

**STATE OF VERMONT
BOARD OF BARBERS AND COSMETOLOGISTS**

In re Tan Minh Duong & Beautiful Nails } Docket No. CO 03-0901

DEFAULT ORDER

The Board of Barbers and Cosmetologists (Board) held a default hearing in the above-referenced matter on January 14, 2002, at the Office of the Secretary of State, 26 Terrace Street, Montpelier, Vermont. Board Members Gregory Josselyn (Hearing Panel Chair), Dolores Martineau, and Josephine Thomas participated in the decision. Assistant Attorney General George C. Haegele, IV, appeared for the State. Respondent Duong was not present and was not represented by counsel.

Findings of Fact

1. The Board hereby takes official notice of the case file in this matter.
2. On October 15, 2001, the Board issued an order summarily suspending the manicurist license of Duong and the shop license of Beautiful Nails.
3. Notice of the summary suspension order and the specification of charges were mailed, certified, return receipt requested to two different addresses in Barre and to the salon in Berlin. All return receipts were signed and returned.
4. In December 2001, the Office of Professional Regulation (Office) received a phone call from Duong's wife, Kim Anh, providing a new mailing address for Duong in Yuba City, California.
5. On December 21, the Office mailed Duong copies of the noticed of the January 14 hearing, the specification of charges, the summary suspension order, and the request for summary suspension. These materials were mailed certified, return receipt requested.
6. On December 27, Anh signed and returned the certified mail receipt.
7. Based upon the State's presentation and matters officially noticed, the Board finds Respondents Duong and

Beautiful Nails in default. The allegations contained in the State's specification of charges dated October 30, 2001 (copy attached) are therefore treated as the facts upon which the Board's order is based.

8. The Board voted to issue a default order at the January 14 hearing, to take effect immediately.

9. This order does not pertain in any way to the individual or shop licenses of the current owner or owners of Beautiful Nails manicurist salon, located in the Berlin Mall in Berlin, Vermont.

Conclusions of Law

Respondents Duong and Beautiful Nails received adequate notice of the charges against them, as indicated by records in the Board's file. Because Duong and Beautiful Nails failed to answer the charges or to appear at the hearing, the State's factual allegations are treated as proved. Pursuant to 3 V.S.A. § 809(d) (informal disposition of contested case by default), the Board therefore concludes that Duong and Beautiful Nails have engaged in the unprofessional conduct alleged in the State's specification of charges.

Order

On the basis of the Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED by the Board of Barbers and Cosmetologists of the State of Vermont that:

1. The manicurist license of Tan Minh Duong is REVOKED.
2. The shop license of Beautiful Nails (as related to shop ownership by Tan Minh Duong) is REVOKED.
3. Pursuant to 3 V.S.A. §§ 129(a)(7) and 131(c)(2)(C), this document is a public record and may be provided to other licensing authorities.
4. This order takes effect as of January 14, 2002, the date of the hearing in this matter.

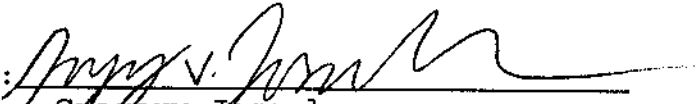
Appeal Rights

This is a final administrative determination. Any party (the State, Respondent Duong, or Beautiful Nails (as related to ownership by Duong)) may appeal by filing a written notice of

appeal with the Director of the Office of Professional Regulation, Office of the Secretary of State, 26 Terrace Street, Drawer 09, Montpelier, Vermont 05609-1106, within 30 days of the date the Office mails this order to Respondent Duong. Any party needing further assistance in calculating the length of time in which to file a notice of appeal may call the Office of Professional Regulation at 802-828-2367.

Dated: January 14, 2002

BOARD OF BARBERS AND COSMETOLOGISTS

By: 
Gregory Josselyn
Hearing Panel Chair

Date of entry: 1/14/02

**STATE OF VERMONT
BOARD OF BARBERS AND COSMETOLOGISTS**

IN RE:)	
TAN MINH DUONG)	
Lic. No. 086-0000149)	Docket No: CO 03-0901
&)	
BEAUTIFUL NAILS)	
Lic. No. 012-0001813)	

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondents Tan Minh Duong and Beautiful Nails:

Board Authority

- 1) The Vermont Board of Barbers and Cosmetologists has jurisdiction to investigate and adjudicate allegations of unprofessional conduct by cosmetologists pursuant to 3 V.S.A. §129; 26 V.S.A. §276; and the Board of Barbers and Cosmetologists Rules (hereinafter "Rules").
- 2) Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board may take disciplinary action. 3 V.S.A. §129a(a)(3).
- 3) Practicing or offering to practice beyond the scope permitted by law is unprofessional conduct upon which the Board may take disciplinary action. 26 V.S.A. §288(1).
- 4) Failing to adequately supervise employees engaged in any of the practices of cosmetology is unprofessional conduct upon which the Board may take disciplinary action. 26 V.S.A. §288(2).
- 5) Delegating professional responsibilities to a person the licensed professional knows, or has reason to know, is not qualified by training, experience, education or licensing credentials to perform them is unprofessional conduct upon which the Board may take disciplinary action. 3 V.S.A. § 129a(a)(6).
- 6) Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board may take disciplinary action. 3 V.S.A. § 129a(a)(3).

