

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

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| STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS, |) | |
| |) | |
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| Petitioner, |) | |
| |) | Case no.: PV11-7001 CB |
| v. |) | |
| |) | |
| VY MIHN TY TRAN, OWNER, MODERN NAIL, |) | |
| |) | |
| |) | |
| Respondent. |) | |

**ORDER OF THE MISSOURI
STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS
DISCIPLINING THE MASTER ESTABLISHMENT LICENSE OF
VY MIHN TY TRAN, OWNER OF MODERN NAIL**

On or about January 5, 2010, the Board of Cosmetology and Barber Examiners ("Board"), in lieu of denial, issued Vy Mihn Ty Tran, Owner of Modern Nail, a master establishment license (license number 2010000134) subject to three years probation as set out in the Order of the Missouri Board of Cosmetology and Barber Examiners Issuing a Probationary Master Establishment License to Modern Nail, Owner Vy Tran ("Probation Order").

On July 25, 2011, at approximately 1:05 p.m., the Board held a hearing pursuant to notice and § 621.110 and § 324.042,¹ 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. Ms. Tran's brother, Thang

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

Trung Tran, also appeared as a witness on Ms. Tran's behalf. 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, Vy Minh Ty Tran, is a natural person and is the owner of Modern Nail, located at 3600 South Country Club, Jefferson City, Missouri, 65109.

3. Respondent holds a probationary master establishment license issued by the Board, license number 2010000134.

4. On or about January 5, 2010, the Board issued a Probation Order issuing Respondent a master establishment license (license number 2010000134) subject to three years probation.

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

6. The Probation Order states, on page 5, section IV.A, as a term and condition, that 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.”

7. The Probation Order further provides, on page 6, section IV.I, 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. On June 30, 2010, the Board’s inspector conducted an inspection of Modern Nail. During the inspection, the inspector identified the following violations: waxing services were being offered without having a licensed esthetician or cosmetologist present, the establishment needed to be cleaned, used files in drawers needed to be disposed of or cleaned, Barbicide needed to be filled for nail implements and a used implement container had no lid on it.

9. Also at the June 30, 2010 inspection, the Board’s inspector noted that Ms. Tran tried to give the Board’s inspector an envelope from her brother containing \$200.00. The inspector did not accept the envelope or the \$200.00. At hearing, Ms. Tran and her brother testified that this offer of money was a gift for the inspector and that they asked for nothing in return and did not say anything about their violations. No other evidence was presented regarding this offer of payment.

10. The probation violation complaint alleges that at the June 30, 2010 inspection, “unlicensed individuals were present and performing services.” The inspection report has “no” checked for box #18 which is “Are all individuals performing services currently licensed in Missouri?” However, no operators are listed as unlicensed and the comments say only that “Another lady was sitting in chair was not working. When ask for ID she said she worked at Dillard’s and just visiting.” The inspection report further states that “Le Bao Hoang was not

working at the time of inspection , . . owner of establishment said that Le Bao Hoang . . . has been working.”

11. On August 18, 2010, a notice of violation was sent to Respondent by the Board identifying the violations cited during the June 30, 2010 inspection.

12. On September 10, 2010, the Board’s inspector conducted an inspection of Modern Nail. During the inspection, the inspector identified the following violations: wax pot available for waxing services without a licensed esthetician or cosmetologist present, dirty restroom and leak under sink in restroom.

13. On October 1, 2010, a notice of violations was sent to the Respondent by the Board identifying the violations cited during the September 10, 2010 inspection.

14. On October 6, 2010, the Board’s inspector conducted an inspection of Modern Nail. During the inspection, the inspector identified the following violation: no hot water in the restroom. The inspection report also indicated that Minh Hieu Thi Le, an unlicensed individual, was present and filling a foot bath during the inspection. Ms. Le left the establishment when the inspector asked Ms. Le what she was doing. The report also stated that Ms. Le said that she was helping her daughter. Respondent testified that Ms. Le is their mother, that she merely ran water for the person sitting in the pedicure chair, that she does not trim nails and does not provide services for which a license is required.

15. On December 22, 2010, a notice of violations was sent to the Respondent by the Board identifying the violations cited during the October 6, 2010 inspection.

16. On December 29, 2010, the Board’s inspector conducted an inspection of Modern Nail. During the inspection, the inspector identified the following violation: no hot water available at the establishment

17. On January 7, 2011, the Board's inspector conducted an inspection of Modern Nail. During the inspection, the inspector identified the following violation: sink in establishment was still leaking and a new sink was waiting to be installed.

