



WEST VIRGINIA

STATE BOARD OF BARBERS AND COSMETOLOGISTS

2011 ANNUAL REPORT

VOLUME 4 (COMPLAINTS)

BOARD MEMBERS

Michael Belcher
Sarah Hamrick
Jim Ryan

Justina Gabbert
Susan Poveromo
Rick Stache

EXECUTIVE DIRECTOR

Adam L. Higginbotham

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Higginbotham, Adam L

From: Anne Nguyen [annenguyen1975@yahoo.com]
Sent: Monday, September 13, 2010 12:11 AM
To: Higginbotham, Adam L; Stewart, Mindi D; Western, Patrick L
Subject: Report employees with no license

To Whom it may concern,

My name is Anne, i would like to report a nail salon that hired people without a license. The nail shop is Royal Nails and Spa the address is 5636 US Route 60 E. Suite 5. Huntington, WV 25705. The pregnant lady that was fine 2 time before still work there, and now they hire more people without a license. You guys should do something about this, The owner doesn't care about the board and do not obey the law. If you come on Friday or Saturday you will see many people work there without a license. I think you guys should take more serious about this.

Anne



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbsc.org

Director
Adam L. Higginbotham

Board Members
Michael Belcher Justina Gabl
Sarah Hamrick Susan Povero
Jim Ryan Rick Stach

Royal Nails and Spa
Tony Dang
5636 US Route 60 East 5
Huntington, WV 25705

January 27, 2011

COMPLAINT #: C2011-28 & C2011-21

Dear Mr. Dang:

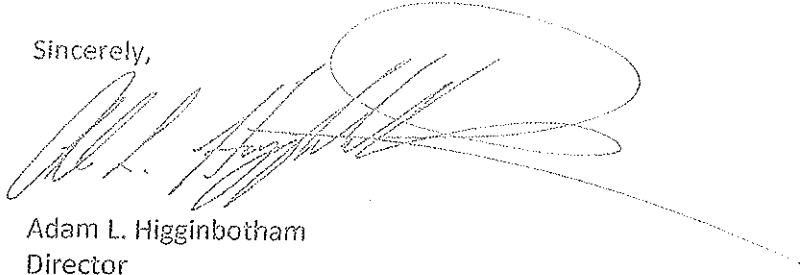
This letter is in regards to the above mentioned complaint.

The Board reviewed the complaint and responses and determined the complaint to be true.

An investigation into the complaint led to the citation of an unlicensed worker. Therefore, the above mentioned complaint number is closed and the violation notice is upheld.

Further proceedings are pending regarding the multiple citations of unlicensed workers. Please wait for our office to contact you regarding your 3rd offense for allowing an unlicensed worker to practice in your salon.

Sincerely,



Adam L. Higginbotham
Director

Cc: Multiple complainants

BEFORE THE WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

STATE OF WEST VIRGINIA
BOARD OF BARBERS and
COSMETOLOGISTS,

Complainant,

vs.

TONY DANG,

Respondent.

COPY

Case No. 2011-02

BEFORE: JACK MCCLUNG
HEARING EXAMINER

Transcript of proceedings had and testimony adduced in the
above-entitled action were held as therein appears before David T. Bolin, Court
Reporter and Notary Public within and for the State of West Virginia, on March
11, 2010, at 10:30 a.m., at the Hampton Inn-Southridge, Charleston, West
Virginia, pursuant to notice.

BILLANTI AND ASSOCIATES
COURT REPORTERS
17 BURNSIDE DRIVE
ELKVIEW, WV 25071
304 965-7444

APPEARANCES

ON BEHALF OF THE COMPLAINANT:

MARY DOWNEY
Assistant Attorney General
State Capitol Complex
Building 1, Room E-26
1900 Kanawha Boulevard, East
Charleston, West Virginia 25303
(304) 558-2021

RESPONDENT PRESENT IN PERSON

I N D E XWITNESSES: DRCT CROSS REDR RECR EXAMFOR THE BOARD:

| | | | | | |
|------------|---|----|-----|-----|-----|
| Ralph Reed | 7 | 28 | --- | --- | --- |
| (Rebuttal) | | | 57 | | |

| | | | | | |
|-----------------|----|-----|-----|-----|-----|
| Patrick Western | 30 | --- | --- | --- | --- |
|-----------------|----|-----|-----|-----|-----|

| | | | | | |
|-------------------|----|-----|-----|-----|-----|
| Adam Higginbotham | 37 | --- | --- | --- | --- |
|-------------------|----|-----|-----|-----|-----|

FOR THE RESPONDENT:

| | | | | | |
|-----------|----|----|-----|-----|-----|
| Tony Dang | 49 | 55 | --- | --- | --- |
|-----------|----|----|-----|-----|-----|

Tammy Tran
(Interpreter)

BOARD'S EXHIBITS: MARKED RECEIVED

| | | |
|---|----|----|
| Complainant No. 1, 5-3-2003 Citation | 16 | 17 |
|---|----|----|

| | | |
|--|----|----|
| Complainant No. 2, 3-27-2003 Citation | 18 | 19 |
|--|----|----|

| | | |
|---|----|----|
| Complainant No. 3, 12-15-2008 Citation | 21 | 22 |
|---|----|----|

| | | |
|--|----|----|
| Complainant No. 4, 5-27-2010 Citation | 23 | 24 |
|--|----|----|

| | | |
|---|----|----|
| Complainant No. 5, 11-16-2010 Citation | 24 | 25 |
|---|----|----|

| | | |
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1 PROCEEDINGS
2 (10:51 a.m.)
3 HEARING EXAMINER MCCLUNG: The matter of
4 the State of West Virginia Board of Barbers and
5 Cosmetologists v. Tony Dang now comes on for
6 hearing pursuant to notice of hearing dated
7 February 1, 2011.
8 At this time I would ask counsel
9 and/or parties in interest to note your
10 appearance for the record, if you would,
11 please, beginning from my left.
12 MS. DOWNEY: I'm Mary Downey, and I'm
13 representing the Barbers and Cosmetologists
14 board.
15 MR. WESTERN: Patrick Western. I am
16 with the Board of Barbers and Cosmetologists as
17 a witness.
18 MR. HIGGINBOTHAM: Adam Higginbotham,
19 the Director of the Board.
20 EXAMINER MCCLUNG: And you, ma'am?
21 MS. TRAN: Tammy Tran, a cousin of Tony
22 Dang.

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1 EXAMINER MCCLUNG: Tammy Trane?
2 MS. TRAN: Tammy Tran.
3 EXAMINER MCCLUNG: That's T-r-a-n-e?
4 MS. TRAN: T-r-a-n.
5 MR. DANG: I'm Tony Dang.
6 EXAMINER MCCLUNG: Thank you, ladies and
7 gentlemen. Are there preliminary matters to be
8 addressed? I think we've already discussed the
9 situation that we have, that Ms. Tran will be
10 speaking for Mr. Dang at this time. Is that
11 correct?
12 MS. TRAN: Yes.
13 MR. DANG: Yes, sir.
14 EXAMINER MCCLUNG: Is that all right
15 with you, Ms. Downey?
16 MS. DOWNEY: I think what it was that
17 she might interpret some of the — I mean, I
18 don't think she's going to be testifying, but
19 interpreting.
20 EXAMINER MCCLUNG: Is that correct?
21 MS. TRAN: Yes.
22 EXAMINER MCCLUNG: Thank you. I'm glad

Page 6

1 I asked that. I probably had it wrong.
2 At this time you may present the
3 case for the Board, Ms. Downey.
4 MS. DOWNEY: Okay. I have distributed
5 some exhibits to everybody, a packet of
6 exhibits that we will be introducing. So for
7 everybody's convenience I have provided the
8 same for everybody.
9 MS. DOWNEY: Would you state your name,
10 please?
11 MR. REED: My name is Ralph Reed.
12 MS. DOWNEY: Mr. Reed, where do you
13 live?
14 MR. REED: I live in Beckley, West
15 Virginia.
16 MS. DOWNEY: Where are you employed?
17 MR. REED: I'm employed with the Barbers
18 and Cosmetologists Board.
19 EXAMINER MCCLUNG: Excuse me. We're
20 going to have to swear the witness.
21 MS. DOWNEY: All right.
22 (Witness sworn.)

Page 7

1 THEREUPON came,
2 R A L P H R E E D
3 called as a witness on behalf of the Board
4 herein, who, having been first duly sworn
5 according to law, testified as follows:
6 MS. DOWNEY: Well, I guess we'll start
7 over.
8 DIRECT EXAMINATION
9 BY MS. DOWNEY:
10 Q Your name, please?
11 A Ralph Reed.
12 Q And I think you said you live in
13 Beckley, West Virginia?
14 A Yes.
15 Q Where are you employed?
16 A I'm employed by the State of West
17 Virginia through the Division of Barbers and
18 Cosmetologists. My title is Inspector 2,
19 Investigator/Inspector 2.
20 Q And what does that mean?
21 A My job is to routinely visit the
22 people that are under our control and make sure

Page 8

1 that they are --

2 Q Who are the people under your

3 control?

4 A Cosmetologists, manicurists,

5 aestheticians, and barbers, to make sure they

6 are compliant with West Virginia law.

7 EXAMINER MCCLUNG: What was that one?

8 Aesthetician?

9 THE WITNESS: It's skin care.

10 EXAMINER MCCLUNG: I've never heard

11 that. Thank you.

12 THE WITNESS: You're welcome.

13 BY MS. DOWNEY:

14 Q How long have you worked as an

15 Inspector/Investigator 2 for the barbers board?

16 A Twelve years.

17 Q With regard to that job with the

18 barbers board, would you please state what it

19 is specifically that you do?

20 A We make sure that people are

21 compliant with rules and regulations of the

22 board, and follow West Virginia law at their

Page 9

1 salons and in their individual practice.

2 Q Please explain what rules to which

3 you're referring.

4 A There are rules and regulations

5 that have been adopted by the board which

6 salons must comply with. They range from

7 washing your hands between customers and making

8 sure that your licenses are up on the wall as

9 prescribed by law, in a frame, and various

10 rules of that nature to protect the health of

11 the citizenry.

12 Q Do these rules apply to the salon

13 as well as to the individual?

14 A Yes, ma'am.

15 Q Would you explain the difference?

16 A Individuals can be cited for either

17 doing or not doing whatever the rules state

18 that they need to do. Salons as well can be

19 cited for anything that they may do against the

20 rules.

21 An example would be a common area

22 where several people share an area and there's

Page 10

1 something wrong with it, it's in noncompliance.

2 The salon would get that instead of an

3 individual because --

4 Q Would get that; what do you mean?

5 A They would get a violation notice

6 for that because that's the duty of the owner

7 and the manager.

8 Q So there are two different types of

9 violations, two different groups of people who

10 could get a violation; correct?

11 A Who could get one, yes; the owner,

12 the manager, or the individual.

13 Q Or both?

14 A Or all three, depending on the

15 rules and regulations.

16 Q The violation; okay. Are there

17 rules with regard to licensed workers or

18 unlicensed workers?

19 A Yes, and our schedule series, Title

20 3, Series 7, it outlines the schedule of fines

21 for actions or inactions, depending upon the

22 violation.

Page 11

1 Q Would you describe the rule that

2 has to do with unlicensed workers?

3 A Yes, ma'am. It's Title 3, Series

4 7, 2.12. It's allowing an unlicensed person to

5 practice in a licensed shop. The first offense

6 is \$500, second offense is \$1,000, and third

7 offense is the board shall summon the

8 practitioner or shop owner to appear before the

9 board for the assessment of a fine and/or

10 proposed revocation, suspension, or refusal to

11 issue a shop license.

12 Q Now you have had some training with

13 regard to the rules and regulations, and the

14 proper way to investigate and inspect these

15 shops; correct?

16 A Yes. I'm nationally certified as

17 an investigator.

18 Q What kind of training have you had?

19 A I've had the beginning training

20 through NCIT.

21 Q What's NCIT?

22 A National Creditation for

Page 12

1 Investigator Training. I went to Texas, San
 2 Antonio, for the original training in 2001.
 3 And then I went for the advanced training in
 4 Las Vegas a few years later.
 5 Q Who put that training on for you?
 6 A I was directed to go there by Larry
 7 Absten, the director of the Board of Barbers
 8 and Cosmetologists at that time.
 9 Q If you know, who was responsible
 10 for putting that training on?
 11 A The association is called the NCIT,
 12 National Creditation for Investigative
 13 Training. It's based out of Virginia.
 14 Q Did you also get some training with
 15 the state police as to how to do
 16 investigations?
 17 A I got training at the State Police
 18 Academy for investigative training regarding
 19 interviewing and interrogation techniques.
 20 Q Do you know a Mr. Tony Dang, who is
 21 the Respondent in this case?
 22 A Yes.

Page 13

1 Q And how do you know Mr. Dang?
 2 A I've been an inspector where Mr.
 3 Dang has had shops in the past. Currently
 4 Huntington is part of my regular territory, and
 5 I inspect his shop.
 6 Q Mr. Dang's shop is in Huntington;
 7 correct?
 8 A Correct. It's called Royal Nails.
 9 Q Now how do you do your inspections?
 10 How do you know where to go, or what to do, so
 11 forth?
 12 A Normally I have a 13-county area
 13 which I do on a regular basis, and time to time
 14 will get complaints about someone. I'll
 15 receive that through the director, our office.
 16 Q Is that Mr. Higginbotham?
 17 A Yes. And then I'll be assigned to
 18 investigate and do appropriate measures.
 19 Q Did you get a referral from Mr.
 20 Higginbotham with regard to Tony Dang?
 21 A Yes.
 22 Q Did you get more than one?

Page 14

1 A Yes.
 2 Q With regard to those referrals, did
 3 you then do an inspection?
 4 A Yes.
 5 Q Did you make findings with regard
 6 to those inspections?
 7 A Yes.
 8 Q Now I would like to then take those
 9 one by one of those actual inspections that you
 10 did, and tell me what you saw, when, and what
 11 you did eventually. I would like to take the
 12 earliest one that you did and do it in
 13 chronological order that way, or would you like
 14 to go from the most recent backwards?
 15 A Either way is fine.
 16 Q Okay. Let's take the earliest one
 17 in which you were involved.
 18 A The earliest one was May 3 of 2003.
 19 Mr. Dang owned a salon and operated it, 2001
 20 Nails. I was sent there. It was not part of
 21 my territory. I was sent there instead of the
 22 inspector that had that territory. I found an

Page 15

1 unlicensed worker, Luu Fong Huynh, H-u-y-n-h,
 2 working in a licensed shop. And I also found a
 3 second unlicensed worker, Ut Nguyen, N-g-u-y-e-
 4 n, and issued a fine for second offense to Mr.
 5 Dang at that time.
 6 Q I notice that you said you issued a
 7 second offense. I assume there was a first
 8 offense prior?
 9 A Yes, ma'am.
 10 Q What did you find at the shop when
 11 you went in? Explain what you did and what you
 12 saw.
 13 A When I visited the salon back in
 14 2003, I found two people working that did not
 15 have a license. They got up and left the area.
 16 I requested Mr. Dang bring them back, which he
 17 did. Then I issued, you know, found out the
 18 facts that they were working on customers and
 19 issued the fine accordingly.
 20 Q And the fine was how much?
 21 A It was second offense, was \$1,000.
 22 Q Did he pay that?

Page 16

1 A I assume that he did. I don't
 2 know.
 3 Q Now I'm going to show you a
 4 document and ask you if you recognize that
 5 document. (Tenders document to witness.)
 6 A Yes, ma'am. That's the fine that I
 7 issued.
 8 Q And is that signed by you?
 9 A Yes, ma'am, and Mr. Dang refused to
 10 sign it and I noted it, that he refused to sign
 11 that.
 12 MS. DOWNEY: I would like this marked as
 13 Respondent's No. 1, please.
 14 EXAMINER MCCLUNG: Could we just say
 15 Board? Would that be okay?
 16 MS. DOWNEY: That's fine.
 17 (WHEREUPON, the May 3, 2003
 18 citation was marked for purposes
 19 of identification as Complainant's
 20 Exhibit No. 1.)
 21 EXAMINER MCCLUNG: Do you want to move
 22 this now or later?

Page 17

1 MS. DOWNEY: Yes.
 2 EXAMINER MCCLUNG: What has been
 3 designated as Complainant's or Board's Exhibit
 4 1, being a citation issued by Mr. Reed, on, it
 5 looks like May 3, 2003, the document is
 6 admitted to the record.
 7 (WHEREUPON, the May 3, 2003 citation
 8 previously marked as Complainant's
 9 Exhibit No. 1, was admitted to
 10 the record, and is hereto attached.)
 11 BY MS. DOWNEY:
 12 Q I'm going to show you what has been
 13 marked as Complainant's Exhibit No. 1 and ask
 14 you if that's your signature?
 15 A Yes, it is.
 16 Q And is that the form that you
 17 filled out with regard to the May 3, 2003
 18 violation?
 19 A Yes, it is.
 20 Q And it would indicate that that was
 21 a second offense and was fined \$1,000; correct?
 22 A Correct.

Page 18

1 Q What was your next inspection, sir?
 2 A Earlier that year, March 27 of
 3 2003, I fined also at the same time. These are
 4 the copies of those fines. At that time Mr.
 5 Nguyen was also working for Mr. Dang, and a
 6 person by the name of Huang Thanh Dang.
 7 Q I want to show you a copy and ask
 8 you if you can identify this form. (Tenders
 9 document to witness.)
 10 A Yes, ma'am, those are the fines
 11 that I wrote.
 12 MS. DOWNEY: May I have this marked as
 13 Exhibit No. 2, please?
 14 (WHEREUPON, the March 27, 2003
 15 citation was marked for purposes
 16 of identification as Complainant's
 17 Exhibit No. 2.)
 18 MS. DOWNEY: And, Your Honor, I would
 19 like to move the admission of Exhibit No. 2.
 20 EXAMINER MCCLUNG: All right. The
 21 second citation that was issued on March 27,
 22 2003 designated Complainant's Exhibit 2 is

Page 19

1 admitted to the record.
 2 (WHEREUPON, the March 27, 2003
 3 citation previously marked as
 4 Complainant's Exhibit No. 2, was
 5 admitted to the record, and is
 6 hereto attached.)
 7 BY MS. DOWNEY:
 8 Q I'm going to show you what's been
 9 marked as Exhibit No. 2 and ask you to explain
 10 with regard to that citation what happened.
 11 A I did an inspection and I found two
 12 unlicensed workers working for Mr. Dang, and I
 13 wrote the fines appropriately.
 14 Q Okay. Was that the first offense,
 15 \$500?
 16 A Yes, ma'am.
 17 Q There are two on that same page,
 18 two forms; correct?
 19 A Right.
 20 Q Why?
 21 A There was an individual fine for
 22 each offense, and because I caught them at the

Page 20

1 same time, it was the first offense for both.
 2 So that's the reason that I did not write a
 3 second offense because it was one event.
 4 Q So there were two workers there?
 5 A Correct.
 6 Q Now explain what you did when you
 7 came in and what you saw.
 8 A When I came in, I asked for
 9 licenses. These two gentlemen got up and left.
 10 They were working on clients and I issued the
 11 fines.
 12 Q And that was on March 27, 2003;
 13 correct?
 14 A Yes, ma'am.
 15 Q Now there are individual and shop
 16 fines; correct?
 17 A Yes, ma'am.
 18 Q This would have been ---
 19 A This was issued to Mr. Dang on his
 20 license personally.
 21 Q What was the next?
 22 A The next was December 15, 2009.

