

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

In the Matter of the Application of)
)
TUONG V. LUU)
)
Applicant.)

**ORDER OF THE MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS ISSUING A PROBATIONARY
“CLASS MO - MANICURIST” OPERATOR LICENSE TO
TUONG V. LUU**

The Missouri State Board of Cosmetology and Barber Examiners (“Board”) hereby issues its **ORDER** granting a **PROBATIONARY “Class MO - manicurist” OPERATOR LICENSE**, License No 2014037654, to Tuong V. Luu (hereafter, Luu), pursuant to the provisions of § 324.038, RSMo.¹ As set forth in § 324.038.2, RSMo, Luu may submit a written request to the Administrative Hearing Commission seeking a hearing and review of the Board’s decision to issue a probated operator 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 Luu file 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.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

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. Luu currently resides at 3637 Poepping Street, St. Louis, Missouri.

3. On or about May 2, 2014, Luu applied by reciprocity for a "Class MO - manicurist" operator license.

4. Luu holds a California manicurist operator license, license number M315375. The California State Board of Barbering and Cosmetology issued Luu's California license on or about September 17, 2013. Luu's California license expires September 30, 2015.

5. On or about June 25, 2014, the Board's inspector conducted an inspection of LT Nails located at 615 South Bishop, Rolla, Missouri. Luu was present at the time of the inspection and was performing a pedicure. The Board's inspection revealed the following violation: Luu did not have an operator license in violation of Section 329.030, RSMo, and 20 CSR 2085-10.060 (1) and (3). Luu had filed his application for reciprocity and was awaiting his certification.

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 Luu'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:

...

(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;

(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;

...

(12) Failure to display a valid license if so required by this chapter or any rule promulgated hereunder;

(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:

(A) "Barbering"—engaging in the capacity so as to shave the beard or cut and dress the hair of any person;

(B) "Esthetician services"—Using mechanical or electrical apparatuses or appliances, cosmetic preparations, antiseptics, tonics, lotions, or creams, not to exceed ten percent (10%) phenol, either directly or indirectly, in any one (1), or any combination, of the following practices: massaging,

cleansing, stimulating, manipulating, exercising, beautifying, or similar work upon the scalp, face, neck, ears, arms, hands, bust, torso, legs, or feet and removing superfluous hair by means other than electric needle or any other means of arching or tinting eyebrows or tinting eyelashes of any person;

(C)“Hairdressing”—Arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching, tinting, coloring, or similar work upon the hair of any person by any means; or removing superfluous hair from the body of any person by means other than electricity, or any other means of arching or tinting eyebrows or tinting eyelashes. Hairdressing also includes any person who either with the person’s hands or with mechanical or electrical apparatuses or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams engages for compensation in any one (1) or any combination of the following: massaging, cleaning, stimulating, manipulating, exercising, beautifying, or similar work upon the scalp, face, neck, arms, or bust; and

(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 Luu’s conduct as stated in paragraph 5 above, the Board has cause to deny or refuse Luu’s application for a cosmetology operator license pursuant to §§ 329.140.1 and 329.140.2(5), (6), (7), (12) and (13), RSMo, in that Luu was performing a pedicure, without a current and active operator license in violation of Section 329.030, RSMo and 20 CSR 2085-10.060 (1) and (3), for which the Board has cause to deny Luu’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 Luu'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, Tuong V. Luu is granted a "Class MO - manicurist" operator license, which is hereby placed on **PROBATION** for a period five (5) years, subject to the terms and conditions set forth below.

IV.

TERMS AND CONDITIONS

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

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

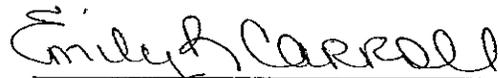
- D. During the probationary period, Luu shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- E. During the disciplinary period, Luu shall appear in person for interviews with the Board or its designee upon request.
- F. Luu 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, 2015.
- G. If, at any time during the probationary period, Luu 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 Luu 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 Luu 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 23rd DAY OF October, 2014.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Emily R. Carroll, Executive Director