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

- 7) In the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a client, patient or customer has occurred is unprofessional conduct upon which the Board may take disciplinary action. 3 V.S.A. § 129a(a)(10).

Board Rules

- 8) Any shop, school or facility where barbering or cosmetology takes place must be clean and sanitary at all times. Any equipment, clothes or furniture that touches a client and is going to be re-used must be sanitized between each client, with an antibacterial agent. Vermont State Board of Barbers and Cosmetologists Rule 6.1.
- 9) Articles, tools and products...Soiled tools, linens and implements shall be deposited in a container made of cleanable, impervious materials and separate from those which are clean or pre-sanitized. Vermont State Board of Barbers and Cosmetologists Rule 6.3(C)(10).
- 10) The shop must have a designated licensee on the premises who is responsible for overall cleanliness and sanitation of the shop. The shop owner is responsible at all times for the overall cleanliness and sanitation of the shop. If more than one licensee provides this coverage, a primary licensee will be designated and a schedule will be posted at all times. Vermont State Board of Barbers and Cosmetologists Rule 3.12(B)(1).

Facts

- 11) Respondent, Tan Minh Duong, is licensed as a manicurist by the State of Vermont holding license number 086-0000149. Respondent Duong was originally licensed on December 30, 1998 and Respondent's license is set to expire on November 30, 2001.
- 12) Respondent, Beautiful Nails, is licensed as a shop and holds license number 012-0001813. Respondent, Beautiful Nails, was originally licensed on January 13, 1999 and Respondent's shop license is set to expire on November 30, 2001.
- 13) Respondent, Tan Minh Duong, is the owner of the Respondent shop, Beautiful Nails.
- 14) Respondent Duong, as owner and operator of the salon/shop, is responsible for the overall cleanliness and sanitation of the salon/shop.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

March 17, 2001 Inspection

- 15) On or about March 17, 2001, the Board of Barbers and Cosmetologists conducted an inspection of the Respondent salon/shop.
- 16) The results of the March 17, 2001 inspection found abundant and widespread violations of the Board's rules regulating sanitation and safety standards. (Attachment A)(Attached and incorporated).
- 17) By way of history, three licenses, including the owner/Respondent's license were posted.
- 18) By way of history, the Board of Barbers and Cosmetologists' inspector recommended a follow up inspection take place.

August and September Complaint(s)

- 19) On or about August 11, 2001 and September 16, 2001, a customer received a manicure from an employee whom she knew as 'Yang' whom was a male subject confined to a wheelchair.
- 20) The individual was not, in fact, licensed to perform the services.

September 10, 2001 Inspection

- 21) Subsequently, on or about September 10, 2001, an investigator with the Office of Professional Regulation conducted a second inspection to follow up on the above violation(s).
- 22) The results of the September 10, 2001 inspection found abundant and widespread violations of the Board's rules regulating sanitation and safety standards that were continuing and were not remedied. (Attachment B)(Attached and incorporated).
- 23) Additionally, the investigator observed a person performing manicuring whom was not licensed by the Board. This is the same person referred to as 'Yang' above.
- 24) There was no license present for a male employee named 'Yang'.

Charges

- A. Practicing or offering to practice beyond the scope permitted by law is unprofessional conduct upon which the Board may take disciplinary action. 26 V.S.A. §288(1).

- B. Failing to adequately supervise employees engaged in any of the practices of cosmetology is unprofessional conduct upon which the Board may take disciplinary action. 26 V.S.A. §288(2).
- C. Delegating professional responsibilities to a person the licensed professional knows, or has reason to know, is not qualified by training, experience, education or licensing credentials to perform them is unprofessional conduct upon which the Board may take disciplinary action. 3 V.S.A. § 129a(a)(6).
- D. Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board may take disciplinary action. 3 V.S.A. § 129a(a)(3). Specifically, operating an unsanitary shop in violation of Rules 6.1 through 6.3 and failing to have a designated licensee on the premises whom is responsible for overall cleanliness and sanitation of the shop.
- E. In the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a client, patient or customer has occurred is unprofessional conduct upon which the Board may take disciplinary action. 3 V.S.A. § 129a(a)(10).


