

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

STATE BOARD OF COSMETOLOGY)
AND BARBER EXAMINERS,)

Petitioner,)

v.)

CASE # 08-0202

TOM NGUYEN,)
d/b/a SKY NAIL & SPA,)

Respondent.)

**ORDER OF THE MISSOURI
STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS
DISCIPLINING THE COSMETOLOGY ESTABLISHMENT
LICENSE OF TOM NGUYEN d/b/a SKY NAIL & SPA**

On or about September 10, 2008, the Administrative Hearing Commission entered its Decision in the case of *State Board of Cosmetology and Barber Examiners v. Tom Nguyen, doing business as Sky Nail & Spa, Case No. 08-0202 CB*. In that Decision, the Administrative Hearing Commission found that Respondent Tom Nguyen's cosmetology establishment license (license # 2006036199) for Sky Nail & Spa is subject to disciplinary action by the Board pursuant to § 329.140.2(5), (13) and (15), RSMo 2000.

The Board has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and § 621.110 and § 329.140.3, RSMo 2000, the Board held a hearing on November 3, 2008, at approximately 11:00 a.m., at the Intercontinental Kansas City at the

Plaza, 401 Ward Parkway, Kansas City, Missouri, 64112, for the purpose of determining the appropriate disciplinary action against Respondent's cosmetology establishment license (license # 2006036199). The Board was represented by Legal Counsel Tina Crow Halcomb. Respondent was present but was not represented by counsel. 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.

I.

Based upon the foregoing the Board hereby states:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Board is an agency of the state of Missouri created and established pursuant to § 329.015, RSMo Cum. Supp. 2007, 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 (as amended).

2. The Board hereby adopts and incorporates by reference the Decision of the Administrative Hearing Commission in *State Board of Cosmetology and Barber Examiners v. Tom Nguyen, doing business as Sky Nail & Spa, Case No. 08-0202 CB*, in its entirety.

3. The Board set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

II.

CONCLUSIONS OF LAW

4. This Board has jurisdiction over this proceeding pursuant to § 621.110 and § 329.140.3, RSMo.

5. The Board expressly adopts and incorporates by reference the Conclusions of Law contained in the Decision issued by the Administrative Hearing Commission on September 10, 2008, in *State Board of Cosmetology and Barber Examiners v. Tom Nguyen, doing business as Sky Nail & Spa, Case No. 08-0202 CB*, and hereby enters its Conclusions of Law consistent therewith.

6. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Order on September 10, 2008, Respondent's cosmetology establishment license is subject to disciplinary action by the Board pursuant to § 329.140.2(5), (13) and (15), RSMo 2000.

7. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

8. Having fully considered all the evidence before the Board, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Board that the cosmetology establishment license of Tom Nguyen, doing business as Sky Nail & Spa, is hereby placed on **SUSPENSION** for a period of **SEVEN (7) DAYS** from the effective date of this Order. Specifically, the aforementioned suspension shall be served on NOVEMBER 24TH, 25TH, 26TH, 27TH, 28TH, 29TH AND 30TH. On the aforementioned suspension dates, Sky Nail & Spa shall not be operated as a cosmetology establishment nor shall any cosmetology services be provided or offered at Sky Nail & Spa, as defined by Chapter 329.

9. Further, it is hereby **ORDERED** that after the aforementioned suspension period, Respondent's cosmetology establishment license for Sky Nail & Spa shall be automatically and immediately placed on **PROBATION** for a term of three (3) years, subject to the following terms and conditions:

- A. During the disciplinary period, Tom Nguyen, doing business as Sky Nail & Spa, shall comply with all provisions of Chapter 328 and 329, RSMo (as amended), all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all 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. Tom Nguyen shall ensure that any waxing services provided in the salon are only performed by a Missouri licensed esthetician or cosmetologist, as required by Missouri law.
- C. During the probationary period, Tom Nguyen shall attend the sanitation class offered by the Missouri State Board of Cosmetology and Barber Examiners at least once every year. Additionally, Tom Nguyen shall require that all employees of Sky Nail & Spa attend a sanitation class offered by the board at least once a year if the employee performs cosmetology services at Sky Nail & Spa, as defined by Chapter 329.
- D. During the disciplinary period, Tom Nguyen, doing business as Sky Nail & Spa, shall keep the Board informed of the current address and telephone number for Sky Nail & Spa. Tom Nguyen shall notify the Board in writing within ten days (10) of any change in this information.
- E. During the probationary period, Tom Nguyen, doing business as Sky Nail & Spa, shall timely renew his cosmetology establishment license and shall timely pay all fees required for licensure and comply with all other Board requirements necessary to maintain his license in a current and active state.
- F. During the probationary period, Tom Nguyen shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- G. During the disciplinary period, Tom Nguyen shall appear in person for interviews with the Board or its designee upon request.
- H. Tom Nguyen 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, 2009.

