

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

STATE BOARD OF COSMETOLOGY	)	
AND BARBER EXAMINERS,	)	
	)	
Petitioner,	)	
	)	Case no.: PV10-1004 CB
v.	)	
	)	
THU TRUONG, OWNER,	)	
FOXY NAILS,	)	
	)	
Respondent.	)	

**ORDER OF THE MISSOURI  
STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS  
DISCIPLINING THE COSMETOLOGY ESTABLISHMENT LICENSE OF  
THU TRUONG, OWNER OF FOXY NAILS**

On or about December 22, 2008, the Board of Cosmetology and Barber Examiners ("Board") and Respondent entered into a Settlement Agreement Between the State Board of Cosmetology and Barber Examiners and Foxy Nails ("Discipline Agreement") suspending Respondent's cosmetology establishment license (license number 2006006513) and then placing the license on three years probation.

On July 25, 2011, at approximately 1:40 p.m., the Board held a hearing pursuant to notice and § 621.110 and § 324.042,<sup>1</sup> 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 Discipline Agreement. The Board was represented by Legal Counsel Tina Crow Halcomb. Respondent received proper notice and

---

<sup>1</sup> Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri, as amended.

opportunity to appear and appeared in person and with legal counsel Shelly Schiebel Patterson. 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, 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. Respondent, Thu Truong, is a natural person and is the owner of Foxy Nails, located at 6325 Lewis Street, Suite 103, Parkville, Missouri, 64152.

3. Respondent holds a probationary cosmetology establishment license issued by the Board, license number 2006006513, for Foxy Nails.

4. On or about December 22, 2008, the Board and Respondent entered into a Discipline Agreement suspending Respondent's cosmetology establishment license and then placing the license on three years probation.

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

6. The Discipline Agreement states, on page 8, section II, paragraph 2, D, as a term and condition, that Respondent "shall comply with all provisions of Chapter 329, RSMo (as amended), all rules and regulations of the Board, and all local, state, and federal laws."

7. The Discipline Agreement further provides, on page 8, section II, paragraphs 4-6, that the Board retains jurisdiction to hold a hearing at any time to determine whether a violation of the Discipline Order has occurred and if so, whether to impose further discipline.

8. On August 26, 2009, the Board's inspector conducted an inspection of Foxy Nails. During the inspection, the inspector identified three violations of state regulation 20 CSR 2085-11.020 in that two licenses posted contained no photograph and the license of one operator who was present and offering services was in a drawer and not properly posted.

9. On December 14, 2009, a notice of violation was sent to Respondent by the Board identifying the violations cited during the August 26, 2009 inspection.

10. On February 10, 2010, the Board's inspector conducted an inspection of Foxy Nails. During the inspection, the inspector identified a violation of state regulation 20 CSR 2085-11.020 in that soiled towels were not kept in a closeable, leak-proof container.

11. On March 29, 2010, a notice of violations was sent to the Respondent by the Board identifying the violations cited during the February 10, 2010 inspection.

12. On April 6, 2010, the Board's inspector conducted an inspection of Foxy Nails. During the inspection, the inspector identified the following violations: a dirty wax pot with no licensed cosmetologist or esthetician to provide waxing services and credo blades were present in a pedicure cart and under a magazine.

13. Respondent testified at the probation violation hearing that the wax pot was in their shop, had been for four years, was for use of the workers on each other and was never used

on customers. Respondent further testified that the credo blade was a credo blade holder without a blade in it and that Respondent thought that all such credo instruments had been thrown out. Respondent testified that there have been violations and they have tried to fix them immediately. Respondent asked for leniency from the Board on this matter.

14. At the probation violation hearing, the Board took official notice of all inspection reports regarding Foxy Nails in the Board's files. The Board acknowledged that Foxy Nails has had multiple inspections other than those discussed herein during which there were no violations, sanitation related or otherwise.

15. The Board set this matter for probation violation hearing and, following several continuances and after serving notice of the hearing upon Respondent in a proper and timely fashion, the matter was heard before the Board.

## II.

### CONCLUSIONS OF LAW

16. This Board has jurisdiction over this proceeding pursuant to §§ 621.110 and 324.042, RSMo, and pursuant to the terms of the Discipline Agreement.

17. 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.

18. Section 329.010(5)(b), RSMo, defines the scope of practice of the "Class MO – manicurist" in Missouri as:

[I]ncludes 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 and cleaning a person's legs and feet.

19. Section 329.010(5)(b), RSMo, does not include waxing services within the Class MO – manicurist license. Such services are included within certain other licensing categories under § 329.010(5).