Page 21

1 That was at Royal Nails in Huntington.
 2 Q What occurred for that inspection?
 3 A I went into the front of the shop
 4 and a girl got up and left from working on a
 5 client. I asked Amanda Nguyen, who is Mr.
 6 Dang's wife, who the girl was. She told me. I
 7 issued first offense to Mrs. Nguyen.
 8 MS. DOWNEY: I would like this marked as
 9 Exhibit No. 3, please.
 10 (WHEREUPON, the December 15, 2009
 11 citation was marked for purposes
 12 of identification as Complainant's
 13 Exhibit No. 3.)
 14 BY MS. DOWNEY:
 15 Q I'm going to show you what's been
 16 marked as Exhibit No. 3, and ask you if you can
 17 identify that.
 18 A Yes, ma'am, this is the fine that I
 19 issued to Mrs. Nguyen.
 20 Q And is that your signature?
 21 A Yes, it is.
 22 MS. DOWNEY: I'd like to move the

Page 22

1 admission of Complainant's Exhibit No. 3.
 2 EXAMINER MCCLUNG: All right. What has
 3 been designated as Complainant's Exhibit 3, a
 4 citation issued on December 15, 2009, the
 5 document is admitted to the record.
 6 (WHEREUPON, the December 15, 2009
 7 citation previously marked as
 8 Complainant Exhibit No. 3, was
 9 admitted to the record, and is hereto
 10 attached.)
 11 BY MS. DOWNEY:
 12 Q Was there another?
 13 A Yes, ma'am.
 14 Q And what was that?
 15 A May 27, 2010, I had received a
 16 complaint through the office that there was an
 17 unlicensed person working at Royal Nails.
 18 Q Yes.
 19 A I went to Royal Nails and observed
 20 Thuy Nguyen, an unlicensed person working on a
 21 client. I issued a fine to the shop for second
 22 offense violation of 3.7.212.

Page 23

1 Q And what is that?
 2 A It's schedule of fines, Title 3,
 3 Series 7, and it's relating to having an
 4 unlicensed worker, working in a licensed shop.
 5 Q I would like to show you an exhibit
 6 and ask you if you can identify that. (Tenders
 7 document to witness.)
 8 A Yes, ma'am, that's a copy of the
 9 citation.
 10 MS. DOWNEY: I would like this marked as
 11 Exhibit No. 4, please.
 12 (WHEREUPON, the May 27, 2010
 13 citation was marked for purposes
 14 of identification as Complainant's
 15 Exhibit No. 4.)
 16 MS. DOWNEY: And I would like to move
 17 the admission of Exhibit No. 4, please.
 18 EXAMINER MCCLUNG: All right. The
 19 document designated Complainant's or Board's
 20 Exhibit 4, being a citation issued on May 27,
 21 2010, is admitted to the record.
 22 (WHEREUPON, the May 27, 2010

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1 citation previously marked as
 2 Complainant's Exhibit No. 4,
 3 was admitted to the record, and
 4 is hereto attached.)
 5 BY MS. DOWNEY:
 6 Q I would like to show you another
 7 form and ask you if you can identify that.
 8 (Tenders document to witness.)
 9 A Yes, ma'am. This is a violation
 10 notice I wrote November 16, 2010.
 11 Q Is that signed by you?
 12 A Yes, ma'am.
 13 MS. DOWNEY: I would like this marked as
 14 Exhibit No. 5, please.
 15 (WHEREUPON, the November 16, 2010
 16 citation was marked for purposes
 17 of identification as Complainant
 18 Exhibit No. 5.)
 19 MS. DOWNEY: I would move its admission,
 20 Your Honor.
 21 EXAMINER MCCLUNG: I notice on this copy
 22 it's a little bit — so this was issued

Page 25

1 November 16th this year or 2010?
 2 THE WITNESS: 2010, yes, sir.
 3 EXAMINER MCCLUNG: I couldn't see the
 4 zero here on the — all right. The document
 5 designated Complainant's or Board's Exhibit 5,
 6 being the citation issued on November 16, 2010,
 7 the document is admitted to the record.
 8 (WHEREUPON, the November 16, 2010
 9 citation previously marked as
 10 Complainant Exhibit No. 5, was
 11 admitted to the record, and is
 12 hereto attached.)
 13 BY MS. DOWNEY:
 14 Q I'm going to show you what's been
 15 marked and admitted as Exhibit No. 5. Would
 16 you please explain what that form indicates?
 17 A I had received a complaint from the
 18 office again and went to Mr. Dang's Royal
 19 Nails.
 20 Q That was in what city?
 21 A Huntington, West Virginia. Upon my
 22 arrival there was a young lady doing a pedicure

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1 on a customer. She got up and left the area.
 2 Mrs. Nguyen was working.
 3 Q Who is Mrs. Nguyen?
 4 A That's Mr. Dang's wife. I asked
 5 her about it and she said that she was actually
 6 doing the pedicure even though she was sitting
 7 at a manicuring station doing another customer.
 8 She called Mr. Dang. A few minutes
 9 later Mr. Dang arrived, and I informed him that
 10 I had caught an unlicensed person working in
 11 his salon, and that I'd be issuing third
 12 offense violation of 37.212.
 13 Q Let's back up a minute. When you
 14 walked in, state specifically what you saw.
 15 A When I walked in, Mrs. Nguyen was
 16 working on a gentleman to the right of me. The
 17 girl that was working on the pedicure was in
 18 the —
 19 Q Did you see the young woman
 20 working? Not Mrs. Nguyen, but the other
 21 worker?
 22 A Yes. She was sitting on a cushion,

Page 27

1 sort of a stand, and she was working on the
 2 feet of the person in the chair.
 3 Q And you saw this?
 4 A Yes, I did.
 5 Q And then what happened?
 6 A And then the girl got up from where
 7 she was and she went out the back door.
 8 Q And then what did you do?
 9 A I told Mrs. Nguyen that, you know,
 10 I had observed what I observed, and she tried
 11 to convince me that she was doing the pedicure.
 12 Then she called Mr. Dang who showed up a few
 13 minutes later, and I informed him that I would
 14 be writing a third offense violation for having
 15 an unlicensed worker. Then I issued the
 16 violation notice.
 17 Q Incidentally, when I was asking
 18 about your qualifications, are you also a
 19 licensed barber/cosmetologist?
 20 A I'm a licensed cosmetologist. I've
 21 been licensed for 34 years.
 22 Q What did you do for those 34 years?

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1 A I was a cosmetologist.

2 Q And what did you do?

3 A All phases of cosmetology;

4 bleaching, coloring, perming, manicuring,

5 pedicuring.

6 Q So you worked in shops?

7 A Correct.

8 Q Are those the totality of the

9 inspections that you personally know about?

10 A Yes, ma'am.

11 MS. DOWNEY: No further questions.

12 EXAMINER MCCLUNG: Ms. Tran?

13 MS. TRAN: You can call me Tammy.

14 EXAMINER MCCLUNG: Tammy, okay. At this

15 time, you or Mr. Dang may ask questions of Mr.

16 Reed on anything that he just testified to.

17 CROSS-EXAMINATION

18 BY MS. TRAN:

19 Q (Confers with the respondent.) On

20 the most recent one when his wife actually did

21 the pedicure for the customer, and the girl,

22 she didn't do a pedicure on the customer -- and

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1 this is the letter from the customer.

2 MS. DOWNEY: Your Honor, if there's a

3 question in there, I don't hear it.

4 EXAMINER MCCLUNG: I didn't either. At

5 this point you need to ask questions on what

6 Mr. Reed testified to.

7 MS. TRAN: Okay.

8 BY MS. TRAN:

9 Q Did you actually see the girl doing

10 the pedicure?

11 A Yes, I did. When I walked in, she

12 had the left leg and was working on it.

13 Q Actually that's not what really

14 happened.

15 EXAMINER MCCLUNG: You'll have a chance

16 after the state puts on its evidence to put

17 your own case on, and you can bring out things

18 like that at that time.

19 MS. TRAN: All right. No further

20 questions.

21 EXAMINER MCCLUNG: No further questions?

22 MS. TRAN: Yes, sir.

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1 EXAMINER MCCLUNG: Do you have further

2 witnesses, Ms. Downey?

3 MS. DOWNEY: Yes, I do. Thank you.

4 EXAMINER MCCLUNG: Thank you, Mr. Reed.

5 (Witness excused.)

6 (Witness affirmed.)

7 THEREUPON came,

8 PATRICK WESTERN

9 called as a witness on behalf of the Board

10 herein, who, having been first duly affirmed

11 according to law, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. DOWNEY:

14 Q State your name, please.

15 A Patrick Western.

16 Q Mr. Western, where do you live?

17 A I live in Nitro.

18 Q West Virginia?

19 A Yes.

20 Q How old are you?

21 A I am 27.

22 Q Where do you work?

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1 A I work for the West Virginia State

2 Board of Barbers and Cosmetologists.

3 Q For how long have you worked for

4 them?

5 A I've been working with them since

6 September of 2009.

7 Q What did you do before that?

8 A Before then I was an intern with

9 Muscular Dystrophy Association and also worked

10 part-time with a commercial real estate broker.

11 Q Since September 2009, when you were

12 first hired by the board, what were your job

13 responsibilities?

14 A I'm sorry. I did not understand

15 the question.

16 Q At the board what are your job

17 responsibilities?

18 A At the board office I am the

19 primary contact for the inspectors, whenever

20 they're out inspecting and have questions

21 regarding the status of a license. I also

22 somewhat help facilitate information between

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1 our director and them, and answer questions
 2 from shop owners and the general public.
 3 Q Are you the keeper of the records?
 4 A I am one of the keepers of the
 5 records.
 6 Q When I say records, I mean the
 7 various violations and so forth.
 8 A Yes, I'm responsible for keeping
 9 track of the fines.
 10 Q With regard to the fines for Mr.
 11 Dang, do you have a document with regard to
 12 those fines? I'm going to show you a document
 13 and ask you if you recognize that. (Tenders
 14 document to witness.)
 15 A Yes. This is a copy of a record of
 16 fines throughout a certain time period which
 17 was found in our office prepared by previous
 18 office staff.
 19 Q But it's your job to maintain these
 20 records?
 21 A Yes, keep track of those. Yes.
 22 MS. DOWNEY: I would like this marked as

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1 Complainant's Exhibit No. 6.
 2 (WHEREUPON, the record of fines
 3 was marked for purposes of
 4 identification as Complainant
 5 Exhibit No. 6.)
 6 BY MS. DOWNEY:
 7 Q I'm going to show you what's been
 8 marked as Complainant's No. 6. Again, explain
 9 what that document is.
 10 A Well, this document lists several
 11 fines for each --
 12 MS. DOWNEY: First of all, may I move
 13 its admission, please?
 14 EXAMINER MCCLUNG: What has been
 15 submitted and designated as Complainant's
 16 Exhibit 6, which it's titled a record of fines,
 17 it's a multi-page document, and it will be
 18 admitted to the record as one exhibit.
 19 (WHEREUPON, the record of fines
 20 previously marked as Complainant
 21 Exhibit No. 6, was admitted to
 22 the record, and is hereto attached.)

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1 BY MS. DOWNEY:
 2 Q All right, now, Mr. Western, does
 3 that document indicate that Mr. Dang was fined?
 4 A This document indicates that Mr.
 5 Dang has been fined several times for different
 6 violations.
 7 Q Please go through each one.
 8 A There's a notation that on July 29,
 9 1999, a violation for 2.12 which is unlicensed
 10 workers, it's 2.12 of our Series 7 rules.
 11 Q And how much was that fine?
 12 A That was a \$500 fine and it was at
 13 Nail & Tanning Salon, which was in Mr. Dang's
 14 ownership at the time.
 15 Q Was there a next one?
 16 A The next one that I noted was
 17 6-13-2000. It was for a second offense for
 18 2.49 which is having pets other than fish in an
 19 aquarium in a shop. Second offense, \$100. It
 20 was issued to Nail & Tanning Salon. Tony was
 21 the manager of the shop at the time.
 22 Q Next page.

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1 A There's nothing on the next page.
 2 The third page, 6-1-2001, we have two entries:
 3 one for a 2.12 and a 2.10 offense issued to
 4 Nail 2001 Salon. Tony was a manager at that
 5 salon.
 6 Q And then is there a next one?
 7 A Yes.
 8 Q And how much was he fined?
 9 A Five hundred dollars.
 10 Q The next one?
 11 A 9-18-2001, again for Nail 2001
 12 Salon, another 2.12 offense, second offense.
 13 Q And what was he fined?
 14 A One thousand dollars. Tony was the
 15 manager of the shop at the time, according to
 16 the records. Then the next several pages do
 17 not have anything in reference to Mr. Dang.
 18 Q Are you aware of whether or not
 19 those fines were paid?
 20 A It's my understanding that those
 21 fines were paid. Mr. Dang's always been very
 22 good about paying his fines.

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1 Q So approximately how much money in
2 fines has he paid? Do you want to take a look
3 at that?
4 A I'm afraid I don't have a total.
5 Q I'm asking for an approximation.
6 A For the ones contained in this
7 record?
8 Q Yes.
9 A Mr. Dang would have paid \$500. The
10 others were in other shop owners' names, so
11 they were likely not paid by him.
12 Q And this record of fines is simply
13 through January of 2003; correct?
14 A That's correct.
15 Q And you were here for the previous
16 testimony; correct?
17 A Correct.
18 Q And those fines would not have been
19 on this record of fines?
20 A Correct.
21 MS. DOWNEY: No further questions.
22 EXAMINER MCCLUNG: Do you have any

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1 questions of Mr. Western?
2 MS. TRAN: (Confers with respondent) No
3 further questions.
4 EXAMINER MCCLUNG: Anything further?
5 MS. DOWNEY: I think I moved the
6 admission of that exhibit. I want to make
7 sure, No. 6.
8 EXAMINER MCCLUNG: Yes.
9 MS. DOWNEY: Okay. No further
10 questions.
11 EXAMINER MCCLUNG: All right, Mr.
12 Western. Thank you.
13 (Witness excused.)
14 (Witness sworn.)
15 THEREUPON came,
16 ADAM HIGGINBOTHAM
17 called as a witness on behalf of the Board
18 herein, who, having been first duly sworn
19 according to law, testified as follows:
20 DIRECT EXAMINATION
21 BY MS. DOWNEY:
22 Q State your name.

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1 A Adam L. Higginbotham.
2 Q Mr. Higginbotham, where do you
3 work?
4 A I work for the Board of Barbers and
5 Cosmetologists of the State of West Virginia.
6 Q Where do you live?
7 A I live in Putnam County.
8 Q How old are you?
9 A Twenty-nine.
10 Q For how long have you worked for
11 the barbers?
12 A Since December 2008.
13 Q Explain, please, what your function
14 is for the barbers.
15 A I am the director of the board. I
16 manage the staff and oversee finances, and
17 ensure that I report violations to the board
18 and complaints, among other things.
19 Q Do you know Mr. Dang?
20 A Yes.
21 Q How are you familiar with him?
22 A I have had a meeting with him in my

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1 office before, and I visited his shop once
2 before.
3 Q Are you familiar with his history
4 with the board?
5 A Yes.
6 Q And you have been present for the
7 testimony here today; correct?
8 A Yes.
9 Q Would you agree with what has been
10 testified to?
11 A Yes.
12 Q And you would agree that he has
13 been fined?
14 A Yes.
15 Q And has he paid his fines?
16 A I believe he's current on all of
17 his fines.
18 Q We've heard that once a complaint
19 is made to the board, that it is given to Ralph
20 Reed. Mr. Reed testified that he then does an
21 inspection.
22 A Yes. A complaint comes in to the

| Page 40 | Page 42 |
|--|---|
| <p>1 board. Once we get the complaint to the board, 2 we forward the complaint to the inspectors in a 3 certain territory if it's deemed necessary. 4 Q Does the board make that decision? 5 A No, that is a board level, the 6 staff level. 7 Q So a complaint comes in. Then what 8 do you do with the complaint? 9 A We investigate it. 10 Q Who is we? 11 A We as in the office staff will 12 investigate it and forward it to that 13 inspectors. 14 Q And what does that mean, you 15 investigate it? 16 A We look into the matter. After we 17 have looked into the matter, I present the 18 information at the next board meeting to the 19 board. 20 Q And then what does the board do? 21 A The board would determine 22 appropriate actions if necessary. Usually in a</p> | <p>1 Q And what were those complaints? 2 A I received four complaints within a 3 matter of two months of unlicensed workers. In 4 November through December of 2010 I received 5 four complaints. 6 Q And they called you up and 7 complained? 8 A Yes. 9 Q And then each and every time what 10 did you do with those complaints? 11 A There's a status where we determine 12 to investigate which we have, and then there's 13 the status of us sending a letter whenever we 14 receive a complaint. In this case we 15 investigated the complaint. 16 Q In each of these four complaints? 17 A Yes. They're all lumped into one, 18 and I believe they might have the complaint 19 there. But there's a complaint that's created. 20 It's either branched into an investigation or 21 it's a written form notifying the licensee of 22 the complaint. Eventually, after this is</p> |
| Page 41 | Page 43 |
| <p>1 case whenever there's a complaint, an 2 investigation is conducted and we send an 3 inspector there and a violation is noticed. 4 The board will state that the violation notice 5 is enough in regards to a complaint. 6 Q When you say a complaint comes in 7 to the board, sometimes is that complaint 8 anonymous or is it — 9 A Yes. 10 Q Sometimes it's not? 11 A Yes. 12 Q It's usually from a citizen not 13 associated with the — just somebody calling in 14 complaining? 15 A It could be a licensee. It could 16 be a non-licensee. It varies on who files 17 complaints. 18 Q It could be anybody? 19 A It could be anybody. 20 Q Did you receive complaints with 21 regard to Mr. Dang? 22 A Yes.</p> | <p>1 investigated and an action is determined to be 2 valid or not valid, that letter — 3 Q By who? 4 A By our inspectors investigating the 5 complaint. Then it will go to the letter form 6 where we will notify the individual of the 7 letter. 8 Q Let me see if I understand this. A 9 complaint phoned in. 10 A Yeah. 11 Q As staff you do an informal 12 investigation? 13 A Yes. 14 Q And then if you find some reason to 15 go forward more, then you give it to your 16 inspector, Mr. Reed. 17 A Yes. 18 Q And then Mr. Reed goes out and does 19 his investigation; correct? 20 A Yes. 21 Q Then his findings come back? 22 A Yes.</p> |

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1 Q And then what?