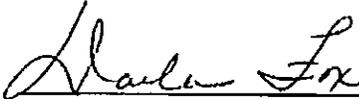
- I. If, at any time during the probationary period, Tom Nguyen changes his address from the state of Missouri, or ceases to maintain his establishment license current or active under the provisions of Chapters 328 and 329, RSMo (as amended), or fails to keep the Board advised of all current places of business, 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.
- J. Upon expiration of the probationary period, Tom Nguyen's establishment license shall be fully restored if all requirements of the law have been satisfied; provided, however, that in the event the Board determines that Tom Nguyen, doing business as Sky Nail & Spa, has violated any term or condition of this Order, the Board may, in its discretion, pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions or remedies concerning the allegations identified herein.
- K. 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 (as amended).
- L. 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.
- M. Any failure by Respondent Nguyen to comply with any condition of discipline set forth herein constitutes a violation of this Order.

9. 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, Chapter 329, RSMo (as amended), or the regulations promulgated thereunder.

10. The Board will maintain this Order as an open, public record of the Board as provided in Chapters 328, 329, 610, and 620, RSMo (as amended).

SO ORDERED EFFECTIVE, THIS 14TH DAY OF November, 2008.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Darla Fox, Executive Director

5. Nguyen owns and operates a cosmetology establishment, Sky Nails & Spa, an unincorporated associate pursuant to § 1.020(11), RSMo, located at 2300 Bernadette Drive #600, Columbia, Missouri 65203.

6. The Board issued Nguyen a probationary Cosmetology Establishment license November 14, 2008 after the Administrative Hearing Commission found cause to discipline his license for violations of § 329.140.2(5), (13) and (15), RSMo. The Board issued the license with a Probation Order dated November 14, 2008.

7. During the probationary period, Nguyen was entitled to continue operating his cosmetology establishment, Sky Nails & Spa, after a seven day suspension, provided that he adhere to all of the terms and conditions of the Probation Order.

8. The Order of Probation states on page 4 that Nguyen 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.

9. On or about February 6, 2010, the Board's inspector conducted an inspection of Sky Nails & Spa which revealed sanitation violations including towels not placed in a closed cabinet or drawer and soiled towels not in a leak-proof container and a presence of credo blades which are prohibited. The inspection report indicated the violations were corrected at the time of the inspection.

10. On or about March 2, 2010, the Board sent Nguyen a Violation Notice for the violations found during the February 6, 2010 inspection.

11. On or about April 22, 2010, the Board's inspector conducted an inspection of Sky Nails & Spa which again revealed minor sanitation violations including dirty files and buffers but a continued presence of credo blades which Nguyen had been informed are prohibited. The inspection report stated the violations were corrected at the time of the inspection.

12. On or about July 22, 2010, the Board received a consumer complaint against Nguyen after a patron received a pedicure on July 27, 2010 from a male employee who used a credo bald on her feet and cut both feet, causing her injury.

13. On or about August 5, 2010, the Board's inspector conducted an inspection of Sky Nails & Spa which again revealed credo blades in the establishment after Nguyen had been informed previously by the Board that credo blades are prohibited.

Conclusions of Law

A. The Committee has jurisdiction in this proceeding, pursuant to the November 14, 2008 Order and § 324.042 RSMo, to determine whether Nguyen has violated the terms and conditions of the November 14, 2008 Order for his cosmetology establishment license.

B. Regulation 20 CSR 2085-11.020(2) states, in relevant part:

(2) Sanitation Requirements.

(A) Protection of the Patron.

...

2. Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens.

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

...

(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

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

C. 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:

...

(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[.]

D. Nguyen violated the terms of discipline set forth in the November 14, 2008 Order, as described in the Findings of Fact of this Order by violating regulation 20 CSR 2085-11.020(2)(A) and (L) as detailed in paragraphs 3 through 13 above.

E. The November 14, 2008 Order 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 November 14, 2008 Order.

E. Jurisdiction and venue are proper before the State Board of Cosmetology and Barber Examiners pursuant to the November 14, 2008 Order 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 Nguyen has violated the terms of the November 14, 2008 Order, and that his cosmetology establishment license is, therefore, subject to further disciplinary action.

The Missouri State Board of Cosmetology and Barber Examiners orders that the cosmetology establishment license for Nguyen, license number 2006036199, is immediately **SUSPENDED** for seven (7) calendar days starting from the date of this Order. Nguyen's license, license number 2006036199 shall also be placed on two additional years of **PROBATION**. The two additional years, when combined with the previous November 14, 2008 probation order, will

conclude November 14, 2013. Nguyen is placed on two additional years of probation subject to the terms and conditions set forth below.

Terms and Conditions

During the aforementioned probation, Nguyen shall be entitled to a cosmetology establishment license subject to the following terms and conditions:

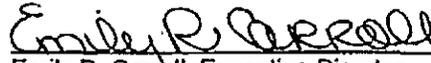
- A. During the disciplinary period, Nguyen shall comply with all provisions of Chapter 329, RSMo (as amended), all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. During the disciplinary period, Nguyen shall keep the Board informed of his current work telephone numbers. Nguyen 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 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, Nguyen 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, Nguyen shall appear in person for interviews with the Board or its designee upon request.
- F. Nguyen 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, 2011.
- G. If, at any time during the probationary period, Nguyen 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 (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 any required notice and opportunity for a hearing before the Board as provided by Chapter 538, 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 Nguyen 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 9th DAY OF February, 2011.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Emily R. Carroll, Executive Director