18. Respondent testified at the probation violation hearing that the wax pot was in their shop but that it was for personal use. However, Respondent also testified that she admits this is a violation and takes responsibility for the violation. Further, Respondent admitted that they needed to fill the Barbacide. Additionally, Respondent testified that they have remodeled the store since the inspections and that it took two to three months for the mall to approve the remodeling and repairs and that is why the sink repair took so long.

19. 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

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

21. 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.

22. Section 329.030, RSMo, provides:

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.

23. 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.

24. 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).

25. State regulation 20 CSR 2085-11.020(1)(B) provides:

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.

26. State regulation 20 CSR 2085-11.020(2)(D) provides:

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.

27. State regulation 20 CSR 2085-11.020(1)(D) provides:

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.

28. By offering waxing services without a person licensed to offer such services, Respondent violated § 329.030, RSMo and thus violated section IV, A of the Probation Order. Accordingly, Respondent's master establishment license is subject to further discipline by the Board.

29. By failing to maintain a clean establishment in good repair, Respondent violated 20 CSR 2085-11.020(1)(B) and thus violated section IV, A of the Probation Order.

30. By failing to clean or dispose of used implements, failing to keep a lid on a used implement container and by failing to properly disinfect implements, Respondent violated 20 CSR 2085-11.020(2)(D) and thus violated section IV, A of the Probation Order.

31. By failing to provide hot running water in the establishment restroom, Respondent violated 20 CSR 2085-11.020(1)(D) and thus violated section IV, A of the Probation Order.

32. There was undisputed evidence that Respondent attempted to give the Board's inspector an envelope containing cash. However, the only evidence presented as to the purpose of such payment was Respondent's testimony that this was an offer of an unconditional gift and that Respondent asked for nothing in return. Accordingly, the Board did not establish a violation of the Probation Order by a preponderance of the evidence regarding this incident.

33. There was undisputed evidence that Respondent's mother was present in Modern Nail and was filling a foot bath with water. However, Respondent denied that her mother provided any services as defined in § 339.010, RSMo, for which a license is required. There was no evidence presented that Respondent did more than fill the foot bath with water. Accordingly,

the Board did not establish a violation of the Probation Order by a preponderance of the evidence regarding this incident.

34. As a result of the foregoing, Respondent's master establishment license is subject to further disciplinary action by the Board pursuant to § 324.042, RSMo.

35. 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 master establishment license of Vy Mihn Ty Tran, Owner of Modern Nail, (license number 2010000134) is hereby **SUSPENDED** for twelve (12) days, to be effective the Friday, Saturday and Sunday of the four (4) weeks following the effective as of the date of this Order. Vy Mihn Ty Tran, Owner of Modern Nail, shall not, during these days of license suspension, publicly display her master establishment license, offer or provide any services for which licensure under chapter 329, RSMo, is required, and shall notify the Board of her compliance.

On the days during these four weeks that Respondent's license is not suspended and following this suspension, Respondent's master establishment license shall be placed on **PROBATION** for an additional two (2) years beyond the three (3) years imposed by the Board in its January 5, 2010 Probation Order. Accordingly, the master establishment license shall be subject to probation for a total of five (5) years (beginning January 5, 2010). This probation period shall be subject to the terms and conditions set forth below.

IV.

TERMS AND CONDITIONS

During the aforementioned probation, Vy Mihn Ty Tran, Owner of Modern Nail, shall be entitled to a master establishment license subject to the following terms and conditions:

- A. 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.
- B. 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.
- C. Respondent shall timely renew her 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. 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. 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.
- G. If, at any time during the probationary period, Respondent changes her address from the state of Missouri, or ceases to maintain her 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.
- 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 the required notice and opportunity for a hearing before the Board as provided by Chapter 536, RSMo (as amended).

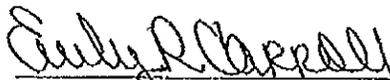
- I. Unless otherwise specified by the Board, all reports, documentation, notices, or other materials required to be submitted to the Board shall be forwarded to: Missouri State Board of Cosmetology and Barber Examiners, P. O. Box 1335, Jefferson City, Missouri 65102.
- J. Any failure by Respondent to 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

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

STATE BOARD OF COSMETOLOGY)
AND BARBER EXAMINERS,)
)
Petitioner,)
)
v.)
)
VY MINH TRAN, OWNER)
d/b/a MODERN NAIL)
)
Respondent.)