2 A If Ralph would not find an

3 unlicensed worker, then we would send a letter

4 to the shop owner to state that the complaint

5 has been filed and what it entails.

6 Q If he does find, and we've heard --

7 A If he does find, we still send the

8 letter out and request their response within 14

9 days as required by our complaint rules.

10 Q Did you do that with regard to Mr.

11 Dang?

12 A Yes.

13 Q And what happened?

14 A He responded to the complaints

15 late. We sent those certified. He responded

16 outside the 14 days. I gave it to the board at

17 the board meeting in November, and the board

18 determined that the violation notice was enough

19 at that time. And then once we determined it

20 was his multiple unlicensed worker violations

21 that he has a history of accumulating, I

22 brought it to the board in January and the

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1 board voted to conduct a hearing, because after

2 the third offense our rules state the board is

3 required, that an individual is supposed to be

4 brought before the board for --

5 Q A hearing?

6 A -- a hearing as required.

7 Q Is that because the license is at

8 stake?

9 A Yes.

10 Q And here we are?

11 A Yes, so we're up to date.

12 Q You mentioned meeting with Mr.

13 Dang. If I'm wrong in asking this question,

14 I've already asked it and it's already

15 answered, tell me. But what was the nature of

16 that visit?

17 A It was to see why he employs

18 unlicensed workers and to see if he had any

19 information on fraudulent documentation of some

20 problems that we have across the state, and he

21 was unwilling to answer anything.

22 Q So he did not answer one way or

Page 46

1 another whether he had unlicensed --

2 A No, he was not clear on his

3 answers.

4 Q What do you mean, he was not clear

5 on his answers?

6 A He just said he didn't know

7 anything.

8 Q He didn't know whether he had

9 unlicensed workers?

10 A He just said "I don't know."

11 Q In your communication with Mr.

12 Dang, did you have trouble understanding his

13 English or did he have --

14 A No.

15 Q Did he have trouble communicating

16 or understanding your questions?

17 A No. No, it seemed like he

18 understood all my questions.

19 Q In response, did he speak in

20 English?

21 A Yes.

22 Q And you understood what he said?

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1 A Yes.

2 Q Without difficulty?

3 A Yeah.

4 Q You also stated that you visited

5 his shop. What happened then?

6 A Patrick and I were going down to

7 Huntington Beauty School, which is right next

8 door to Royal Nails.

9 Q That's Patrick Western --

10 A Patrick Western.

11 Q -- who just testified?

12 A Who just testified. Huntington

13 Beauty School is next door or like three stores

14 down in the strip mall where Royal Nails is

15 located, which is the shop owned by Tony Dang.

16 We happened to just go in to the Royal Nails on

17 our way to Huntington.

18 Q And what happened?

19 A We were just checking to see if

20 every license was valid, and everything was at

21 that time.

22 Q Was Mr. Dang there?

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1 A Yes.

2 Q Did you speak with him?

3 A Yes.

4 Q Did you have any trouble

5 understanding his English?

6 A No.

7 Q And did he seem to have any trouble

8 understanding your questions?

9 A No.

10 MS. DOWNEY: No further questions.

11 EXAMINER MCCLUNG: Do you folks have any

12 questions of Mr. Higginbotham on what he just

13 testified to?

14 MS. TRAN: (Confers with respondent.)

15 No questions.

16 EXAMINER MCCLUNG: No questions?

17 MS. TRAN: No.

18 EXAMINER MCCLUNG: Thank you, Mr.

19 Higginbotham.

20 (Witness excused.)

21 MS. DOWNEY: And that completes our

22 case-in-chief.

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1 EXAMINER MCCLUNG: All right, thank you.

2 Now we're moving to your side of the case. So

3 at this time you may call any witnesses that

4 you may have. You may submit any documentation

5 that you think is in support of your case. And

6 you will be entitled to make any kind of

7 commentary on your case. And inasmuch as you

8 will be giving testimony, I'm going to ask both

9 of you to raise your right hands.

10 (Witnesses sworn.)

11 THEREUPON came,

12 TONY DANG

13 the Respondent herein, who, having been first

14 duly sworn according to law, testified as

15 follows:

16 TAMMY TRAN

17 the interpreter herein, who, having been first

18 duly sworn according to law, testifies as

19 follows:

20 MS. TRAN: (Confers with respondent.)

21 This is a letter from the customer that Mr.

22 Reed says that on November 16, 2010 that he saw

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1 the girl did the pedicure on the customer, that

2 that customer can be a witness that she —

3 MS. DOWNEY: I'm going to object to a

4 letter being introduced from somebody who is

5 not here as hearsay. We don't know who wrote

6 it. We don't know who signed it.

7 MR. DANG: I have a phone number.

8 MS. DOWNEY: They're not here for me to

9 cross-examine.

10 MR. DANG: I have a phone number to

11 contact her.

12 EXAMINER MCCLUNG: I don't think that

13 that would probably be appropriate. We

14 wouldn't know who the person was. We couldn't

15 see. You should have brought the person here.

16 MS. TRAN: She cannot be here because

17 she has to travel out of town. That's why we

18 tried to ask her to come, but she can't.

19 MR. DANG: Can you take a look at the

20 letter?

21 EXAMINER MCCLUNG: You can submit the

22 letter, but Ms. Downey's objections are valid.

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1 The lady is not here to be cross-examined.

2 I'll go ahead and admit it just to take a look

3 at it, but I doubt that I will give it any

4 probative value.

5 MR. DANG: They have her phone number in

6 the bottom.

7 EXAMINER MCCLUNG: Well, as I indicated,

8 if she had been here, you know, it certainly

9 would have —

10 MS. TRAN: We tried. She got a

11 business.

12 EXAMINER MCCLUNG: -- been fine. But

13 inasmuch as she -- and I'm not going to take

14 time to call her on the phone, and I don't

15 think that that evidence would probably be --

16 MR. DANG: So when he comes, the lady

17 sit down and keep the customer talking. That's

18 all, she sit there. So when he come in, he saw

19 the girl sit down. The girl just sit down and

20 started talking, that's it.

21 MS. TRAN: As the man is saying that,

22 when Mr. Reed come in, the girl just sit there

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1 to keep the customer company. That girl didn't
 2 do the pedicure on the customer, because Amanda
 3 already done the pedicure on the customer.
 4 That's why she moved to the next customer.
 5 That girl just sit there just to talk to the
 6 customer. She didn't even do anything on the
 7 customer.
 8 EXAMINER MCCLUNG: Who said that, that
 9 she didn't do anything to the customer?
 10 MS. TRAN: Just a friend of Amanda.
 11 MS. DOWNEY: Okay, I'm going to object
 12 to that testimony. I mean, that's just -- I
 13 mean, nobody is here for me to cross-examine
 14 them as to what they're saying. It's hearsay.
 15 And I can't cross-examine them. In fact, this
 16 letter is so vague as to pretty much being
 17 meaningless. So I object to that testimony.
 18 EXAMINER MCCLUNG: I'm going to sustain
 19 the objection to that testimony. I will admit
 20 this document just because there's been some
 21 discussion and will appear in the record on it.
 22 I'll call it Respondent's 1. Ms. Downey's

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1 objections will be noted even on that.
 2 (WHEREUPON, the letter was marked
 3 for purposes of identification as
 4 Respondent Exhibit No. 1.)
 5 EXAMINER MCCLUNG: Anything further from
 6 you folks?
 7 MR. DANG: That's it.
 8 MS. DOWNEY: I have some questions.
 9 CROSS-EXAMINATION
 10 BY MS. DOWNEY:
 11 Q Do you deny that you were fined?
 12 You heard, Mr. Dang, about the fines, that you
 13 had been fined a number of different times for
 14 unlicensed workers. Are you denying that?
 15 MS. TRAN: (Confers with respondent.)
 16 He said due to the Royal Nails that the first
 17 two times it was right. He didn't deny it.
 18 But the last time, the most recent one, that he
 19 deny it. He didn't agree on that fine.
 20 EXAMINER MCCLUNG: Did he pay the fine?
 21 MS. TRAN: (Confers with respondent.)
 22 Not the last one. The last one he didn't

Page 54

1 receive any fine.
 2 BY MS. DOWNEY:
 3 Q On July 29, 1999, did you pay a
 4 \$500 fine?
 5 A Yes, ma'am.
 6 Q On June 13, 2000, did you pay a
 7 \$100 fine?
 8 A Yes, ma'am.
 9 Q On June 1, 2001, did you pay a \$500
 10 fine?
 11 A 2001?
 12 Q Yes.
 13 A (Confers with interpreter.)
 14 Q Sir?
 15 A Yeah.
 16 Q On September 18, 2001, did you pay
 17 a \$1500 fine? Two fines, one for \$1,000 and
 18 one for \$500?
 19 MS. TRAN: On what day is that, ma'am?
 20 MS. DOWNEY: September 18, 2001.
 21 BY MS. DOWNEY:
 22 Q I'm sorry. Did you pay a \$1,000

Page 55

1 fine on September 18, 2001?
 2 A Yeah.
 3 Q Is your answer yes, sir?
 4 A Yes.
 5 Q On November 15, 2009, did you pay a
 6 \$500 fine? Maybe that's December, December 15,
 7 2009? It looks like this (pointing).
 8 A Yeah.
 9 Q On May 27, 2010, did you pay a
 10 fine?
 11 A Yeah.
 12 Q Yes?
 13 A Yes.
 14 Q Are you suggesting that on November
 15 16, 2010, you did not pay the fine?
 16 A I think I did.
 17 Q You did?
 18 A Yeah. (Confers with interpreter.)
 19 Q On the violation notice dated
 20 November 16, 2010, does that state that it is
 21 your third offense?
 22 MS. TRAN: (Confers with respondent.)

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1 He didn't receive any letter that tell him to
 2 pay for this one.
 3 MS. DOWNEY: So he did not pay it?
 4 MS. TRAN: No, ma'am.
 5 BY MS. DOWNEY:
 6 Q Are you aware that for the third
 7 offense there is no fine? In lieu of a fine
 8 there's supposed to be this hearing?
 9 A Yes.
 10 MS. DOWNEY: No further questions.
 11 EXAMINER MCCLUNG: Anything further from
 12 you?
 13 MS. TRAN: (Confers with respondent.)
 14 No, sir.
 15 (Witness stands aside.)
 16 MS. DOWNEY: I do have a rebuttal
 17 witness.
 18 EXAMINER MCCLUNG: Hi, again, Mr. Reed.
 19 You are still under oath.
 20 THEREUPON came,
 21 R A L P H R E E D
 22 recalled as a rebuttal witness on behalf of the

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1 Board herein, who, having been previously
 2 sworn, testified further as follows:
 3 REDIRECT EXAM (Rebuttal)
 4 BY MS. DOWNEY:
 5 Q Mr. Reed, you heard what Mr. Dang
 6 testified to with regard to what happened.
 7 When you walked in to that shop, did you see
 8 the unlicensed worker working on the left foot?
 9 A Yes, ma'am.
 10 Q Actually working on the foot?
 11 A Yes.
 12 MS. DOWNEY: No further questions.
 13 EXAMINER MCCLUNG: Do you have any
 14 questions of Mr. Reed on anything that he just
 15 testified to?
 16 MR. DANG: (Confers with interpreter.)
 17 No, sir.
 18 EXAMINER MCCLUNG: All right. Thank
 19 you, Mr. Reed.
 20 (Witness excused.)
 21 EXAMINER MCCLUNG: Do you have anything
 22 further?

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1 MR. DANG: (Confers with interpreter.)
 2 No, sir.
 3 EXAMINER MCCLUNG: All right. It
 4 appears to me that we may have reached the
 5 closure, at least on the record in this matter.
 6 I'm assuming that nobody wants to make closing
 7 statements, but I will entertain them if they
 8 would like.
 9 At this point we will go off record
 10 and discuss a schedule for filing proposed
 11 findings of fact and conclusions of law. I
 12 will attempt to explain that to you.
 13 (WHEREUPON, a discussion
 14 was had off the record.)
 15 EXAMINER MCCLUNG: Pursuant to off
 16 record discussions with the parties in this
 17 matter, it is determined that proposed findings
 18 of fact will be simultaneously filed with the
 19 hearing examiner on or before May 1, 2011.
 20 This matter is concluded. Thank you, ladies
 21 and gentlemen.
 22 (WHEREUPON, the hearing

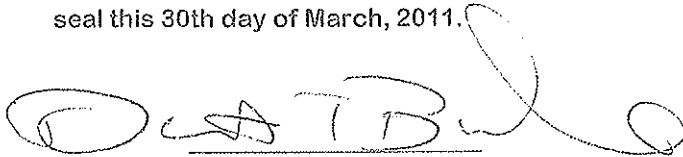
Page 59

1 was concluded at 12:02 p.m.)
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REPORTER'S CERTIFICATE

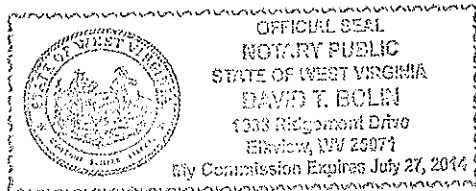
I, David T. Bolin, Court Reporter
and Notary Public in and for the State of West
Virginia, hereby certify that the foregoing is
a true and correct transcript of all
proceedings had and evidence adduced, together
with all the objections made, as stated in the
caption hereto, and transcribed into the
English language.

Given under my hand and official
seal this 30th day of March, 2011.



DAVID T. BOLIN
Court Reporter
and Notary Public

My commission expires July 27, 2014.



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WEST VIRGINIA STATE BOARD OF BARBERS AND COSMETOLOGISTS

1716 Pennsylvania Avenue, Suite 7, Charleston, WV 25302
Phone (304) 558-2924 Fax (304) 558-3450

As provided by Title 3 Legislative Rule, Series 7 of West Virginia State Board of Barbers and Cosmetologists, this fine is issued as described below.

Fine No: §3-7-2.12 Date Cited: 05-03-2003

☐ 1st offense \$ ☒ 2nd offense \$ 1,000.00 ☐ 3rd offense \$

Issued to: Tony Peng for violation of
§3-7-2.12

Inspector comments: Allowing an unlicensed person to work in
a licensed shop. and at NOOGER
a licensed shop
Refused to sign Raymond Reed
Inspector Signature

ACKNOWLEDGEMENT: I, the undersigned, acknowledge receipt of the above fine from the Board of Barbers and Cosmetologists, and understand that I am required to pay the above fine within ten (10) working days of the date cited hereon. Payment is to be made with money order or check and submitted to the above address along with this form. I further acknowledge that I have received a copy of the schedule of fines issued by the Board, and am aware of the violations. I also acknowledge that I have been advised of my right to appeal any part or all of the above mentioned fines, to the board.

| | |
|-----------|------|
| Signature | Date |
|-----------|------|

Write - Board Office • Yellow - Submit with Payment • Pink - Your Records • Goldenrod - Inspector

3-11-11

WEST VIRGINIA STATE BOARD OF BARBERS AND COSMETOLOGISTS

1716 Pennsylvania Avenue, Suite 7, Charleston, WV 25302

Phone (304) 558-2924 Fax (304) 558-3450

As provided by Title 3 Legislative Rule, Series 7 of West Virginia State Board of Barbers and Cosmetologists, this fine is issued as described below:

Fine No: \$3-7-2.12 Date Cited: 3-27-2003

☒ 1st offense \$ 500.00 ☐ 2nd offense \$ ☐ 3rd offense \$

Issued to: Tony Dang License # 31461

Inspector comments: Allowing an unlicensed Person (UT NELLYEN) to practice in a licensed shop # 12924.

Robert A. Reed
Inspector Signature

ACKNOWLEDGEMENT: I, the undersigned, acknowledge receipt of the above fine from the Board of Barbers and Cosmetologists, and understand that I am required to pay the above fine within ten (10) working days of the date cited hereon. Payment is to be made with money order or check and submitted to the above address along with this form. I further acknowledge that I have received a copy of the Schedule of Fines issued by the Board, and am aware of the violations. I also acknowledge that I have been advised of my right to appeal any part or all of the above mentioned fines, to the board.

Signature _____ Date 01/891

White - Board Office • Yellow - Submit with Payment • Pink - Your Records • Goldenrod - Inspector
01/891

WEST VIRGINIA STATE BOARD OF BARBERS AND COSMETOLOGISTS

1716 Pennsylvania Avenue, Suite 7, Charleston, WV 25302

Phone (304) 558-2924 Fax (304) 558-3450

As provided by Title 3 Legislative Rule, Series 7 of West Virginia State Board of Barbers and Cosmetologists, this fine is issued as described below:

Fine No: \$3-7-2.12 Date Cited: 3-27-2003

☒ 1st offense \$ 500.00 ☐ 2nd offense \$ ☐ 3rd offense \$

Issued to: Tony Dang License #

Inspector comments: Allowing an unlicensed Person (HONG THAK DANG) to practice in a licensed shop # 12924

Robert A. Reed
Inspector Signature

ACKNOWLEDGEMENT: I, the undersigned, acknowledge receipt of the above fine from the Board of Barbers and Cosmetologists, and understand that I am required to pay the above fine within ten (10) working days of the date cited hereon. Payment is to be made with money order or check and submitted to the above address along with this form. I further acknowledge that I have received a copy of the Schedule of Fines issued by the Board, and am aware of the violations. I also acknowledge that I have been advised of my right to appeal any part or all of the above mentioned fines, to the board.

Signature _____ Date 01/891

White - Board Office • Yellow - Submit with Payment • Pink - Your Records • Goldenrod - Inspector
01/891



23-11

FINE

FINE

11-05-78
SLISIS

complainant's
Exhibit

3 3-11-11

WEST VIRGINIA STATE BOARD OF BARBERS AND COSMETOLOGISTS

1716 Pennsylvania Avenue, Suite 7, Charleston, WV 25302
Phone (304) 558-2924 Fax (304) 558-3450

As provided by Title 3 Legislative Rule, Series 7 of West Virginia State Board of Barbers and Cosmetologists, this fine is issued as described below:

File No.: 3-7-2, 12 Date Cited: 11/15/2007

☒ 1st offense \$ 2291 ☐ 2nd offense \$ ☐ 3rd offense \$

Issued to: David W. Nguyen
1000 W. 40th St

Inspector comments: At 11:00 AM on 11/15/07
I inspected the shop at 1000 W. 40th St.
and found the following violations:

[Signature]
Inspector Signature

ACKNOWLEDGEMENT: I, the undersigned, acknowledge receipt of the above fine from the Board of Barbers and Cosmetologists, and understand that I am required to pay the above fine within ten (10) working days of the date cited hereon. Payment is to be made with money order or check and submitted to the above address along with this form. I further acknowledge that I have received a copy of the Schedule of Fines issued by the Board, and am aware of the violations. I also acknowledge that I have been advised of my right to appeal any part or all of the above mentioned fines, to the board.