Relief Requested

WHEREFORE, the licenses of Tan Minh Duong and Beautiful Nails should be revoked, suspended, or otherwise disciplined.

Dated this 30th day of October, 2001, at Montpelier, Vermont.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
George C. Haegele IV
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

DATE OF INSPECTION: 9-10-01 New Shop Existing Shop - New Owner Relocated Shop - Same Owner

NAME OF SHOP BEING INSPECTED Beautiful Nails

OWNER OF SHOP BEING INSPECTED TAN MINH DUNG PHONE NUMBER _____

ADDRESS OF SHOP BEING INSPECTED 282 Berlin Mall - Montpelier, Vt. 05602

DESIGNATED LICENSEE OF SHOP BEING INSPECTED Tan Minh Dung LICENSE NUMBER 086-0000149

Sign prominently displayed	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:
License's posted in front entrance of shop	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:
Designated licensee's name is posted and the designated licensee is on the premises	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment: <u>POSTED - NOT PRESENT. Come until October sat of Country</u>
General condition of shop	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment: <u>STATIONS STAINED DENT Bath Sink STAINED</u>
General areas for customer's use are neat and clean with covered waste receptacles for trash	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment: <u>1 TRASH CAN EACH STATION IN CABINET</u>
Floor surface in work areas are washable	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment: <u>CARPET w/ MATS</u>
Ventilation (see Rules 6.3(A)(3)(8))	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:
Hot and cold running water in work area and bathroom; antibacterial soap supplied	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:
Shampoo bowls, back board	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment: <u>N/A</u>

NAME OF SHOP BEING INSPECTED BEBBIE FUL Nails

DATE OF INSPECTION: 5-16-01

Disinfectants, sterilizers and/or spray disinfectants are present and used between clients	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment:
Disinfectant solutions and sprays are Environmental Protection Agency (EPA) registered hospital and tuberculocidal approved	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:
Shampoo capes & neck protectors	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment: N/A
Sanitized tools, linens and implements are stored in enclosed cabinets or covered receptacle	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment:
Soiled tools, linens and implements are kept separate from those which are clean or pre-sanitized	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment:
Disinfectant units on all manicurist stations	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment: ALL EMPTY
Wax pots are clean	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment: N/A
Blood Spill Kit	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment:
Flammable chemicals are stored in a flammable storage cabinet in a ventilated room	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment: N/A
Material Safety Data Sheets (MSDS)	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:
Shop area and immediate work areas are free of insects, rodents, fish or any type of animal that is not a hearing or seeing eye dog	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:

NAME OF SHOP BEING INSPECTED Beautiful Nails

DATE OF INSPECTION 9-10-01

Operator's Name License # <u>Kim Anh Thi Tran</u> <u>086-0000-150</u>	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comments:
Operator's Name License # <u>Hanh Thi Tran</u> <u>086-0000174</u>	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comments:
Operator's Name License #	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comments:
Operator's Name License #	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comments:
Operator's Name License #	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comments:
Operator's Name License #	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comments:

STATEMENT OF OWNER OR DESIGNATED LICENSEE RESPONSIBLE FOR OVERALL CLEANLINESS AND SANITATION OF THE SHOP

I HAVE READ AND RECEIVED A COPY OF THIS INSPECTION REPORT AND I UNDERSTAND IT'S CONTENT.

I UNDERSTAND I MUST RESPOND IN WRITING TO ANY FAILED ITEMS WITHIN THIRTY (30) DAYS OF THIS REPORT, EXPLAINING WHAT CORRECTIVE ACTION HAS BEEN TAKEN OR WHY I FEEL NO ACTION IS NECESSARY OR I MAY BE SUBJECT TO DISCIPLINARY ACTION ON MY LICENSE.

Signature of Owner or Designated Licensee _____ Date 9-10-01

INSPECTOR'S RECOMMENDATION: _____ ISSUE LICENSE _____ DO NOT ISSUE _____ REINSPECTION NECESSARY

Signature of Inspector Ronald Hart Date 9-10-01

Secretary of State
Office of Professional Regulation
BOARD OF BARBERS AND COSMETOLOGISTS INSPECTION FORM

Attachment B

227

DATE OF INSPECTION: 3-19-01

New Shop

Existing Shop - New Owner

Relocated Shop - Same Owner

NAME OF SHOP BEING INSPECTED

BEAUTIFUL NAILS

(HANA THE TRADY HAS PART OWNER'SHIP SINCE SBDT OF ACCO.)