Case No. PV11-7001 CB-01

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER**

At its regularly scheduled meeting on January 26, 2015, and pursuant to notice described in the Findings of Fact, the Missouri State Board of Cosmetology and Barber Examiners (“Petitioner”) took up the probation violation complaint alleging that Vy Minh Tran, Owner, d/b/a Modern Nail (“Respondent”) failed to comply with the terms of her probation for her Probationary Master Cosmetology Establishment license.

The Petitioner appeared at the hearing through its attorney Jamie Cox. Tran appeared pro se. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the board’s legal advisor at the hearing, during deliberations, and in the preparation of this order.

Findings of Fact

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

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

2. Respondent is a natural person, whose address of record for the Petitioner is 3600 S. Country Club, Jefferson City, Missouri 65109.

3. Respondent holds a Master Cosmetology Establishment license for Modern Nail, license number 2010000134.

4. Respondent owns and operates the cosmetology establishment, Modern Nail, located at 3600 S. Country Club, Jefferson City, Missouri 65109.

5. On or about January 5, 2010, Petitioner issued an Order granting Respondent a Master Cosmetology Establishment license, license number 2010000134. The terms of the Order placed Respondent's Master Cosmetology Establishment license on probation for a period of three (3) years commencing on January 5, 2010 and ending on January 5, 2013.

6. On or about August 31, 2011, Petitioner issued an Order disciplining Respondent's Master Cosmetology Establishment license, suspending Respondent's license for twelve (12) days. Following the suspension Respondent's Master Cosmetology Establishment license was placed on probation for an additional two (2) years beyond the three (3) years imposed by Petitioner in its January 5, 2010 Probation Order.

7. On or about October 21, 2013, Petitioner filed a Probation Violation Complaint against Respondent, which alleged Respondent violated the terms of Respondent's probation as listed in the January 5, 2010 Order granting Respondent's Master Cosmetology Establishment license and the August 31, 2011 disciplinary Order.

8. The August 31, 2011 Disciplinary Order states on page 9, paragraph A, as a term and condition of probation, that Respondent 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.

9. On or about April 8, 2013, the Board received a consumer complaint from K.K. regarding an infection from services she received from Respondent establishment. An inspection was conducted on April 17, 2013, during which credo blades were found on-site in violation of 20 CSR 2085-11.020(2)(L)(1).

10. On or about July 15, 2013, the Board's inspector conducted an inspection of the Respondent establishment during which unauthorized implements were found in a pedicure drawer, used files were thrown in the trashcan and more operator licenses were posted than the establishment was licensed for, violations of 20 CSR 2085-11.020(2)(L)(1), 20 CSR 2085-11.020(2)(D) and 20 CSR 2085-10.050(1) respectively.

11. Pursuant to paragraph F of the August 31, 2011 Disciplinary Order, and paragraph G of the January 5, 2010 Order granting Respondent a Master Cosmetology Establishment license, Respondent was to submit written reports to the Board before January 1 and July 1 of each year, stating Respondent has been in compliance with all terms and conditions of the Disciplinary Orders.

12. Respondent failed to provide the Board with a timely submitted report of compliance, which was due by July 1, 2013.

Conclusions of Law

13. The Board has jurisdiction in this proceeding, pursuant to the January 5, 2010 Order granting Respondent a Master Cosmetology Establishment license, the August 31, 2011 Disciplinary Order and § 324.042, RSMo, to determine whether Respondent has violated the terms and conditions of the 2010 and 2011 Orders.

14. Section 324.042 RSMo provides:

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.

15. Respondent violated the terms of discipline set forth in the 2010 and 2011 Orders, as described in the Findings of Fact of this Order.

16. The 2010 and 2011 Orders 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 2010 and 2011 Orders as described in the Findings of Fact of this Order.

Decision and Order

17. It is the decision of the Missouri State Board of Cosmetology and Barber Examiners that Respondent has violated the terms of the 2010 and 2011 Orders and Respondent's Master Cosmetology Establishment license is, therefore, subject to further disciplinary action.

18. The Missouri State Board of Cosmetology and Barber Examiners orders that Respondent's Master Cosmetology Establishment license, license number 2010000134, is hereby **REVOKED** from the effective date of this Order. Upon receipt of this Order, Respondent shall immediately return all evidence of licensure to the Board.

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

SO ORDERED, EFFECTIVE THIS 25th DAY OF March, 2015.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

Emily R. Carroll

Emily R. Carroll, Executive Director