Signature _____ Date _____

White - Board Office • Yellow - Submit with Payment • Pink - Your Records • Goldenrod - Inspector

2010-47



West Virginia State
Board of Barbers and Cosmetologists
1201 DUNBAR AVE.
DUNBAR, WV 25064

Complainant's
Exhibit

4 3-11-11

This is a violation notice of West Virginia Code, Chapter 30, Article 27, and/or the rules established through the authority of Chapter 30, Article 27.

☒ Shop License # 15151 Date 5-27-2010

☐ Individual Name Royal Nails & Spa

☒ Violation Notice Cite # 3-7-2.12 ☐ 1st Off. ☐ 3rd Off.

☐ Unsanitary Practice ☒ 2nd Off. ☐ Warn

By initialing the box below, I understand the Board office will contact me concerning this notice within 45 days.

Licensee Signature [Signature] Inspector Signature [Signature]

Additional Comments: Roofie, They Nguyen

Comments: Allowing an unlicensed person to

LDS # 2010-166

Complainant's
Exhibit

53-11-11



VIOLATION NOTICE

West Virg. State
Board of Barbers and Cosmetologists
1201 Dunbar Ave.
Dunbar, WV 25064

C-00

This is a violation notice of West Virginia Code, Chapter 30, Article 27,
and/or the rules established through the authority of Chapter 30, Article 27.

☐ Shop

License #

31461

Date

11-16-20

☒ Individual

Name

Tony Dancy

☐ Violation Notice

Cite #

3-7-2012

☐ 1st Off.

☐ 2nd Off.

☐ Unsanitary Practice

☒ 3rd Off.

☐ Warn

By initialing the box below, I understand the Board office will contact me concerning this notice within 4

Licensee Signature

[Signature]

Inspector Signature

[Signature]

Comments

Allowing an unlicensed

Addl. Comments

Person to operate...

LOG #

Record of Fines

2/18/98 Through 1/21/03

1/24/03

Page 1

Complainant's Exhibit

3-11-11

| Date | Description | Memo | Category | Amount |
|----------|---|--|-----------------|----------|
| 5/10/99 | BALANCE 2/17/98 | | | 0.00 |
| 5/10/99 | Opening Balance | | | 0.00 |
| 5/10/99 | Trang Tuong - Lovely Nails #11548 | 1st offense \$500.00 pd 6/2/99 | [Fine Log] 2.12 | 500.00 |
| 5/21/99 | Thomas Nguyen - Second Nails #11619 | 1st offense \$500.00 pd 5/26/99 | 2.12 | 500.00 |
| 5/21/99 | Hang T. Lee - Second Nails #11619 | 1st offense \$500.00 pd 5/26/99 | 2.10 | 500.00 |
| 5/21/99 | Thomas S. Jennings - Scotty's Family Traditions | 1st offense \$200.00 pd \$25 9/6/00 | 2.5 | 25.00 |
| 5/24/99 | To Oanh Thi Nguyen - Pro Nails #11223 | 1st offense \$500.00 6/2/99 | 2.12 | 500.00 |
| 5/24/99 | Giang T. Nguyen - Pro Nails #11223 | 1st offense \$500.00 pd 6/2/99 | 2.10 | 500.00 |
| 7/29/99 | Dung Hoang Dang - Nail & Tanning Salon #10917 | 1st offense \$500.00 10/18/99 | 2.12 | 500.00 |
| 7/29/99 | Bic Thuy Thi Ly - Nail & Tanning Salon #10917 | 1st offense \$500.00 pd 8/3/99 | 2.10 | 500.00 |
| 8/25/99 | John M. Brown #31970 | 1st offense \$100.00 pd 6/8/99 | 2.2 | 100.00 |
| 12/1/99 | Vuong (Jimmy) Tran - Bally Nails #10440 | 1st offense \$500.00 pd 12/20/99 | 2.12 | 500.00 |
| 12/1/99 | Vuong (Jimmy) Tran - Bally Nails #10440 | 2nd offense \$1,000.00 pd 2/24/00 | 2.12 | 1,000.00 |
| 12/1/99 | John Brown - The Barber Shop #11046 | 1st offense \$100.00 pd 6/8/00 | 2.4 | 200.00 |
| 12/21/99 | Kelvin Phi Nguyen | 1st offense \$500.00 pd 2/24/00 | 2.10 | 500.00 |
| 1/14/00 | Brad McGeary - Famous Hair #10330 | 1st offense \$500.00 pd 2/24/00 | 2.10 | 500.00 |
| 1/14/00 | Debbie Hartzell - Famous Hair #10330 | 1st offense \$300.00 pd 1/24/00 | 2.8 | 300.00 |
| 2/17/00 | Thai Hai Duc Nguyen - Glamour Nails #11729 | 1st offense \$500.00 pd 1/24/00 | 2.12 | 500.00 |
| 2/24/00 | Kim Chi T. Tran - Glamour Nails #11729 | 1st offense \$500.00 | 2.10 | 0.00 |
| 2/24/00 | Timothy Thin Tri Nguyen - Glamour Nails #11729 | 1st offense \$500.00 pd 3/9/00 | 2.12 | 500.00 |
| 3/1/00 | Thuan Thi Ha - Regal Nails #11857 | 1st offense \$500.00 pd 3/20/00 | 2.10 | 500.00 |
| 3/1/00 | Tuan Q. Dinh - Regal Nails #11857 | 1st offense \$500.00 pd 3/15/00 | 2.10 | 500.00 |
| 3/9/00 | Viet Phung Tran - Regal Nails #11857 | 1st offense \$500.00 pd 6/28/00 | 2.12 | 500.00 |
| 3/9/00 | Robert J. Keiffer - Hair Masters #11236 | 2nd offense \$100.00 pd 6/28/00 | 2.49 | 100.00 |
| 4/11/00 | Ly Ly Hang Nguyen - Bally Nails | 1st offense \$300.00 (shop closed 5/2... | 2.8 | 0.00 |
| 4/17/00 | Tuan Q. Dinh - T & M Nails #11874 | 1st offense \$500.00 pd 6/28/00 | 2.12 | 500.00 |
| 4/17/00 | Tuan K. Nguyen - Bally Nails | 1st offense \$500.00 (shop closed 5/2... | 2.12 | 500.00 |
| 4/17/00 | Jefferson Nguyen - T & M Nails #11874 | 1st offense \$300.00 | 2.8 | 0.00 |
| 6/7/00 | Juanita Davis - Juanita's Colony Shop | 2nd offense \$100.00 pd 7/29/00 | 2.49 | 100.00 |
| 6/13/00 | Thi Ngoc L. Nguyen - Nail & Tanning Salon #11854 | 1st offense \$500.00 pd 6/22/00 | 2.12 | 500.00 |
| 6/14/00 | Diane Daugherty - Classic Cutters #11802 | 1st offense \$500.00 pd 6/26/00 | 2.10 | 500.00 |
| 6/14/00 | Melissa Miser - Classic Cutters #11802 | 1st offense \$200.00 pd 5/31/01 | 2.4 | 200.00 |
| 6/26/00 | John Cale - Phoenix Salon #9744 | 1st offense \$100.00 (waived) | 2.2 | 0.00 |
| 6/27/00 | Tammie Powell #29517 | 1st offense \$200.00 pd 7/3/00 | 2.22 | 200.00 |
| 6/29/00 | Larry Sipple - Larry's Cut Above | 1st offense \$500.00 pd 7/12/00 | 2.12 | 500.00 |
| 7/5/00 | Alicia Lester - Glade Springs Racquet Club & Spa #12... | 1st offense \$200.00 | 2.22 | 0.00 |
| 7/6/00 | Juanita Davis - Juanita's Colony Shop #11071 | 1st offense \$500.00 pd 7/31/00 | 2.11 | 500.00 |
| 7/13/00 | Adam Truong - Fashion Nail & Tanning | 1st offense \$500.00 pd 7/31/00 | 2.10 | 500.00 |
| 7/13/00 | Thu Ha Thi Nguyen - Fashion Nail & Tanning | 1st offense \$500.00 | | |

Record of Fines

1/24/03

2/18/98 Through 1/21/03

Page 2

| Date | Description | Memo | Category | Amount |
|----------|---|--|----------|----------|
| 7/13/00 | Adam Truong - Fashion Nail & Tanning | 1st offense \$500.00 pd 7/31/00 | 2.10 | 500.00 |
| 7/14/00 | Francis Huu Tri Nguyen - Nail Famous #10039 | 2nd offense \$50.00 pd 8/10/00 | 2.27 | 50.00 |
| 7/14/00 | Francis Huu Tri Nguyen - Nail Famous #10039 | 2nd offense \$50.00 pd 8/10/00 | 2.51 | 50.00 |
| 7/14/00 | Francis Huu Tri Nguyen - Nail Famous #10039 | 2nd offense \$50.00 pd 8/10/00 | 2.47 | 50.00 |
| 7/14/00 | Smartstyle Family Hair #11798 | 2nd offense \$100.00 pd 8/15/00 | 2.45 | 100.00 |
| 8/18/00 | Debra Dickerson - Hair Plus #7326 | 2nd offense \$50.00 pd 10/2/00 | 2.54 | 50.00 |
| 8/18/00 | Debra Dickerson - Hair Plus #7326 | 2nd offense \$100.00 pd 10/2/00 | 2.45 | 100.00 |
| 8/28/00 | Thomas Jennings | 1st offense \$200.00 (owes \$175.00) | 2.5 | 25.00 |
| 8/31/00 | Kim Chi T. Tran - Glamour Nails #11729 | 1st offense \$500.00 pd 11/29/00 | 2.12 | 500.00 |
| 8/31/00 | Thu Thi Tran - Glamour Nails #11729 | 1st offense \$500.00 pd 11/29/00 | 2.10 | 500.00 |
| 9/19/00 | Alicia Devicia Beauty Shop #11682 | 1st offense \$200.00 | 2.4 | 0.00 |
| 9/22/00 | Gina Harbaugh - Hair Kutz #11014 | 1st offense \$200.00 (closed 11/3/00) | 2.4 | 0.00 |
| 9/27/00 | William E. Ball #20872 | 1st offense \$100.00 pd 3/13/01 | 2.2 | 100.00 |
| 9/27/00 | William E. Ball #20872 | 1st offense \$200.00 pd 10/15/00 | 2.5 | 200.00 |
| 10/4/00 | Chong S. Wamsley - Webster Springs Continous Car... | 2nd offense \$50.00 10/24/00 | 2.1 | 50.00 |
| 10/24/00 | Alicia Devicia Beauty Shop #11682 | 1st offense \$200.00 (waived 10/25/00) | 2.4 | 0.00 |
| 10/25/00 | Earl A. Gay - Racine Barber Shop #11845 | 2nd offense \$100.00 pd 2/1/01 | 2.47 | 100.00 |
| 11/3/00 | Gina Harbaugh - Hair Kutz #11014 | 1st offense \$200.00 | 2.4 | 0.00 |
| 11/24/00 | John Cale - Phoenix Salon #9744 | 2nd offense \$500.00 pd 3/9/01 | 2.4 | 500.00 |
| 11/24/00 | Tammie Powell #29517 | 1st offense \$100.00 (waived) | 2.2 | 0.00 |
| 11/24/00 | Jimmy Tran - Top Nails #11853 | 2nd offense \$100.00 pd 12/5/00 | 2.40 | 100.00 |
| 12/15/00 | John J. Brown #33831 | 1st offense \$300.00 pd \$100/\$35/\$165 | 2.8 | 300.00 |
| 1/12/01 | Daniel R. Mathena - Dan's Barber Shop #12219 | 2nd offense \$100.00 (waived 1/23/01) | 2.49 | 0.00 |
| 1/18/01 | Thao That Ton - Nails Pizazz #11032 | 1st offense \$50.00X2 pd 3/15/01 | 2.3 | 100.00 |
| 1/19/01 | Candace L. Alqutub - Sunsational #11734 | 1st offense \$200.00 pd 3/19/01 | 2.4 | 200.00 |
| 1/20/01 | Nam Thai Phan - Hollywood Nails #11707 | 1st offense \$500.00 X2 pd 2/22/01 | 2.12 | 1,000.00 |
| 2/14/01 | Tonya Riley - Famous Hair #10205 | 1st offense \$500.00 pd 2/27/01 | 2.10 | 500.00 |
| 3/9/01 | Nam Thai Phan - Hollywood Nails #11707 | 2nd offense \$1000.00 pd 3/13/01 | 2.12 | 1,000.00 |
| 3/15/01 | Anna Knighting - Smartstyle #11139 | 1st offense \$300.00 | 2.8 | 0.00 |
| 3/15/01 | Virginia Gageby - Smartstyle #11139 | 1st offense \$300.00 pd 4/23/01 | 2.8 | 300.00 |
| 3/15/01 | Regis Corp (Smartstyle #11139) | 1st offense \$500.00 (2) | 2.12 | 1,000.00 |
| 3/22/01 | Dawn Siler #M01108 | 1st offense \$200.00 pd 8/27/02 | 2.6 | 200.00 |
| 3/23/01 | Phong T. La - Bally Nails #12345 | 1st offense \$300.00 pd 4/13/01 | 2.8 | 300.00 |
| 3/23/01 | Hai Phu Pham - Bally Nails #12345 | 1st offense \$500.00 pd 4/12/01 | 2.12 | 500.00 |
| 4/4/01 | Chin Luong - Pro Nails #10677 | 1st offense \$500.00 pd 4/13/01 | 2.12 | 500.00 |
| 4/4/01 | Chin Luong - Pro Nails #10677 | 2nd offense \$100.00 pd 4/13/01 | 2.39 | 100.00 |
| 4/9/01 | Tony H. Ho - Top Nails #12418 | 1st offense \$500.00 pd 4/18/01 | 2.12 | 500.00 |
| 4/9/01 | Thay Thuy Al Nguyen - Top Nails #12418 | 1st offense \$500.00 pd 7/27/01 | 2.10 | 500.00 |
| 4/10/01 | Quan L. Pham/Johnny Duy Pham - Nails II #12148 | 1st offense \$150.00 pd 4/17/01 | 2.30 | 150.00 |
| 4/12/01 | Cher Johnson - California Cutz #10387 | 2nd offense \$100.00 pd 4/23/01 | 2.47 | 100.00 |
| 4/12/01 | Cher Johnson - California Cutz #10387 | 2nd offense \$100.00 pd 4/23/01 | 2.46 | 100.00 |

Record of Fines

2/18/98 Through 1/21/03

1/24/03

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| Date | Description | Memo | Category | Amount |
|----------|--|---------------------------------------|------------|----------|
| 4/12/01 | Cher Johnson - California Cutz #10387 | 2nd offense \$100.00 pd 4/23/01 | 2.45 | 100.00 |
| 4/12/01 | Cher Johnson - California Cutz #10387 | 2nd offense \$100.00 pd 4/23/01 | 2.42 | 100.00 |
| 4/12/01 | Cher Johnson - California Cutz #10387 | 2nd offense \$50.00 pd 4/23/01 | 2.37 | 50.00 |
| 4/19/01 | Outlooks For Hair #9117 | 1st offense \$500.00 pd 7/6/01 | 2.12 | 500.00 |
| 4/25/01 | Daniel R. Mathena - Dan's Barber Shop #12219 | 2nd offense \$100.00 | 2.49 | 0.00 |
| 4/30/01 | Timmy V. Nguyen - T & M Nails #12229 | 1st offense \$500.00 pd 6/28/01 | 2.12 | 500.00 |
| 5/16/01 | John Tran - Nails 2001 #12293 | 1st offense \$500.00 | 2.10 | 0.00 |
| 5/16/01 | Kim Tuyen N. Vo - Nails 2001 #12293 | 1st offense \$500.00 pd 5/21/01 | 2.12 | 500.00 |
| 5/30/01 | Thao That Ton - Nails Pizazz #12437 | 1st offense \$500.00 pd 6/19/01 | 2.12 | 500.00 |
| 6/1/01 | Nail & 2001 Salon #12055 | 1st offense \$500.00 | 2.10 | 0.00 |
| 6/1/01 | Quan Nguyen - Nail & 2001 Salon #12055 | 1st offense \$500.00 pd 9/17/01 | 2.12 | 500.00 |
| 6/6/01 | Regina E. Love #21448 | 1st offense pd 6/8/01 | 2.2 | 100.00 |
| 6/14/01 | Melanie David - Adena Styling Salon #7379 | 2nd offense \$100.00 (closed 3/1/02) | 2.47 | 0.00 |
| 6/19/01 | Melissa Weaver - The Rage, A Hair Company 6917 | 1st offense \$500.00 pd 3/75/00 | 2.12 | 375.00 |
| 6/21/01 | Roger E. Thorne - Roger's Barber Shop #128 | 2nd offense \$50.00 pd 1/17/03 | 2.37 | 50.00 |
| 6/21/01 | Roger E. Thorne - Roger's Barber Shop #128 | 2nd offense \$50.00 pd 1/17/03 | 2.44 | 50.00 |
| 6/21/01 | Roger E. Thorne - Roger's Barber Shop #128 | 2nd offense \$100.00 pd 1/17/03 | 2.47 | 100.00 |
| 6/21/01 | Roger E. Thorne - Roger's Barber Shop #128 | 2nd offense \$100.00 pd 1/17/03 | 2.54 | 50.00 |
| 6/21/01 | Roger E. Thorne - Roger's Barber Shop #128 | 2nd offense \$100.00 pd 1/17/03 | 2.52 | 50.00 |
| 6/26/01 | Hoa Van Nguyen | 1st offense \$500.00 (closed 8/31/02) | 2.11 | 0.00 |
| 6/26/01 | Leslie Goff | 1st offense \$300.00 pd \$200 9/7/01 | 2.8 | 200.00 |
| 7/5/01 | Peggy Jordan - Peggy's Shapes & Styles | 1st offense \$200.00 | 2.2 | 0.00 |
| 7/10/01 | Daniel R. Mathena - Dan's Barber Shop #12219 | 2nd offense \$100.00 | 2.49 | 0.00 |
| 7/17/01 | Morgan Ta - Pretty Nails #10830 | 1st offense \$500.00 pd 7/25/01 | 2.12 | 500.00 |
| 7/17/01 | Tran Nguyen - Pretty Nails #10830 | 1st offense \$300.00 pd 7/25/01 | 2.8 | 300.00 |
| 7/17/01 | Tony H. Ho - Top Nails #12418 | 2nd offense \$1000.00 pd 8/27/01 | 2.12 | 1,000.00 |
| 7/17/01 | Nghia Cong Lo - Pro Nails & Hair #12340 | 1st offense \$500.00 pd 7/24/01 | 2.12 | 500.00 |
| 7/17/01 | Vickie E. Williams #18682 | 1st offense \$100.00 pd 7/25/01 | 2.2 | 100.00 |
| 7/18/01 | Thanh V. Dang - Second Nails #12224 | 1st offense \$500.00 pd 8/10/01 | 2.12 | 500.00 |
| 7/24/01 | Sandy Mui Loi - Second Nails #12224 | 1st offense \$500.00 pd 8/13/01 | 2.10 | 500.00 |
| 7/25/01 | Dreama Schrom - The Salon #11869 | 1st offense \$500.00 pd 7/31/01 | 2.12 | 500.00 |
| 7/26/01 | Tuyen M. Nguyen | 1st offense \$500.00 (closed 8/31/02) | 2.10 | 0.00 |
| 8/3/01 | Diane Rouss - Shear Image #8144 | 2nd offense \$200.00 pd 8/21/01 | 2.31; 2.39 | 200.00 |
| 8/13/01 | Barbara Nelson - Hot Heads Hair Design #11700 | 2nd offense \$100.00 pd 8/21/01 | 2.31 | 100.00 |
| 8/31/01 | Kimberly Diehl #32036 | 2nd offense \$50.00 pd 10/1/01 | 2.1 | 50.00 |
| 9/11/01 | Johnny Duy Pham - Nails II #12148 | 2nd offense \$100.00 (waived) | 2.46 | 0.00 |
| 9/11/01 | Johnny Duy Pham - Nails II #12148 | 2nd offense \$100.00 (waived) | 2.44 | 0.00 |
| 9/11/01 | Johnny Duy Pham - Nails II #12148 | 2nd offense \$100.00 | 2.10 | 0.00 |
| 9/18/01 | Quan Nguyen - Nail & 2001 Salon #12055 | 2nd offense \$500.00 pd 12/12/01 | 2.12 | 500.00 |
| 9/26/01 | Holiday Hair Fashions #6300 | 2nd offense \$100.00 pd 11/5/01 | 2.44 | 100.00 |
| 10/19/01 | John F. Reid - John's Hair Salon #8467 | 2nd offense \$100.00 pd 11/1/01 | 2.30 | 100.00 |

