiners ("Board") is an agency of the State of Missouri created and existing pursuant to § 329.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Respondent is a natural person whose address of record for the Board is 6817 Longview Road, Kansas City, Missouri 64134.

3. Respondent holds a probationary Cosmetology establishment license issued by the Board, license number 2003012015 for Sunny's Nail.

4. Respondent's probationary Cosmetology establishment license, license number 2003012015 is, and was at all relevant time, current and valid.

5. Respondent holds a probationary "Class MO – manicurist" license issued by the Board, license number 112140.

6. Respondent's probationary "Class MO – manicurist" license, license number 112140 is, and was at all relevant time, current and valid.

7. Respondent owns and operates a cosmetology establishment, Sunny's Nail, located at 6817 Longview Road, Kansas City, Missouri 64134.

8. Respondent's Cosmetology establishment license and "Class MO – manicurist" license were placed on probation on November 6, 2012, by a Settlement Agreement entered into between the Board and Respondent, because of significant sanitation violations that were found at the establishment, because of a malpractice judgment issued against Respondent which arose from a consumer complaint, and because credo blades had been found in the establishment.

9. During the probationary period, Respondent was entitled to continue operating his cosmetology establishment, Sunny's Nail, after a seven day suspension, provided that he adhere to all of the terms and conditions of the Settlement Agreement.

10. The 2012 Settlement Agreement states on page 5 that Respondent, identified as Licensee, shall comply with all provisions of Chapter 329, all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws.

11. On or about March 15, 2013, the Board's inspector conducted an inspection of Sunny's Nail which revealed sanitation violations including floors' walls, ceilings, equipment and contents were not found to be clean and in good repair; one of the tables used for manicuring was in need of repair; the waxing room was not clean and the floor under and around the manicuring and pedicuring areas needed to be free from nail clippings and vacuumed; and the establishment was not licensed for the number of operators who had their licenses posted.

12. On or about March 29, 2013, the Board sent Respondent a Violation Notice for the violations found during the March 15, 2013 inspection.

Conclusions of Law

13. The Committee has jurisdiction in this proceeding, pursuant to the 2012 Settlement Agreement and § 324.042 RSMo, to determine whether Respondent has violated the terms and conditions of the 2012 Settlement Agreement for his cosmetology establishment license and his cosmetology operator's license.

14. Regulation 20 CSR 2085-11.020 states, in relevant 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.

...

> (D) Restrooms. All cosmetology establishments shall provide adequate and Conveniently located restrooms, for use by patrons and operators. All schools shall provide two (2) or more restrooms to separately accommodate male and female students. All restrooms shall be provided with, at least, an operating toilet, a functional sink with hot and cold running water, soap (liquid or powder), and individual towels. Floors, walls, ceilings, and fixtures shall be made of washable materials and kept clean and in good repair at all times.

(2) Sanitation Requirements.

...

> (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

...

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

15. Regulation 20 CSR 2085-10.050 states, in relevant part:

(1) The minimum biennial fee for a cosmetology establishment shall license the establishment for up to three (3) operators, including apprentices, students with temporary permits, or both. An additional fee is required for each additional operator working in the establishment. If at any time during the license period the number of operators working in the establishment exceeds the number of operators for which the establishment is licensed, it is the responsibility of the holder(s) of the establishment license to submit written notification to the board along with the fee for each additional operator.

16. Section 329.140.2, RSMo states, in relevant part:

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:

...

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession 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[.]

17. Respondent violated the terms of discipline set forth in the 2012 Settlement Agreement, as described in the Findings of Fact of this Order by violating regulation 20 CSR 2085-11.020(1)(B) and (D); 20 CSR 2085-11.020(2)(D) and (L); and 20 CSR 2085-10.050(1) as detailed in paragraphs 3 through 12 above.

18. The 2012 Settlement Agreement and § 324.042 RSMo., allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of the 2012 Settlement Agreement.

19. Jurisdiction and venue are proper before the State Board of Cosmetology and Barber Examiners pursuant to the 2012 Settlement Agreement and § 324.042, RSMo, which authorizes the Board to impose additional discipline in a disciplinary hearing arising from a probation violation.

Decision and Order

It is the decision of the Missouri State Board of Cosmetology and Barber Examiners that Respondent has violated the terms of the 2012 Settlement Agreement, and that his Cosmetology establishment and "Class MO – manicurist" licenses are, therefore, subject to further disciplinary action.

The Missouri State Board of Cosmetology and Barber Examiners orders that Respondent's cosmetology establishment and "Class MO – manicurist" licenses shall also be placed on two (2) additional years of PROBATION. The additional two (2) years, when combined with the probation agreed upon in the 2012 Settlement Agreement, will conclude November 6, 2017. Respondent is placed on an additional two (2) years of probation subject to the terms and conditions set forth below.

Terms and Conditions

During the aforementioned probation, Respondent shall be entitled to a Cosmetology establishment license and "Class MO – manicurist" license subject to the following terms and conditions:

A. During the disciplinary period, Respondent 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, Respondent shall keep the Board informed of his current work telephone numbers. Respondent shall notify the Board in writing within ten days (10) of any change in this information.

C. During the probationary period, Nguyen shall timely renew his cosmetology establishment and operator licenses granted hereby and shall timely pay all fees required for licensure and comply

with all other Board requirements necessary to maintain said licenses in a current and active state.

D. During the probationary period, Respondent 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, Respondent shall appear in person for interviews with the Board or its designee upon request.

F. Respondent 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, 2015.

G. If, at any time during the probationary period, Respondent changes his address from the state of Missouri, or ceases to maintain his cosmetology establishment 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 Respondent to comply with any condition of discipline set forth herein constitutes a violation of this 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.

SO ORDERED, EFFECTIVE THIS 14 DAY OF December, 2014.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

Emily R. Carroll

Emily R. Carroll, Executive Director