OWNER OF SHOP BEING INSPECTED

TAN MINH DUNG

PHONE NUMBER

323 4046

ADDRESS OF SHOP BEING INSPECTED

252 BERLIN WALL ROAD UNIT 22

DESIGNATED LICENSEE OF SHOP BEING INSPECTED

TAN MINH DUNG

LICENSE NUMBER

012 000 1813

Item	Pass	Fail	Comment
Sign prominently displayed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
License's posted in front entrance of shop	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Designated licensee's name is posted and the designated licensee is on the premises	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Comment: <u>None</u>
General condition of shop	<input type="checkbox"/>	<input type="checkbox"/>	Comment: <u>None</u>
General areas for customer's use are neat and clean with covered waste receptacles for trash	<input type="checkbox"/>	<input type="checkbox"/>	Comment: <u>Hand tables and mirrors in the shop, no ceiling</u>
Floor surface in work areas are washable	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Comment: <u>ALL CARPET NO NAILS ACCORD WORK AREA</u>
Ventilation (see Rules 6.3(A)(3)(8))	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Hot and cold running water in work area and bathroom; antibacterial soap supplied	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Shampoo bowls, back board	<input type="checkbox"/>	<input type="checkbox"/>	Comment: <u>N/A</u>

NAME OF SHOP BEING INSPECTED BEAUTIFUL NAILS DATE OF INSPECTION: 3-19-61

Disinfectants, sterilizers and/or spray disinfectants are present and used between clients	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment: <u>Will Get</u>
Disinfectant solutions and sprays are Environmental Protection Agency (EPA) registered hospital and tuberculocidal approved	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment: <u>Need bigger spray bottle for disinfectant</u>
Shampoo capes & neck protectors	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment: <u>NA</u>
Sanitized tools, linens and implements are stored in enclosed cabinets or covered receptacle	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment: <u>NEED COVERED CONTAINERS & IMPLEMENTS need to be in sanitizing solution</u>
Soiled tools, linens and implements are kept separate from those which are clean or pre-sanitized	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment:
Disinfectant units on all manicurist stations	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment:
Wax pots are clean	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment: <u>NA</u>
Blood Spill Kit	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment:
Flammable chemicals are stored in a flammable storage cabinet in a ventilated room	Pass <input type="checkbox"/>	Fail <input type="checkbox"/>	Comment:
Material Safety Data Sheets (MSDS)	Pass <input type="checkbox"/>	Fail <input checked="" type="checkbox"/>	Comment: <u>Will Get</u>
Shop area and immediate work areas are free of insects, rodents, fish or any type of animal that is not a hearing or seeing eye dog	Pass <input checked="" type="checkbox"/>	Fail <input type="checkbox"/>	Comment:

Positive Bath: Hair Nails Clean

NAME OF SHOP BEING INSPECTED BEAUTIFUL NAILS DATE OF INSPECTION 3-19-01

Operator's Name License # <u>Kim-Anh Thi Tran</u> <u>056-000150</u>	Pass <input checked="" type="checkbox"/> Fail <input type="checkbox"/>	Comments:
Operator's Name License # <u>HANH THI TRAN</u> <u>056-000170</u>	Pass <input checked="" type="checkbox"/> Fail <input type="checkbox"/>	Comments:
Operator's Name License # <u>TAN MINH DIENS</u> <u>056-000149</u>	Pass <input checked="" type="checkbox"/> Fail <input type="checkbox"/>	Comments:
Operator's Name License #	Pass <input type="checkbox"/> Fail <input type="checkbox"/>	Comments:
Operator's Name License #	Pass <input type="checkbox"/> Fail <input type="checkbox"/>	Comments:
Operator's Name License #	Pass <input type="checkbox"/> Fail <input type="checkbox"/>	Comments:

STATEMENT OF OWNER OR DESIGNATED LICENSEE RESPONSIBLE FOR OVERALL CLEANLINESS AND SANITATION OF THE SHOP

I HAVE READ AND RECEIVED A COPY OF THIS INSPECTION REPORT AND I UNDERSTAND IT'S CONTENT.

I UNDERSTAND I MUST RESPOND IN WRITING TO ANY FAILED ITEMS WITHIN THIRTY (30) DAYS OF THIS REPORT, EXPLAINING WHAT CORRECTIVE ACTION HAS BEEN TAKEN OR WHY I FEEL NO ACTION IS NECESSARY OR I MAY BE SUBJECT TO DISCIPLINARY ACTION ON MY LICENSE.

Signature of Owner or Designated Licensee _____ Date 3-19-01

INSPECTOR'S RECOMMENDATION: _____ ISSUE LICENSE _____ DO NOT ISSUE _____ REINSPECTION NECESSARY

Signature of Inspector [Signature] Date 3/19/01