Record of Fines

1/24/03

2/18/98 Through 1/21/03

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| Date | Description | Memo | Category | Amount |
|----------|---|--|------------------|----------|
| 10/24/01 | Holiday Hair Fashions #6300 | 2nd offense \$100.00 pd 11/5/01 | 2.46 | 100.00 |
| 11/26/01 | Le Nguyen - T & M Nails #12229 | 1st offense \$500.00 | 2.10 | 0.00 |
| 11/26/01 | Timmy Nguyen - T & M Nails #12229 | 2nd offense \$1000.00 pd 12/13/01 | 2.12 | 1,000.00 |
| 11/27/01 | Steve Tran - Citi Nails #11545 | 2nd offense \$100.00 pd 12/10/01 | 2.44 | 100.00 |
| 11/27/01 | Steve Tran - Citi Nails #11545 | 2nd offense \$100.00 pd 12/6/01 | 2.43 | 100.00 |
| 12/11/01 | Hair Plus #4904 | 2nd offense \$50.00 pd 1/15/02 | 2.54 | 50.00 |
| 1/8/02 | Chiarra Dickerson - Class Cutters #9316 | 2nd offense \$100.00 pd 4/24/02 | 2.47 | 100.00 |
| 1/9/02 | House Of Dimitri II #12143 | 1st offense \$300.00 pd 4/4/02 | 2.8 | 300.00 |
| 1/9/02 | Fahame Ghareeb - House Of Dimitri II #12143 | 1st offense \$500.00 pd 3/14/02 | 2.12 | 500.00 |
| 1/25/02 | Tara Williams - The College Town Hair'um | 2nd offense \$100.00 pd 5/13/02 | 2.51 | 100.00 |
| 2/1/02 | Hai Phu Pham - Bally Nails #12345 | 1st offense \$500.00 pd 2/26/02 | 2.12 | 500.00 |
| 2/8/02 | Roger E. Thorne - Roger's Barber Shop #128 | 3rd offense \$100.00 | 2.37 | 0.00 |
| 2/8/02 | Roger E. Thorne - Roger's Barber Shop #128 | 3rd offense \$100.00 | 2.54 | 0.00 |
| 2/8/02 | Roger E. Thorne - Roger's Barber Shop #128 | 3rd offense \$300.00 | 2.44 | 0.00 |
| 2/8/02 | Roger E. Thorne - Roger's Barber Shop #128 | 3rd offense \$300.00 | 2.47 | 0.00 |
| 2/8/02 | Roger E. Thorne - Roger's Barber Shop #128 | 3rd offense \$100.00 | 2.52 | 0.00 |
| 3/21/02 | Tena L. Havens #29315 | 1st offense \$100.00 pd 4/10/02 | 2.2 | 100.00 |
| 4/2/02 | Louise Johnston #21067 | 1st offense \$100.00 pd 10/1/02 | 2.2 | 100.00 |
| 4/8/02 | Rose Pendry #27654 | 1st offense \$100.00 pd 4/26/02 | 2.2 | 100.00 |
| 4/8/02 | Carolyn Woods - Da Spot LLC | 1st offense \$200.00 | 2.6 | 0.00 |
| 4/8/02 | Cortez McNeil - Da Spot LLC | 1st offense \$500.00 | 2.11 | 0.00 |
| 4/19/02 | Chiarra Dickerson #33139 | 1st offense \$100.00 | 2.2 | 0.00 |
| 4/22/02 | Becki Fink #38870 | 1st offense \$100.00 | 2.2 | 0.00 |
| 4/22/02 | Donna Fillingier #32413 | 1st offense \$100.00 | 2.2 | 0.00 |
| 5/3/02 | Dorothy Stapleton #25086 | 1st offense \$100.00 pd 4/29/02 | 2.2 | 100.00 |
| 5/15/02 | Peter Vo - T & M Nails #12854 | 1st offense \$100.00 pd 4/24/02 | 2.2 | 100.00 |
| 5/15/02 | Nhung Thi My Ngo | 1st offense \$500.00 | 2.12 | 500.00 |
| 5/16/02 | Rudolph Valentine #15634 | 1st offense \$500.00 | 2.10 | 500.00 |
| 5/24/02 | Tammy Chappell 32578 | 1st offense \$100.00 pd 9/5/02 | 2.2 | 100.00 |
| 6/7/02 | Raymond Coleman #33306 | 1st offense \$100.00 pd 6/14/02 | 2.2 | 100.00 |
| 6/14/02 | Phuc Tran (unlicensed) | 1st offense \$100.00 pd 9/26/02 | 2.2 | 100.00 |
| 6/14/02 | Cam Tri Tran - Nail & Tanning Salon #12264 | 1st offense \$500.00 pd 7/8/02 | 2.10 | 500.00 |
| 7/3/02 | Citi Nails #12793 | 1st offense \$500.00 pd 7/8/02 | 2.12 | 500.00 |
| 7/12/02 | Heather Rice #33997 | ? | ? | 1,000.00 |
| 7/12/02 | James Robert Johnson | 1st offense \$300.00 pd 7/29/02 | 2.8 | 300.00 |
| 7/23/02 | Holiday Hair Fashions #8118 | 1st offense \$300.00 pd 7/29/02 | 2.8 | 300.00 |
| 7/30/02 | David Mayfield - #18895 | 2nd offense \$100.00; \$100.00; \$50.00... | 2.40; 2.31; 2.54 | 250.00 |
| 7/30/02 | David Mayfield - #18895 | 1st offense \$100.00 | 2.2 | 0.00 |
| 7/30/02 | David Mayfield - #18895 | 1st offense \$100.00 | 2.37 | 0.00 |
| 7/30/02 | David Mayfield - #18895 | 1st offense \$200.00 | 2.4 | 0.00 |
| 7/30/02 | David Mayfield - #18895 | 1st offense \$200.00 | 2.5 | 0.00 |
| 7/30/02 | David Mayfield - #18895 | 1st offense \$300.00 | 2.8 | 0.00 |

Record of Fines

1/24/03

2/18/98 Through 1/21/03

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| Date | Description | Memo | Category | Amount |
|----------|--|---|----------|-----------|
| 7/30/02 | David Mayfield - #18895 | 1st offense \$400.00 | 2.9 | 0.00 |
| 8/1/02 | Johnny Ray Browning #26721 | 1st offense \$400.00 pd 8/12/02 | 2.9 | 400.00 |
| 8/2/02 | Peggy Cisco - Peggy's Beauty Shop #4978 | 1st offense \$200.00 (waived 11/21/02) | 2.4 | 0.00 |
| 8/14/02 | Le Phuong #M00898 - Pro Nails #10677 | 1st offense \$400.00 | 2.9 | 0.00 |
| 8/14/02 | Le Phuong #M00898 - Pro Nails #10677 | 2nd offense \$100.00 | 2.33 | 0.00 |
| 8/14/02 | Glade Springs Racquet Club & Spa #12034 | 1st offense \$300.00 | 2.8 | 0.00 |
| 8/16/02 | Catherine Nutter - Candu, LLC Hair Club For Men #11... | 1st offense \$400.00 pd 8/26/02 | 2.9 | 400.00 |
| 8/20/02 | Diem T. Nguyen | 1st offense \$500.00 pd 2/19/02 | 2.13 | 500.00 |
| 9/3/02 | Giang Nhat Truong Nguyen (unlicensed) | 1st offense \$500.00 pd 10/1/02 | 2.10 | 500.00 |
| 9/3/02 | Thanh V. Dang - Second Nails #12224 | 2nd offense \$1000.00 pd 9/16/03 | 2.12 | 1,000.00 |
| 9/4/02 | Joneica R. Jones #33553 | 2nd offense \$100.00 pd 12/2/02 | 2.45 | 100.00 |
| 9/4/02 | Cody Neely - Reflections #13052 | 1st offense \$200.00 pd 9/19/03 | 2.5 | 200.00 |
| 9/4/02 | Joneica R. Jones #33553 | 2nd offense \$100.00 pd 1/3/03 | 2.46 | 100.00 |
| 9/5/02 | Anh T. Hoang - Nail & Tanning #12977 | 1st offense \$500.00 X 3 | 2.12 | 0.00 |
| 9/5/02 | Body And Sol Salon #12352/Alisha Patterson #33249 | 1st offense \$500.00 pd 10/2/02; 12/27... | 2.12 | 500.00 |
| 9/5/02 | Christine Newlon | 1st offense \$300.00 pd 11/20/02 | 2.8 | 300.00 |
| 9/5/02 | Dang (Kelvin) Hoang (unlicensed) | 1st offense \$300.00 pd 9/19/02 | 2.8 | 300.00 |
| 9/5/02 | Phuc V. Tran (unlicensed) | 1st offense \$300.00 pd 1/19/02 | 2.8 | 300.00 |
| 9/5/02 | Quoc Anh Hoang (unlicensed) | 1st offense \$300.00 pd 9/19/02 | 2.8 | 300.00 |
| 9/19/02 | Susan White #32892 - Mane Attraction #12393 | 2nd offense \$100.00 pd 10/1/02 | 2.51 | 100.00 |
| 11/6/02 | Daniel R. Mathena - Dan's Barber Shop #12219 | 3rd offense \$300.00 | 2.49 | 0.00 |
| 11/8/02 | Diem Nguyen (Donna) - Pro Nails #12340 | 1st offense \$500.00 pd 11/14/02 | 2.10 | 500.00 |
| 11/8/02 | Nghia C. Lo (Kenny) - Pro Nails & Hair #12340 | 2nd offense \$200.00 (renewed 11/18) | 2.12 | 1,000.00 |
| 11/13/02 | Donald Gibson - The Cut Above #7104 | 2nd offense \$100.00 pd 12/12/02 | 2.4 | 0.00 |
| 11/14/02 | Tena L. Havens #29315 | 1st offense \$100.00 pd 1/10/03 | 2.45 | 100.00 |
| 11/15/02 | Arthur J. England #12340/England's Barber Shop #13... | 1nd offense \$100.00 | 2.22 | 200.00 |
| 12/6/02 | Heather Cook - Hair Essentials #11532 | 1st offense \$200.00 pd \$100 12/17/02 | 2.51 | 0.00 |
| 12/12/02 | Peggy Abbott - Shop #011126 | 1st offense \$200.00 | 2.4 | 100.00 |
| 12/19/02 | Pamela Cheatwood - Pam's Professional Profile #9973 | 1st offense \$200.00 pd 1/22/03 | 2.4 | 0.00 |
| 12/19/02 | Heartland Beauty Shop #4634 | 1st offense \$200.00 pd \$50 12/30/02 | 2.4 | 200.00 |
| 12/20/02 | Earl Gay - Racine Barber Shop #11845 | 1st offense \$200.00 | 2.4 | 0.00 |
| 12/20/02 | Ronnie Robinette - Ron's Beauty Corner #12153 | 1st offense \$500.00 pd 1/16/03 | 2.4 | 0.00 |
| 12/20/02 | Duc Hoang - US Nails #012466 | 1st offense \$500.00 | 2.12 | 500.00 |
| 1/2/03 | Van Tsu Hoang - Unlicensed | 1st offense \$500.00 | 2.10 | 0.00 |
| 1/2/03 | Nhut Q. Nguyen - L.A. Nails #12211 | 1st offense \$500.00 | 2.12 | 0.00 |
| 1/21/03 | Diem Thi Nguyen - L.A. Nails #12211 | 1st offense \$300.00 | 2.8 | 0.00 |
| 1/21/03 | | | | |
| | TOTAL 2/18/98 - 1/21/03 | | | 47,825.00 |
| | BALANCE 1/21/03 | | | 47,825.00 |

Record of Fines

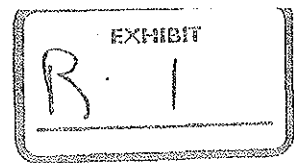
2/18/98 Through 1/21/03

1/24/03

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| Date | Description | Memo | Category | Amount |
|------|----------------|------|----------|------------------|
| | TOTAL INFLOWS | | | 47,825.00 |
| | TOTAL OUTFLOWS | | | 0.00 |
| | NET TOTAL | | | <u>47,825.00</u> |

12/31/2010



To whom it may concern:

I have been a customer of Royal Nail and Spa for quite a long time. On the evening of Nov. 16 I was there for my bi-weekly pedicure with Cindy. After Cindy was finished she introduced me to Yvonne who sat with me while my polish dried. Royal Nail and Spa is always clean and professional and there is no where else I would rather go. If you would like to discuss my service with Royal Nail and Spa any further please do not hesitate to call me at 304.521.3960.

Sincerely -
Marbeth Thacker

BEFORE THE WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

STATE OF WEST VIRGINIA
BOARD OF BARBERS and
COSMETOLOGISTS,

Complainant,

CASE NO.: 2011-02 **COPY**

v.

TONY DANG

Respondent.

COMPLAINT

The West Virginia Board of Barbers and Cosmetologists having instituted an investigation into allegations that certain conduct by Tony Dang may constitute a violation of West Virginia Code § 30-27-1 *et seq.* and/or the legislative rules promulgated thereunder. The Board has made a finding of probable cause to file a complaint for disciplinary action.

The charge is as follows:

1. The Board is a state entity created by West Virginia Code § 30-21-1 *et seq.*, and is authorized to regulate the practice of barbers and cosmetologists pursuant West Virginia Code § 30-26-1.
2. West Virginia Code § 36-27-20 permits the Board to suspend or revoke an existing license to practice as a barber or cosmetologist upon proof that a person failed or refused to comply with a rule or regulation promulgated by the Board.
3. Respondent Tony Dang holds a license with the Board of Barbers and Cosmetologists and is subject to the license requirements of the Board.

4. Respondent maintains a business designated as Royal Nail & Spa in Barboursville, West Virginia, and as such said practice is subject to the license requirements of the Board.
5. On or about December 12, 2009, the Respondent permitted unlicensed workers to perform services at Royal Nail & Spa. Pursuant to Title 3, Legislative Rule Board of Barbers and Cosmetologists Series 7, Respondent was fined for allowing an unlicensed person to practice.
6. On or about May 27, 2010, unlicensed workers were again permitted to perform services at Royal Nail & Spa. Pursuant to Title 3, Legislative Rule Board of Barbers and Cosmetologists Series 7, Respondent was fined again for allowing an unlicensed person to practice.
7. On or about November 16, 2010, unlicensed workers were again permitted to perform services at Royal Nail & Spa. Pursuant to Title 3, Legislative Rule Board of Barbers and Cosmetologists Series 7, Respondent was fined again for allowing an unlicensed person to practice.
8. At a Board meeting, after doing a formal investigation, the Board decided there was sufficient evidence to warrant further proceedings and that further action should be taken against Tony Dang and Royal Nails & Spa.
9. The acts described above, if proven true, would constitute unprofessional conduct, intentional violation of a legislative rule, and aiding and abetting unlicensed practice pursuant to West Virginia Code § 30-27-20.
10. The Board has the power to hold a hearing and to revoke a license, place on probation, suspend license, reprimand a licensee or take other disciplinary action under West Virginia Code § 30-27-1 *et seq.* and the rules promulgated thereunder.

11. The hearing will continue until evidence is fully submitted and the Board, or its hearing examiner, will recommend findings of fact and conclusions of law which may be approved, disapproved, or modified by the Board or by the hearing examiner if one is used. In the event guilt is found, disciplinary action may occur which can include the imposition of the costs and the expenses of this proceeding.

Dated this 1 day of February, 2011.

STATE OF WEST VIRGINIA BOARD
OF BARBERS AND COSMETOLOGISTS,

By: 

President

BEFORE THE WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

STATE OF WEST VIRGINIA
BOARD OF BARBERS and
COSMETOLOGISTS,

Complainant,

CASE NO.: 2011-02

v.

TONY DANG

Respondent.

NOTICE OF HEARING

You are hereby notified that on the 11th day of March, 2011, at 11:00 a.m. the West Virginia Board of Barbers and Cosmetologists will conduct a hearing before a hearing examiner at Hampton Inn, 1 Preferred Place, Charleston, West Virginia, 25309, at Southridge. The purpose of this hearing is to take evidence regarding the allegations set out in the Complaint provided with this notice.

This hearing affects your legal rights and you may attend, with your attorney if so desired, to present evidence and legal argument in your defense. You have the right to cross-examine the witnesses presented against you and the right to offer witnesses and other evidence on your own behalf. If you require subpoenas to compel the attendance of witnesses or the production of documents, you may request subpoenas from the hearing examiner.

This hearing will be conducted in accordance with West Virginia Code §§ 30-1-1 *et seq.*, 30-14-1 *et seq.*, and 29A-5-1 *et seq.* and the Code of State Rules, 24 CSR 1 *et seq.* The hearing will proceed until all evidence is fully submitted and may be continued to receive additional testimony and evidence as needed.

Motions to continue these proceedings may be granted upon a showing of good cause and should be submitted to the hearing examiner at this address:

Jack C. McClung
2211 Washington St E.
Charleston, West Virginia 25311.