20. State regulation 20 CSR 2085-10.010(3) provides, in pertinent part:

(A) Operator licenses, apprentice licenses, or student temporary permits shall either be posted at each respective assigned work station or all posted together in one (1) conspicuous, readily accessible, central location within the establishment area that will allow easy identification of the persons working in the establishment by clients, board representatives, or the general public.

(B) A two inch square (2" × 2") photograph taken within the last five (5) years shall be attached to operator licenses. A two inch square (2" × 2") photograph taken within the last five (5) years shall be attached to apprentice licenses and student temporary permits.

21. State regulation 20 CSR 2085-11.020(2)(A)(3) provides:

Soiled towels shall be placed in a closeable, leakproof container immediately upon completion of use.

22. State regulation 20 CSR 2085-11.020(2)(L) provides, in pertinent part:

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.

23. By allowing operators to offer services at Foxy Nails with licenses posted without photographs and by allowing an operator to offer services at Foxy Nails without a license posted

at all, Respondent violated 20 CSR 2085-10.010(3) and thereby violated section II, 2, D of the Discipline Agreement. Accordingly, Respondent's cosmetology establishment license is subject to further discipline by the Board.

24. By failing to keep soiled towels in a closed, leak-proof container, Respondent violated 20 CSR 2085-11.020(2)(A)(3) and thereby violated section II, 2, D of the Discipline Agreement. Accordingly, Respondent's cosmetology establishment license is subject to further discipline by the Board.

25. By offering waxing services without a person licensed to offer such services, Respondent violated § 329.030, RSMo and thus violated section II, 2, D, of the Discipline Agreement. Accordingly, Respondent's cosmetology establishment license is subject to further discipline by the Board.

26. By maintaining credo blades in the cosmetology establishment, Respondent violated 20 CSR 2085-11.020(2)(L) and thus violated section II, 2, D, of the Discipline Agreement. Accordingly, Respondent's cosmetology establishment license is subject to further discipline by the Board.

27. As a result of the foregoing, Respondent's cosmetology establishment license is subject to further disciplinary action by the Board pursuant to § 324.042, RSMo, and the terms of the Discipline Agreement.

28. 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, it is the **ORDER** of the Board that the cosmetology establishment license of Thu Truong, Owner of Foxy Nails, (license number 2006006513) is hereby **SUSPENDED** for fourteen (14) days, to be effective the date of this Order. Respondent, shall not, during these days of license suspension, publicly display the cosmetology establishment license for Foxy Nails, offer or provide any services for which licensure under chapter 329, RSMo, is required, and shall notify the Board of Respondent's compliance.

Following this suspension, Respondent's cosmetology establishment license shall be placed on **PROBATION** for an additional two (2) years beyond the three (3) years imposed by the Board in its December 22, 2008 Discipline Agreement. Accordingly, the cosmetology establishment license shall be subject to probation for a total of five (5) years (beginning December 22, 2008). This probation period shall be subject to the terms and conditions set forth below.

### IV.

#### TERMS AND CONDITIONS

During the aforementioned probation, Thu Truong, Owner of Foxy Nails, shall be entitled to a cosmetology establishment license subject to the following terms and conditions:

- A. Respondent Thu Truong and all operators and employees of Foxy Nails shall be required to attend a Board sanitation workshop within forty-five (45) days of this Order.
- B. Respondent shall comply with all provisions of Chapters 328 and 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.

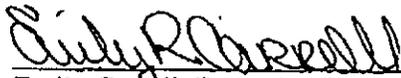
- C. Respondent shall keep the Board informed of its current work telephone number and Respondent shall keep the Board informed of her current home telephone number. Respondent shall notify the Board in writing within ten (10) days of any change in this information.
- D. Respondent shall timely renew Respondent's establishment license 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.
- E. Respondent shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- F. Respondent shall appear in person for interviews with the Board or its designee upon request.
- G. 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.
- H. If, at any time during the probationary period, Respondent changes Respondent's address from the state of Missouri, or ceases to maintain Respondent's establishment license current or active under the provisions of Chapters 328 and 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.
- I. 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 the required notice and opportunity for a hearing before the Board as provided by Chapter 536, RSMo (as amended).
- J. 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.
- K. Any failure by Respondent 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, or the regulations promulgated thereunder.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 328, 329, 610 and 324, RSMo (as amended).

SO ORDERED, EFFECTIVE THIS 31 DAY OF August, 2011.

MISSOURI STATE BOARD OF COSMETOLOGY  
AND BARBER EXAMINERS

  
\_\_\_\_\_  
Emily Carroll, Executive Director