All other motions relating to this proceeding must be made in writing and submitted to the Board's office at 1201 Dunbar Avenue, Dunbar, West Virginia, 25064, at least ten days prior to the hearing. Copies of all motions should also be mailed to the hearing examiner and to the attorney presenting the case for the Board:

Mary Downey
Office of Attorney General
State Capitol, Room E-26
Charleston, West Virginia 25305

Following the submission of all the evidence, the hearing examiner will recommend findings of fact and conclusions of law, which may be approved, disapproved, or modified by the West Virginia Board of Barbers and Cosmetologists. If the charges in the Complaint are proven, the Board has the authority to order permanent or temporary sanctions against you, including permanent revocation of your privilege to practice in the State of West Virginia and an assessment for the costs of this proceeding.

This Notice issued on the 1 day of February, 2011.

STATE OF WEST VIRGINIA BOARD
OF BARBERS AND COSMETOLOGISTS,

By: Adam Hamish

President

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,
v.

Complaint No. 2011-02

TONY DANG,

Respondent.

COMPLAINANT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Complainant, West Virginia Board of Barbers and Cosmetologists ("Board"), by counsel, Mary M. Downey, Assistant Attorney General, and hereby submits the following proposed Findings of Fact and Conclusions of Law:

INTRODUCTION

1. The Board is a State administrative agency created pursuant to W. Va. Code § 30-27-1 *et seq.* with the responsibility of administering and enforcing the State laws and regulations pertaining to the practice of barbering, barber permanent waving, cosmetology, aesthetics, or nail care.

2. As part of the Board's mandate to enforce these laws and regulations, the Board has the authority to investigate any alleged violation of the West Virginia Board of Barbers and Cosmetologists Act and its accompanying rules. See W. Va. Code § 30-27-1 *et seq.* and W. Va. Code R. § 3-1-1 *et seq.*

3. Respondent Tony Dang ("Respondent") is a licensee of the Board with license number 31461 and owns a business named Royal Nails with a licence number

of 15151

and is subject to the jurisdiction of the Board and its requirements.

4. The hearing in this matter went forward on March 11, 2011, before Hearing Examiner Jack McClung. The Board called three witnesses: Ralph Reed ("Reed") who is one of the Board's investigators; Patrick Western ("Western") who is an employee of the Board; and Adam Higginbotham ("Higginbotham") who is the executive director.

5. Respondent called no witnesses other than himself and testified through Tammy Tran who served as his interpreter.

FINDINGS OF FACT

6. This matter arose after the Board received four (4) complaints with regard to Respondent between November through December of 2010. (Tr. at p. 42).

7. The complaint was forwarded to Reed who did an investigation with regard to the complaints. (Tr. at pp.14, 39-40).

8. On November 16, 2010, Reed visited Royal Nails in Huntington, West Virginia. Upon his arrival, Reed saw a woman performing a pedicure on a customer. The woman doing the pedicure left the salon through the back door. (Tr. at pp. 25-27). Although Dang's wife was doing a manicure with another customer in a different location, she told Reed that she was doing the pedicure. (Tr. at p.26). When Dang arrived Reed told him that he was in violation of having an unlicensed worker performing services in the salon. (Tr. at p. 26). See Complainant's Exhibits 5 and 6.

9. Dang's violations began in 1999. On July 29, 1999, he was issued a citation for allowing an unlicensed person to practice in his salon and was fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 34). See Complainant's Exhibit 6.

10. On June 13, 2000, Dang was issued another citation and fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.49 for having a pet in the salon. (Tr. at p. 34). See Complainant's Exhibit 6.

11. On June 1, 2001, Dang was cited pursuant to W. Va. Code R. § 3-7-2.12 with regard to unlicensed workers and fined \$500.00. (Tr. at p.35). See Complainant's Exhibit 6.

12. On September 18, 2001, Dang was cited for another offense pursuant to W. Va. Code R. § 3-7-2.12 and was fined \$1,000.00. (Tr. at p.35). See Complainant's Exhibit 6.

13. On March 27, 2003, Dang was again cited and fined for the same. (Tr. at pp.18-19). See Complainant's Exhibits 2 and 6.

14. On May 3, 2003, Dang was issued another violation for unlicensed workers. Reed entered Royal Nails, saw two individuals working on clients, and asked for their license. Instead of showing Reed their license, they left the salon. Dang was again fined for having unlicensed workers performing services in his salon. (Tr. at pp.16-17). See: Complainant's Exhibits 1 and 6.

15. On December 15, 2009, upon receiving another complaint, Reed saw a young woman working on a client at Royal Nails. Upon seeing Reed, the young woman left. (Tr. at p.21). She was unlicensed and Reed issued another citation pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 21). See Complainant's Exhibits 3 and 6.

16. On May 27, 2010, another complaint was received and Reed conducted another investigation. He observed an unlicensed person named Thuy Nguyen working on

a client and another citation was issued. (Tr. at p.22). See Complainant's Exhibits 4 and 6.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to conduct investigations into complaints to determine if probable cause existed that the licensee was in violation W. Va. Code § 30-27-20(c) or any rule in W. Va Code R. § 3-1-1 *et seq.*

2. The Board's authority to discipline licensees is found at W. Va. Code § 30-27-20 and W. Va. Code R. § 3CSR3.

3. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W. Va. Code § 30-27-5(13).

4. Disciplinary action can include reprimand, probation, administrative fine not to exceed \$1,000 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public pursuant to W. Va. Code § 30-27-20(h).

5. The relevant grounds for discipline with regard to this case are:

a. Intentionally violating a legitimate rule of the board pursuant to W. Va. Code § 30-27-20(g)(4);

third
before
revocation,

b. Allowing an unlicensed person to practice in a licensed shop and for the violation the Board shall summon the licensee or shop owner to appear the Board for the assessment of a fine and/or the proposed suspension, or refusal to issue a shop license pursuant to W. Va.

Code R. § 3CSR3;

- § 30- c. Aiding or abetting the unlicensed practice pursuant to W. Va. Code 27-20(g)(6); and
- d. Engaging in an act while acting in a professional capacity which endangered or is likely to endanger the health, welfare or safety of the public pursuant to W. Va. Code § 30-27-20(g)(7).

6. Based upon the above *Findings of Fact*, the Board has shown by a preponderance of the evidence that Respondent violated W. Va. Code §§ 30-27-20(g)(4)(6)(7) and (12) and W. Va. Code R. § 3CSR3;

7. The Board served the *Complaint* and Notice of Hearing upon the Respondent pursuant to the law and regulations of West Virginia;

8. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W. Va. Code § 30-27-5(13).

9. Disciplinary action can include reprimand, probation, administrative fine not to exceed \$1,000 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk pursuant to W. Va. Code § 30-27-20(h).

WHEREFORE, based upon the foregoing, the West Virginia Board of Barbers Cosmetologists requests that Respondent's practitioner license and his shop license be REVOKED.

Respectfully submitted,

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

By Counsel

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

MARY M. DOWNEY (State Bar ID No.1056)
ASSISTANT ATTORNEY GENERAL
State Capitol Complex
1900 Kanawha Boulevard, East
Building 1, Room E-26
Charleston, West Virginia 25305
(304) 558-2021

CERTIFICATE OF SERVICE

I, Mary M. Downey, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing "Complainant's Proposed Findings of Fact and Conclusions of Law" were served by depositing the same, postage prepaid in the United States Mail, this _____ day of April 2011, addressed as follows:

Mark French, Esquire
Criswell & French PLLC
405 Capital Street, Suite 1007
Charleston, West Virginia 25301

Mary M. Downey

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,
v.

Complaint No. 2011-02

TONY DANG,

Respondent.

COMPLAINANT'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

COMES NOW the Complainant, West Virginia Board of Barbers and Cosmetologists ("Board"), by counsel, Mary M. Downey, Assistant Attorney General, and hereby submits the following proposed Findings of Fact and Conclusions of Law:

INTRODUCTION

1. The Board is a State administrative agency created pursuant to W. Va. Code § 30-27-1 *et seq.* with the responsibility of administering and enforcing the State laws and regulations pertaining to the practice of barbering, barber permanent waving, cosmetology, aesthetics, or nail care.

2. As part of the Board's mandate to enforce these laws and regulations, the Board has the authority to investigate any alleged violation of the West Virginia Board of Barbers and Cosmetologists Act and its accompanying rules. See W. Va. Code § 30-27-1 *et seq.* and W. Va. Code R. § 3-1-1 *et seq.*

3. Respondent Tony Dang ("Respondent") is a licensee of the Board with license number 31461 and owns a business named Royal Nails with a licence number of 15151

and is subject to the jurisdiction of the Board and its requirements.

4. The hearing in this matter went forward on March 11, 2011, before Hearing Examiner Jack McClung. The Board called three witnesses: Ralph Reed (Reed) who is one of the Board's investigators; Patrick Western (Western) who is an employee of the Board; and Adam Higginbotham (Higginbotham) who is the director.

5. Respondent called no witnesses other than himself and testified through by Tammy Tran who served as his interpreter.

FINDINGS OF FACT

6. This matter arose after the Board received four (4) complaints with regard to Respondent between November through December of 2010. (Tr. at p. 42).

7. The complaint was forwarded to Reed who did an investigation with regard to the complaints. (Tr. at pp.14, 39-40).

8. On November 16, 2010, Reed visited Royal Nails in Huntington, West Virginia. Upon his arrival, Reed saw a woman performing a pedicure on a customer. The woman doing the pedicure left the salon by the back door. (Tr. at pp. 25-27). Although Dang's wife was doing a manicure with another customer in a different location, she insisted that she was doing the pedicure. (Tr. at p.26). When Dang arrived Reed told him that he was in violation for a third time for having an unlicensed worker performing services in the salon. (Tr. at p. 26). See Complainant Exhibits 5 and 6.

9. Dang's violations began in 1999. On July 29, 1999, he was issued a citation for allowing an unlicensed person to practice in his salon and was fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 34) See Complainant Exhibit 6.

10. On June 13, 2000, Dang was issued another citation and fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.49 for having a pet in the salon (Tr. at p. 34) See

Complainant Exhibit 6.

11. On June 1, 2001, Dang was cited pursuant to W. Va. Code R. §§ 3-7-2.12 with regard to unlicensed workers and fined \$500.00. (Tr. at p.35) See Complainant Exhibit 6.

12. On September 18, 2001, Dang was cited for another offense pursuant to W. Va. Code R. § 3-7-2.12 and was fined \$1,000.00. (Tr. at p.35) See Complainant Exhibit 6.

13. On March 27, 2003, Dang was again cited with regard to the same and was fined. (Tr. at pp.18-19). See Complainant Exhibits 2 and 6.

14. On May 3, 2003, Dang was issued another violation for unlicensed workers. Reed entered Royal Nails, saw two individuals working on clients, and asked for their licenses. Instead of showing Reed their licenses, they left the salon. Dang was again fined with regard for having unlicensed workers performing services in his salon. (Tr. at pp.16-17) See: Complainant Exhibits 1 and 6.

15. On December 15, 2009, upon receiving another complaint, Reed went to Royal Nails and saw a young woman working on a client. Upon seeing Reed the young woman left. (Tr. at p.21). She was unlicensed and Reed issued another citation pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 21). See Complainant Exhibits 3 and 6.

16. On May 27, 2010, another complaint was received and Reed conducted an investigation. He observed an unlicensed person named Thuy Nguyen working on a client and another citation was issued. (Tr. at p.22) See Complainant Exhibits 4 and 6.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to conduct investigations into complaints to determine if probable cause existed that the licensee was in violation W.Va. Code § 30-27-20(c) or any rule in W.Va Code R. § 3-1-1 *et seq.*

2. The Board defined the grounds for disciplinary action at W. Va. Code § 30-27-20 and W. Va. Code R. § 3CSR3.

3. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W. Va. Code § 30-27-5(13).

4. Disciplinary action can include reprimand; probation; administrative fine, not to exceed \$1,000 per day per violation; mandatory attendance at continuing education seminars or other training; practicing under supervision or other restriction; requiring licensee to report to the board for periodic interviews for a specified period of time; or other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk pursuant to W. Va. Code § 30-27-20(h).

5. The relevant grounds for discipline with regard to this case are:

a. Intentionally violating a legitimate rule of the board pursuant to W. Va. Code § 30-27-20(g)(4);

third
before
revocation,
Code R. §
b. Allowing an unlicensed person to practice in a licensed shop and for the violation the Board shall summon the licensee or shop owner to appear the Board for the assessment of a fine and/or the proposed suspension or refusal to issue a shop license pursuant to W. Va. 3CSR3;

§ 30-
c. Aiding or abetting the unlicensed practice pursuant to W. Va. Code 27-20(g)(6); and

d. Engaging in an act while acting in a professional capacity which endangered or is likely to endanger the health, welfare of safety of the public pursuant to W. Va. Code § 30-27-20(g)(7).

6. Based upon the *Findings of Fact* the Board has shown by a preponderance of the evidence that Respondent violated W. Va. Code § 30-27-20(g)(4)(6)(7) and (12) and W. Va. Code R. § 3CSR3;

7. The Board served the *Complaint* and Notice of Hearing upon the Respondent pursuant to the law and regulations of West Virginia;

8. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W.Va. Code § 30-27-5(13).

9. Disciplinary action can include reprimand; probation; administrative fine, not to exceed \$1,000 per day per violation; mandatory attendance at continuing education seminars or other training; practicing under supervision or other restriction; requiring licensee to report to the board for periodic interviews for a specified period of time; or other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk pursuant to W.Va. Code § 30-27-20(h).

WHEREFORE, based upon the foregoing, the West Virginia Board of Barbers Cosmetologists requests that Respondent's practitioner license be REVOKED and his shop license be REVOKED.

Respectfully submitted,

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

By Counsel

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

MARY M. DOWNEY (State Bar ID No.1056)
ASSISTANT ATTORNEY GENERAL
State Capitol Complex
1900 Kanawha Boulevard, East
Building 1, Room E-26

CERTIFICATE OF SERVICE

I, Mary M. Downey, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing "Complainant's Proposed Findings of Fact and Conclusions of Law" were served by depositing the same, postage prepaid in the United States Mail, this _____ day of April 2011, addressed as follows:

Tony Dang
5636 US Route 60
Suite 5
Huntington, West Virginia 25705

Mary M. Downey



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

April 21, 2011

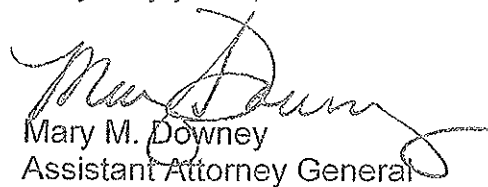
Mr. Jack C. McClung
Hearing Examiner
2211 Washington Street, East
Charleston, West Virginia 25311

Re: State of West Virginia Board of Barbers and Cosmetologists v. Tony Dang
Case No. 2-11-2

Dear Mr. Clung:

Enclosed please find Complainant's Findings of Fact and Conclusions of Law in the above-referenced case. Thank you.

Very truly yours,


Mary M. Downey
Assistant Attorney General

cc: Mark French, Esquire
Adam Higginbotham

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,
v.

Complaint No. 2011-02

TONY DANG,

Respondent.

COMPLAINANT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Complainant, West Virginia Board of Barbers and Cosmetologists ("Board"), by counsel, Mary M. Downey, Assistant Attorney General, and hereby submits the following proposed Findings of Fact and Conclusions of Law:

INTRODUCTION

1. The Board is a State administrative agency created pursuant to W. Va. Code § 30-27-1 *et seq.* with the responsibility of administering and enforcing the State laws and regulations pertaining to the practice of barbering, barber permanent waving, cosmetology, aesthetics, or nail care.

2. As part of the Board's mandate to enforce these laws and regulations, the Board has the authority to investigate any alleged violation of the West Virginia Board of Barbers and Cosmetologists Act and its accompanying rules. *See* W. Va. Code § 30-27-1 *et seq.* and W. Va. Code R. § 3-1-1 *et seq.*

3. Respondent Tony Dang ("Respondent") is a licensee of the Board with license number 31461 and owns a business named Royal Nails with a licence number of 15151 and is subject to the jurisdiction of the Board and its requirements.

4. The hearing in this matter went forward on March 11, 2011, before Hearing Examiner Jack C. McClung. The Board called three witnesses: Ralph Reed ("Reed") who is one of the Board's investigators; Patrick Western ("Western") who is an employee of the Board; and Adam Higginbotham ("Higginbotham") who is the executive director.

5. Respondent called no witnesses other than himself and testified through Tammy Tran who served as his interpreter.

FINDINGS OF FACT

6. This matter arose after the Board received four (4) complaints with regard to Respondent between November through December of 2010. (Tr. at p. 42).

7. The complaint was forwarded to Reed who did an investigation with regard to the complaints. (Tr. at pp. 14, 39-40).

8. On November 16, 2010, Reed visited Royal Nails in Huntington, West Virginia. Upon his arrival, Reed saw a woman performing a pedicure on a customer. The woman doing the pedicure left the salon through the back door. (Tr. at pp. 25-27). Although Dang's wife was doing a manicure with another customer in a different location, she told Reed that she was doing the pedicure. (Tr. at p. 26). When Dang arrived Reed told him that he was in violation of having an unlicensed worker performing services in the salon. (Tr. at p. 26). *See* Complainant's Exhibits 5 and 6.

9. Dang's violations began in 1999. On July 29, 1999, he was issued a citation for allowing an unlicensed person to practice in his salon and was fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 34). *See* Complainant's Exhibit 6.
10. On June 13, 2000, Dang was issued another citation and fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.49 for having a pet in the salon. (Tr. at p. 34). *See* Complainant's Exhibit 6.
11. On June 1, 2001, Dang was cited pursuant to W. Va. Code R. § 3-7-2.12 with regard to unlicensed workers and fined \$500.00. (Tr. at p. 35). *See* Complainant's Exhibit 6.
12. On September 18, 2001, Dang was cited for another offense pursuant to W. Va. Code R. § 3-7-2.12 and was fined \$1,000.00. (Tr. at p. 35). *See* Complainant's Exhibit 6.
13. On March 27, 2003, Dang was again cited and fined for the same. (Tr. at pp. 18-19). *See* Complainant's Exhibits 2 and 6.
14. On May 3, 2003, Dang was issued another violation for unlicensed workers. Reed entered Royal Nails, saw two individuals working on clients, and asked for their license. Instead of showing Reed their license, they left the salon. Dang was again fined for having unlicensed workers performing services in his salon. (Tr. at pp. 16-17). *See* Complainant's Exhibits 1 and 6.
15. On December 15, 2009, upon receiving another complaint, Reed saw a young woman working on a client at Royal Nails. Upon seeing Reed, the young woman left. (Tr. at p. 21). She was unlicensed and Reed issued another citation pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 21). *See* Complainant's Exhibits 3 and 6.
16. On May 27, 2010, another complaint was received and Reed conducted another investigation. He observed an unlicensed person named Thuy Nguyen working on a client and another citation was issued. (Tr. at p. 22). *See* Complainant's Exhibits 4 and 6.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to conduct investigations into complaints to determine if probable cause existed that the licensee was in violation W. Va. Code § 30-27-20(c) or any rule in W. Va Code R. § 3-1-1 *et seq.*
2. The Board's authority to discipline licensees is found at W. Va. Code § 30-27-20 and W. Va. Code R. § 3-8-1 *et seq.*
3. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W. Va. Code § 30-27-5(13).
4. Disciplinary action can include reprimand, probation, administrative fine not to exceed \$1,000.00 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public pursuant to W. Va. Code § 30-27-20(h).
5. The relevant grounds for discipline with regard to this case are:
 - a. Intentionally violating a legitimate rule of the board pursuant to W. Va. Code § 30-27-20(g)(4);
 - b. Allowing an unlicensed person to practice in a licensed shop and for the third violation the Board shall summon the licensee or shop owner to appear before the Board for the assessment of a fine and/or the proposed revocation, suspension, or refusal to issue a shop license pursuant to W. Va. Code R. § 3-7-2.12;
 - c. Aiding or abetting the unlicensed practice pursuant to W. Va. Code § 30-27-20(g)(6); and
 - d. Engaging in an act while acting in a professional capacity which endangered or is likely to endanger the health, welfare of safety of the public pursuant to W. Va. Code § 30-27-20(g)(7).

6. Based upon the above *Findings of Fact*, the Board has shown by a preponderance of the evidence that Respondent violated W. Va. Code §§ 30-27-20(g)(4)(6)(7) and (12) and W. Va. Code R. § 3-7-1 *et seq.*

7. The Board served the *Complaint* and Notice of Hearing upon the Respondent pursuant to the law and regulations of West Virginia;

8. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W. Va. Code § 30-27-5(13).

9. Disciplinary action can include reprimand, probation, administrative fine not to exceed \$1,000.00 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk pursuant to W. Va. Code § 30-27-20(h).

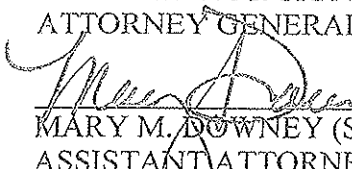
WHEREFORE, based upon the foregoing, the West Virginia Board of Barbers Cosmetologists requests that Respondent's practitioner and shop license be REVOKED.

Respectfully submitted,

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

By Counsel

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL




MARY M. DOWNEY (State Bar ID No. 1056)
ASSISTANT ATTORNEY GENERAL
Building 1, Room E-26
Charleston, West Virginia 25305
(304) 558-2021

CERTIFICATE OF SERVICE

I, Mary M. Downey, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing "Complainant's Proposed Findings of Fact and Conclusions of Law" were served by depositing the same, postage prepaid in the United States Mail, this 21st day of April 2011, addressed as follows:

Mark French, Esquire
Criswell & French PLLC
405 Capital Street, Suite 1007
Charleston, West Virginia 25301



Mary M. Downey

Criswell
& French, PLLC

Matthew S. Criswell
Mark L. French

ATTORNEYS AT LAW

www.criswellfrench.com

405 Capitol St., Suite 1007, Charleston, WV 25301
Phone: 304.720.6220 Fax: 304.720.6221

May 6, 2011

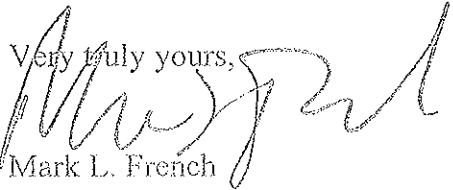
Mr. Jack C. McClung
Hearing Examiner
2211 Washington Street, East
Charleston, WV 25311

Re: State of West Virginia Board of Barbers and Cosmetologists v. Tony Dang
Case No. 2-11-2
Our File No.: 1425

Dear Mr. Clung:

Enclosed please find Respondent's Motion to Re-Open the Hearing in this Matter regarding the above-referenced case.

Very truly yours,



Mark L. French

MLF:kab
Enclosure

cc: Mary M. Downey, Esquire
Adam L. Higginbotham
Tony Dang

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS
WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS,

Complainant,

v.

Complaint No. 2011-02

TONY DANG,

Respondent.

RESPONDENT'S MOTION TO RE-OPEN THE HEARING IN THIS MATTER

COMES NOW the Respondent, by counsel Mark L. French and the law firm of Criswell & French, PLLC, for his Motion to Re-Open the Hearing in this matter, and states as follows:

1. A hearing in this matter was conducted on March 11, 2011 before hearing examiner Jack McClung.
2. The Respondent was not represented by counsel, but rather appeared with Tammy Tran, an interpreter who has very limited knowledge of the law and legal procedure.
3. During the hearing, testimony was elicited from Ralph Reed, an investigator for the West Virginia Board of Barbers and Cosmetologists, that an unlicensed worker was performing a pedicure on or about May 27, 2010 in Tony Dang's shop.
4. Also during the hearing, Ms. Tran attempted to submit evidence that that would show that the unlicensed worker observed by Mr. Reed was simply talking to the customer to keep the customer company. This evidence was not allowed, or was extremely discounted by the Hearing Examiner, because Ms. Tran did not have the requisite knowledge regarding how to properly submit evidence pursuant to the *West Virginia Rules of Evidence*.

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS,

Complainant,

v.

Complaint No. 2011-02

TONY DANG,

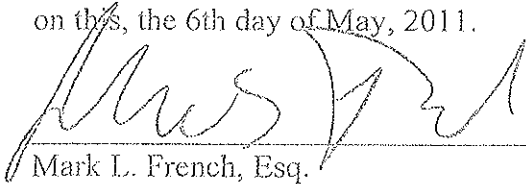
Respondent.

CERTIFICATE OF SERVICE

I, Mark L. French, Esquire, do hereby certify that a true copy of the foregoing
"Respondent's Motion to Re-Open Hearing in this Matter" was served on the following, via
USPS, postage pre-paid:

MARY M. DOWNEY (State Bar ID No. 1056)
ASSISTANT ATTORNEY GENERAL
Building 1, Room E-26
Charleston, West Virginia 25305
(304) 558-2021

on this, the 6th day of May, 2011.



Mark L. French, Esq.
West Virginia Bar No. 9061
Matthew S. Criswell, Esq.
West Virginia Bar No. 8796
CRISWELL & FRENCH, PLLC
405 Capitol Street, Suite 1007
Charleston, WV 25301
(304) 720-6220 (ofc)
(304) 720-6221 (fax)



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

May 11, 2011

Jack C. McClung
Hearing Examiner
2211 Washington Street, East
Charleston, West Virginia 25311

Re: *State of West Virginia Board of Barbers and Cosmetologists v. Tony Dang*
Case No. 2011-02

Dear Mr. McClung:

Please find enclosed "*Complainant's Response to Respondent's Motion to Re-Open the Hearing*" in the above- referenced matter. By providing a copy of this correspondence to Mark L. French, I have provided service upon the Respondent in this matter.

Very truly yours,


Mary M. Downey
Assistant Attorney General

cc: Mark French, Esquire
Adam Higginbotham

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,
v.

Complaint No. 2011-02

TONY DANG,

Respondent.

COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION TO RE-OPEN
THE HEARING IN THIS MATTER

COMES NOW the Complainant, West Virginia Board of Barbers and Cosmetologists (hereinafter "Board"), by counsel, Mary M. Downey, Assistant Attorney General, and hereby submits the following *Response to Respondent's Motion to Re-Open the Hearing*.

1. The Board is a State administrative agency created pursuant to W. Va. Code § 30-27-1 *et seq.* with the responsibility of administering and enforcing the State laws and regulations pertaining to the practice of barbering, barber permanent waving, cosmetology, aesthetics, or nail care. It has the authority to investigate any alleged violation of the West Virginia Board of Barbers and Cosmetologists Act and its accompanying rules. *See* W. Va. Code § 30-27-1 *et seq.* and W. Va. Code R. § 3-1-1 *et seq.* and 3-7-1 *et seq.*

2. Tony Dang (hereinafter "Dang") is a licensee of the Board.

3. A complaint and notice of hearing for March 11, 2011, were served on Dang by the Board outlining specific violations pursuant to W. Va. Code § 30-27-1 *et seq.* and W. Va. Code R. § 3-7-1 *et seq.* The notice stated that the purpose of the hearing was to take evidence regarding the allegations in the complaint and permanent or temporary sanctions including losing his license could result. It further stated that an attorney could represent him at the hearing; witnesses could be

compelled to be in attendance; and a request could be made to continue the hearing, if needed.

4. The hearing went forward and uncontroverted evidence was offered that since 1999, Dang had many violations and fines for having unlicensed workers in his shop.¹

5. Dang disputed only the November 16, 2010, violation. (Tr. at p. 53).

6. Pursuant to the current complaint one of the Board's investigators testified that on November 16, 2010, he witnessed another unlicensed worker performing a pedicure on a customer at Dang's shop. (Tr. at pp. 25-27). Amanda Thi Nguyen (hereinafter "Nguyen"), who was observed doing a pedicure on another patron, told the investigator that she was doing the pedicure on the customer in question. (Tr. at pp. 25-27).

-
- ¹
- a. On July 29, 1999, he was issued a citation for allowing an unlicensed person to practice in his salon and was fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at pp. 34, 54);
 - b. On June 13, 2000, Dang was issued another citation and fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.49 for having a pet in the salon. (Tr. at pp. 34, 54). *See* Complainant's Exhibit 6;
 - c. On June 1, 2001, Dang was cited pursuant to W. Va. Code R. § 3-7-2.12 with regard to unlicensed workers and fined \$500.00. (Tr. at pp. 35, 54);
 - d. On September 18, 2001, Dang was cited for another offense pursuant to W. Va. Code R. § 3-7-2.12 and was fined \$1,000.00. (Tr. at pp. 35, 54-55);
 - e. On March 27, 2003, Dang was again cited for two unlicensed workers and fined. (Tr. at pp. 18-19);
 - f. On May 3, 2003, Dang was issued another violation for unlicensed workers;
 - g. On December 15, 2009, Dang was again cited the same. (Tr. at pp. 21, 55);
 - h. On May 27, 2010, another complaint and investigation conducted. Another citation for the same was issued. (Tr. at pp. 22, 55); and
 - i. On November 16, 2010, he was cited again for the same offence and in lieu of a fine this hearing was held. (Tr. at pp. 55-56).

7. Moreover, Dang testified at the hearing that Nguyen was doing the pedicure on the customer in question on November 16, 2010. (Tr. at p. 52).²

8. However, the letter from the customer dated December 31, 2011, that was admitted per request of Dang at the hearing and was the primary focus in his *Motion to Re-Open* stated that it was not Nguyen, but a woman named Cindy who performed the pedicure in question. (Hearing Exhibit R-1).

9. Dang alleged that testimony from the customer who wrote the letter in question was needed to refute the testimony of the investigator. Although Dang implied in his *Motion to Re-Open the Hearing* that, “. . . this evidence [letter] was not allowed,” it was *admitted* over Complainant’s objection. (Tr. at pp. 49-51). Even though the letter was admitted and the contents available to the hearing examiner to consider, Dang argued that he did not know how to properly submit evidence pursuant to the *West Virginia Rules of Evidence* and, therefore, the hearing needed to be re-opened.

10. Finally, Dang alleged in his *Motion to Re-Open the Hearing* that he wanted the hearing re-opened so that he could testify that since the date of his last violation in November, 2010, no other violations have been cited by the Board against him with regard to unlicensed workers. First, Dang had the opportunity to testify to this, but failed to at the hearing on March 11, 2011. Secondly, although Dang alleged that this evidence would be “probative,” it only shows that Dang had enough sense not to commit the same violation before the hearing - the same violation he had committed time after time in the past.

² In his *Motion to Re-Open the Hearing* served on May 6, 2011, Respondent referred to the incident leading up to the last violation as occurring on May 27, 2011, a date into the future. The date should be November 16, 2010.

LAW

1. The Board receives its authority and jurisdiction pursuant to the Administrative Procedures Act. *See*, W. Va. Code § 30-1-1 *et seq.*
2. An administrative agency is a creature of statute has no authority except as conferred by statute. Eureka Pipeline Co. v. Public Service Commission, 137 S.E.2d 200, 204 (W. Va. 1964).
3. The Administrative Act gives no authority with regard to reopening a case under these circumstances.

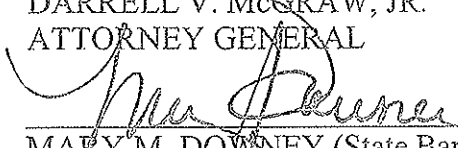
WHEREFORE, based upon the facts and law in this case, the West Virginia Board of Barbers Cosmetologists requests that *Respondent's Motion To Re-Open the Hearing* be DENIED. The Notice of Hearing specifically informed Dang of his right to have an attorney at the hearing and that the alleged charges against him were serious. The customer letter dated December 31, 2010, was admitted into evidence and, therefore, the customer/witness statement is already part of the record to be considered by the hearing examiner. Dang's own testimony contradicts the letter of December 31, 2010. Finally, there is no authority in the Administrative Procedure Act for a re-opening of a hearing as presented in *Respondent's Motion to Re-Open the Hearing*.

Respectfully submitted,

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

By Counsel

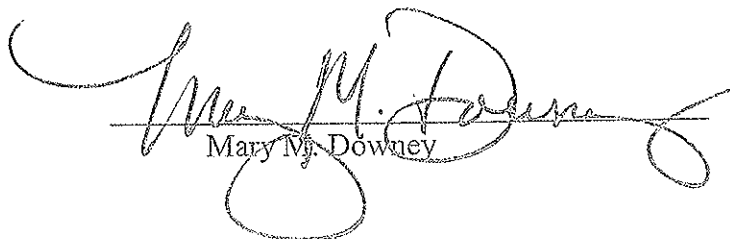
DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL


MARY M. DOWNEY (State Bar ID No. 1056)
ASSISTANT ATTORNEY GENERAL
Building 1, Room E-26
Charleston, West Virginia 25305
(304) 558-2021

CERTIFICATE OF SERVICE

I, Mary M. Downey, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing "*Complainant's Response to Respondent's Motion to Re-Open the Hearing in this Matter*" was served by depositing the same, postage prepaid in the United States Mail, this 11th day of May, 2011, addressed as follows:

Mark French, Esquire
Criswell & French PLLC
405 Capital Street, Suite 1007
Charleston, West Virginia 25301


Mary M. Downey



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

June 7, 2011

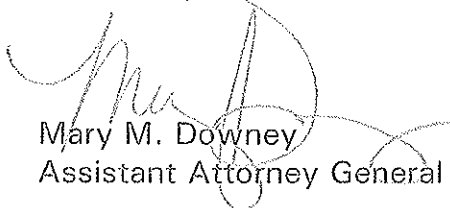
Adam Higginbotham
Director
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Re: *West Virginia Board of Barbers and Cosmetologists v. Dang*
Complaint no. 2011-02

Dear Adam:

Enclosed please find a copy of the hearing examiner's *Order Denying Motion to Reopen and Establishing Supplemental Post-Hearing Submission Schedule* in the above-referenced case. The *Order* stated that we could file supplemental filings with regard to proposed findings of fact and conclusions of law. I do not believe that we need to do so, but please let me know if you think otherwise. I have enclosed another copy of our findings of fact and conclusions of law. Thank you.

Very truly yours,


Mary M. Downey
Assistant Attorney General

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,

v.

Complaint No. 2011-02

TONY DANG,

Respondent.

ORDER DENYING MOTION TO REOPEN
AND
ESTABLISHING SUPPLEMENTAL POST-HEARING SUBMISSION SCHEDULE

This matter comes before the undersigned Hearing Examiner Jack C. McClung by Respondent's Motion To Reopen Hearing In This Matter. The said motion was filed under date of May 6, 2011, by Respondent's counsel, Mark L. French, after Respondent appeared pro see in the March 11, 2011, evidentiary hearing of this matter. Complainant West Virginia Board of Barbers and Cosmetologists (hereinafter "Board") filed its Response, by its counsel Assistant Attorney General Mary M. Downey, in opposition to the said motion under date of May 11, 2011.

It was uncontested at the hearing of this matter that the complaint and notice of hearing bringing this matter before the examiner was lawfully and timely served on the Respondent. Further, Respondent makes no allegation in his Motion of any insufficiency as to service or notice.

Respondent cites in his motion that he appeared without counsel at the said hearing, and was accompanied only by Tammy Tran, an interpreter (and also the cousin of Respondent). As cause for the reopening of the hearing, Respondent cites the failure of Respondent to have received into evidence certain testimony as to a letter produced by him at hearing from a customer of Respondent. The said letter was admitted into the record (Exhibit R-1) by the examiner over the objection of Complainant, but with reservations as to the weight that would be given the hearsay document, and testimony as to the contents of the letter from Respondent was not permitted upon the objection of Complainant. Hearing Transcript ("Tr.") at 49 - 53.

Respondent asserts in his motion that being without benefit of counsel, neither he nor his interpreter had the requisite knowledge as to how to properly submit evidence pursuant to the *West Virginia Rules of Evidence*.

In its Response in opposition to the said Motion, Complainant notes that the letter in question was, in fact, admitted into evidence and that it is therefore part of the record to be considered by the hearing examiner.

Both parties therefore recognize that the subject letter was admitted into the evidentiary record (Exhibit R-1). Respondent asserts that it was "extremely discounted" upon admission, and the record does reflect comments by the examiner as to the lack of probative value of the hearsay document (Tr. at 50-51), but such comments do not limit the parties and the examiner from revisiting the matter of its probative value in post-hearing arguments. In its Response, Complainant notes that the said letter is " part of the record to be considered by the hearing examiner," and it, in fact is part of the record.

Respondent therefore accomplished the submission into the record of the subject letter. A reopening would therefore serve only the purpose of allowing counsel for Respondent to present arguments to the examiner to give it more weight than the examiner suggested he was then inclined to do. Such argument may be, and would generally be, presented not at the hearing but rather by post-hearing argument.

Respondent's argument as to the subject letter (Exhibit R-1) for reopening is therefore found to be without merit.

Respondent also asserts as cause for reopening his need to introduce evidence as to the outcome of subsequent inspections of Respondent's place of business by the Board, arguing that such evidence is probative and relevant to the determination of appropriate sanctions by the Board.

A reopening for the purpose of hearing evidence as to matters occurring subsequent to the matters brought before the examiner by the notice of hearing in this matter would be both unnecessary and improper. It is unclear that such evidence would have any probative value as to the matters before the examiner by the notice of hearing, and evidence offered solely to establish some

subsequent matter would be inadmissible as irrelevant to the matters in question.

Respondent's argument as to the need to reopen in order to accept evidence as to the said subsequent inspections is therefore found to also be without merit.

It is therefore found that the said motion to reopen is without merit for the reasons stated and should therefore be denied.

Respondent's Motion To Reopen The Hearing In This Matter is therefore hereby DENIED.

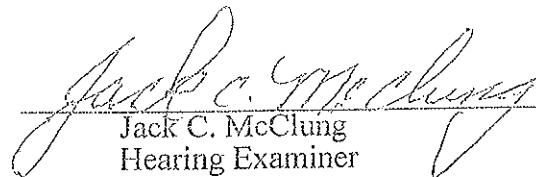
The matter being disposed of on the grounds stated, the examiner finds it unnecessary to address other arguments as to the said issue made by the parties.

Upon consideration of the matter, it is found appropriate to establish a supplemental post-hearing submission schedule to afford Respondent an opportunity to submit to the examiner proposed findings of fact and conclusions of law, and to afford Complainant the opportunity to submit a further filing to supplement its post-hearing filings.

It is therefore ORDERED that the parties are hereby granted leave to file proposed findings of fact and conclusions of law, or supplemental filings to previously filed pleadings, by June 17, 2011.

It is SO ORDERED.

Ordered this 3rd day of June, 2011.



Jack C. McClung
Hearing Examiner



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

April 21, 2011

Mr. Jack C. McClung
Hearing Examiner
2211 Washington Street, East
Charleston, West Virginia 25311

Re: State of West Virginia Board of Barbers and Cosmetologists v. Tony Dang
Case No. 2-11-2

Dear Mr. Clung:

Enclosed please find Complainant's Findings of Fact and Conclusions of Law in the above-referenced case. Thank you.

Very truly yours,


Mary M. Downey
Assistant Attorney General

cc: Mark French, Esquire
Adam Higginbotham

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,
v.

Complaint No. 2011-02

TONY DANG,

Respondent.

COMPLAINANT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Complainant, West Virginia Board of Barbers and Cosmetologists ("Board"), by counsel, Mary M. Downey, Assistant Attorney General, and hereby submits the following proposed Findings of Fact and Conclusions of Law:

INTRODUCTION

1. The Board is a State administrative agency created pursuant to W. Va. Code § 30-27-1 *et seq.* with the responsibility of administering and enforcing the State laws and regulations pertaining to the practice of barbering, barber permanent waving, cosmetology, aesthetics, or nail care.

2. As part of the Board's mandate to enforce these laws and regulations, the Board has the authority to investigate any alleged violation of the West Virginia Board of Barbers and Cosmetologists Act and its accompanying rules. *See* W. Va. Code § 30-27-1 *et seq.* and W. Va. Code R. § 3-1-1 *et seq.*

3. Respondent Tony Dang ("Respondent") is a licensee of the Board with license number 31461 and owns a business named Royal Nails with a licence number of 15151 and is subject to the jurisdiction of the Board and its requirements.

4. The hearing in this matter went forward on March 11, 2011, before Hearing Examiner Jack C. McClung. The Board called three witnesses: Ralph Reed ("Reed") who is one of the Board's investigators; Patrick Western ("Western") who is an employee of the Board; and Adam Higginbotham ("Higginbotham") who is the executive director.

5. Respondent called no witnesses other than himself and testified through Tammy Tran who served as his interpreter.

FINDINGS OF FACT

6. This matter arose after the Board received four (4) complaints with regard to Respondent between November through December of 2010. (Tr. at p. 42).

7. The complaint was forwarded to Reed who did an investigation with regard to the complaints. (Tr. at pp. 14, 39-40).

8. On November 16, 2010, Reed visited Royal Nails in Huntington, West Virginia. Upon his arrival, Reed saw a woman performing a pedicure on a customer. The woman doing the pedicure left the salon through the back door. (Tr. at pp. 25-27). Although Dang's wife was doing a manicure with another customer in a different location, she told Reed that she was doing the pedicure. (Tr. at p. 26). When Dang arrived Reed told him that he was in violation of having an unlicensed worker performing services in the salon. (Tr. at p. 26). *See* Complainant's Exhibits 5 and 6.

9. Dang's violations began in 1999. On July 29, 1999, he was issued a citation for allowing an unlicensed person to practice in his salon and was fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 34). *See* Complainant's Exhibit 6.
10. On June 13, 2000, Dang was issued another citation and fined \$500.00 pursuant to W. Va. Code R. § 3-7-2.49 for having a pet in the salon. (Tr. at p. 34). *See* Complainant's Exhibit 6.
11. On June 1, 2001, Dang was cited pursuant to W. Va. Code R. § 3-7-2.12 with regard to unlicensed workers and fined \$500.00. (Tr. at p. 35). *See* Complainant's Exhibit 6.
12. On September 18, 2001, Dang was cited for another offense pursuant to W. Va. Code R. § 3-7-2.12 and was fined \$1,000.00. (Tr. at p. 35). *See* Complainant's Exhibit 6.
13. On March 27, 2003, Dang was again cited and fined for the same. (Tr. at pp. 18-19). *See* Complainant's Exhibits 2 and 6.
14. On May 3, 2003, Dang was issued another violation for unlicensed workers. Reed entered Royal Nails, saw two individuals working on clients, and asked for their license. Instead of showing Reed their license, they left the salon. Dang was again fined for having unlicensed workers performing services in his salon. (Tr. at pp. 16-17). *See* Complainant's Exhibits 1 and 6.
15. On December 15, 2009, upon receiving another complaint, Reed saw a young woman working on a client at Royal Nails. Upon seeing Reed, the young woman left. (Tr. at p. 21). She was unlicensed and Reed issued another citation pursuant to W. Va. Code R. § 3-7-2.12. (Tr. at p. 21). *See* Complainant's Exhibits 3 and 6.
16. On May 27, 2010, another complaint was received and Reed conducted another investigation. He observed an unlicensed person named Thuy Nguyen working on a client and another citation was issued. (Tr. at p. 22). *See* Complainant's Exhibits 4 and 6.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to conduct investigations into complaints to determine if probable cause existed that the licensee was in violation W. Va. Code § 30-27-20(c) or any rule in W. Va Code R. § 3-1-1 *et seq.*
2. The Board's authority to discipline licensees is found at W. Va. Code § 30-27-20 and W. Va. Code R. § 3-8-1 *et seq.*
3. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W. Va. Code § 30-27-5(13).
4. Disciplinary action can include reprimand, probation, administrative fine not to exceed \$1,000.00 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public pursuant to W. Va. Code § 30-27-20(h).
5. The relevant grounds for discipline with regard to this case are:
 - a. Intentionally violating a legitimate rule of the board pursuant to W. Va. Code § 30-27-20(g)(4);
 - b. Allowing an unlicensed person to practice in a licensed shop and for the third violation the Board shall summon the licensee or shop owner to appear before the Board for the assessment of a fine and/or the proposed revocation, suspension, or refusal to issue a shop license pursuant to W. Va. Code R. § 3-7-2.12;
 - c. Aiding or abetting the unlicensed practice pursuant to W. Va. Code § 30-27-20(g)(6); and
 - d. Engaging in an act while acting in a professional capacity which endangered or is likely to endanger the health, welfare of safety of the public pursuant to W. Va. Code § 30-27-20(g)(7).

6. Based upon the above *Findings of Fact*, the Board has shown by a preponderance of the evidence that Respondent violated W. Va. Code §§ 30-27-20(g)(4)(6)(7) and (12) and W. Va. Code R. § 3-7-1 *et seq.*

7. The Board served the *Complaint* and Notice of Hearing upon the Respondent pursuant to the law and regulations of West Virginia;

8. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to W. Va. Code § 30-27-5(13).

9. Disciplinary action can include reprimand, probation, administrative fine not to exceed \$1,000.00 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk pursuant to W. Va. Code § 30-27-20(h).

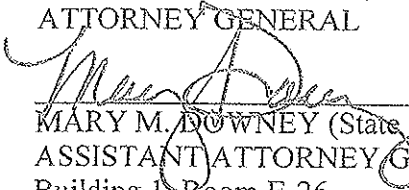
WHEREFORE, based upon the foregoing, the West Virginia Board of Barbers Cosmetologists requests that Respondent's practitioner and shop license be REVOKED.

Respectfully submitted,

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

By Counsel

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL




MARY M. DOWNEY (State Bar ID No. 1056)
ASSISTANT ATTORNEY GENERAL
Building 1, Room E-26
Charleston, West Virginia 25305
(304) 558-2021

CERTIFICATE OF SERVICE

I, Mary M. Downey, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing "Complainant's Proposed Findings of Fact and Conclusions of Law" were served by depositing the same, postage prepaid in the United States Mail, this 21st day of April 2011, addressed as follows:

Mark French, Esquire
Criswell & French PLLC
405 Capital Street, Suite 1007
Charleston, West Virginia 25301



Mary M. Downey

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,

v.

Complaint No. 2011-02

TONY DANG,

2011-21428

Respondent.

ORDER DENYING MOTION TO REOPEN
AND
ESTABLISHING SUPPLEMENTAL POST-HEARING SUBMISSION SCHEDULE

This matter comes before the undersigned Hearing Examiner Jack C. McClung by Respondent's Motion To Reopen Hearing In This Matter. The said motion was filed under date of May 6, 2011, by Respondent's counsel, Mark L. French, after Respondent appeared pro se in the March 11, 2011, evidentiary hearing of this matter. Complainant West Virginia Board of Barbers and Cosmetologists (hereinafter "Board") filed its Response, by its counsel Assistant Attorney General Mary M. Downey, in opposition to the said motion under date of May 11, 2011.

It was uncontested at the hearing of this matter that the complaint and notice of hearing bringing this matter before the examiner was lawfully and timely served on the Respondent. Further, Respondent makes no allegation in his Motion of any insufficiency as to service or notice.

Respondent cites in his motion that he appeared without counsel at the said hearing, and was accompanied only by Tammy Tran, an interpreter (and also the cousin of Respondent). As cause for the reopening of the hearing, Respondent cites the failure of Respondent to have received into evidence certain testimony as to a letter produced by him at hearing from a customer of Respondent. The said letter was admitted into the record (Exhibit R-1) by the examiner over the objection of Complainant, but with reservations as to the weight that would be given the hearsay document, and testimony as to the contents of the letter from Respondent was not permitted upon the objection of Complainant. Hearing Transcript ("Tr.") at 49 - 53.

Respondent asserts in his motion that being without benefit of counsel, neither he nor his interpreter had the requisite knowledge as to how to properly submit evidence pursuant to the *West Virginia Rules of Evidence*.

In its Response in opposition to the said Motion, Complainant notes that the letter in question was, in fact, admitted into evidence and that it is therefore part of the record to be considered by the hearing examiner.

Both parties therefore recognize that the subject letter was admitted into the evidentiary record (Exhibit R-1). Respondent asserts that it was "extremely discounted" upon admission, and the record does reflect comments by the examiner as to the lack of probative value of the hearsay document (Tr. at 50-51), but such comments do not limit the parties and the examiner from revisiting the matter of its probative value in post-hearing arguments. In its Response, Complainant notes that the said letter is " part of the record to be considered by the hearing examiner," and it, in fact is part of the record.

Respondent therefore accomplished the submission into the record of the subject letter. A reopening would therefore serve only the purpose of allowing counsel for Respondent to present arguments to the examiner to give it more weight than the examiner suggested he was then inclined to do. Such argument may be, and would generally be, presented not at the hearing but rather by post-hearing argument.

Respondent's argument as to the subject letter (Exhibit R-1) for reopening is therefore found to be without merit.

Respondent also asserts as cause for reopening his need to introduce evidence as to the outcome of subsequent inspections of Respondent's place of business by the Board, arguing that such evidence is probative and relevant to the determination of appropriate sanctions by the Board.

A reopening for the purpose of hearing evidence as to matters occurring subsequent to the matters brought before the examiner by the notice of hearing in this matter would be both unnecessary and improper. It is unclear that such evidence would have any probative value as to the matters before the examiner by the notice of hearing, and evidence offered solely to establish some

subsequent matter would be inadmissible as irrelevant to the matters in question.

Respondent's argument as to the need to reopen in order to accept evidence as to the said subsequent inspections is therefore found to also be without merit.

It is therefore found that the said motion to reopen is without merit for the reasons stated and should therefore be denied.

Respondent's Motion To Reopen The Hearing In This Matter is therefore hereby DENIED.

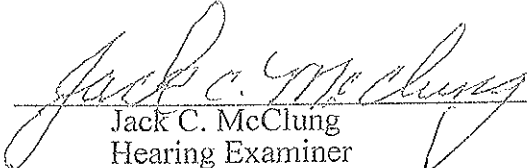
The matter being disposed of on the grounds stated, the examiner finds it unnecessary to address other arguments as to the said issue made by the parties.

Upon consideration of the matter, it is found appropriate to establish a supplemental post-hearing submission schedule to afford Respondent an opportunity to submit to the examiner proposed findings of fact and conclusions of law, and to afford Complainant the opportunity to submit a further filing to supplement its post-hearing filings.

It is therefore ORDERED that the parties are hereby granted leave to file proposed findings of fact and conclusions of law, or supplemental filings to previously filed pleadings, by June 17, 2011.

It is SO ORDERED.

Ordered this 3rd day of June, 2011.



Jack C. McClung
Hearing Examiner



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbs.org

Director
Adam L. Higginbotham

Board Members
Michael Belcher Justina Gabber
Sarah Hamrick Susan Poveroni
Jim Ryan Rick Stache

Tony Dang
Royal Nails Salon
5636 US Route 60, Suite 5
Huntington, WV 25705

July 12th, 2011

Dear Tony Dang:

Attached is a copy of the hearing examiner's decision in the complaint the State of West Virginia Board of Barbers and Cosmetologists filed against you. Please notice that the hearing examiner found in the Board's favor and ordered the Board to take such disciplinary action authorized under law and deemed appropriate. Based on the numerous counts of unlicensed activity that you have overseen as a licensee or allowed in your shop, the Board decided to REVOKE your individual license and shop license.

You are required to provide the Board representatives your individual license and shop license. At the time of the receipt of this letter by hand you are required to close your shop permanently.

Should you have any questions, you may contact the Board at 304-558-2924 or the Attorney General's Office at 304-558-2021 and as to speak with Mary Downey.

Sincerely,

Adam L. Higginbotham
Director

BEFORE THE WEST VIRGINIA BOARD OF BARBERS AND COSMETOLOGISTS

WEST VIRGINIA BOARD OF
BARBERS AND COSMETOLOGISTS

Complainant,

v.

Complaint No. 2011-02

TONY DANG,

Respondent.

HEARING EXAMINER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

PROCEDURAL HISTORY

This matter came on for hearing on March 11, 2011, pursuant to the Notice of Hearing and Complaint dated February 1, 2011, issued by the Complainant West Virginia Board of Barbers and Cosmetologists (hereinafter "Board") against Respondent Tony Dang. The Board appeared by its Executive Director, Adam Higginbotham, and by counsel Mary Downey, Assistant Attorney General. Respondent appeared pro se, with Tammy Tran acting as translator for Respondent at his request.

During the evidentiary hearing, the Board called as its witnesses Ralph Reed, Patrick Western and Adam Higginbotham, its Executive Director, and introduced six (6) exhibits, all of which were made a part of the record. Respondent testified on his own behalf through his interpreter and introduced one (1) exhibit, which was made a part of the record.

All witnesses were sworn, documents were received into evidence, the hearing was recorded electronically, and a transcript prepared and distributed to the parties. The parties were directed to file proposed findings of fact and conclusions of law with the hearing examiner on or before May 1, 2011. Hearing Transcript ("Tr") at 58.

Complainant Board filed its proposed findings of fact and conclusions of law dated April 21, 2011. Respondent filed no post-hearing filing by May 1, 2011, but subsequently filed, by counsel Mark L. French, his Respondent's Motion to Re-Open the hearing in this Matter.

Complainant subsequently filed its Response To Respondent's Motion To Re-Open the Hearing in opposition to the said motion.

On June 3, 2011, the examiner issued an order denying Respondent's motion to reopen and establishing a supplemental post-hearing submission schedule by which the parties were granted leave to file proposed findings of fact and conclusions of law, or supplemental filings to previously filed pleadings, by June 17, 2011.

Neither party having filed any such supplemental filing, it is found that this matter is mature for decision.

CREDIBILITY OF WITNESSES, TESTIMONY, AND EXHIBITS

The hearing examiner was and is satisfied that all records and documents entered as exhibits are complete, authentic and valid, and that they were entered with the proper evidentiary foundations. The hearing examiner was and is satisfied that the witnesses brought on by the parties were credible and truthful except as noted below. Neither the demeanor of the witnesses nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive except as noted below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a review of the record and exhibits admitted into evidence at the hearing, after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, and after consideration of the proposed findings of fact and conclusions of law as were filed by the parties, the undersigned Hearing Examiner makes the following Findings of Fact and Conclusions of Law. To the extent that these findings and conclusions are generally consistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Hearing Examiner. Conversely, to the extent that the same are inconsistent with these findings and conclusions, they are rejected. To the extent that the testimony of any witness is not in accordance with these Findings and Conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or Argument proposed and submitted by a party but omitted herein is deemed

irrelevant or unnecessary to the determination of the material issues in this matter.

FINDINGS OF FACT

1. The Board is the State administrative agency created by the provisions of W.Va. Code § 30-27-1 et seq. with the responsibility of administering and enforcing the State laws and regulations pertaining to the practice of barbering, barber permanent waving, cosmetology, aesthetics, or nail care.

2. Respondent Tony Dang is a licensee of the Board with license number 31461 who owns a business called Royal Nails, which business has license number 15151, and is therefore subject to the jurisdiction of the Board.

3. As part of the Board's mandate to enforce the laws and regulations of the State pertinent to the exercise of its authority, the Board has the authority to investigate any alleged violation of the West Virginia Board Of Barbers and Cosmetologists Act and its accompanying rules. *See* W.Va. Code § 30-27-1 et seq. and W.Va. Code R. § 3-1-1 et seq.

4. This matter arose after the Board received four (4) complaints between November and December of 2010 with regard to the Respondent's acts and/or omissions as a licensee of the Board. Tr. at 42.

5. Prior to receipt of those complaints, Respondent had a record of violations with the Board going back to 1999, including the following.

a. A July 29, 1999, citation for allowing an unlicensed person to practice in his salon, for which he was fined \$500 pursuant to the provisions of W.Va. Code R. § 3-7-2.12. Tr. at 34; *see* Complaint's Exhibit ("C-") 6.

b. A June 13, 2000, citation for having a pet in his salon, for which he was fined \$500 pursuant to the provisions of W.Va. Code R. § 3-7-2.49. Tr. at 35; *see* Exhibit C-6.

c. A June 1, 2001, citation with regard to unlicensed workers, for which he was fined \$500 pursuant to the provisions of W.Va. Code R. § 3-7-2.12. Tr. at 35; *see* Exhibit C-6.

d. A September 18, 2001, citation for another offense pursuant to the provisions

of W.Va. Code R. § 3-7-2.12. for which he was fined \$1,000. Tr. at 35; *see* Exhibit C-6.

e. A March 27, 2003, a citation for unlicensed workers, for which he was again fined. Tr. at 18-19; *see* Exhibits C-2 and C-6.

f. A May 3, 2003, citation, again for unlicensed workers, for which Respondent was again fined by the Board. Tr. at 16-17; *see* Exhibits C-1 and C-6.

g. A December 15, 2009, citation, again for an unlicensed person working on a client, which was a violation of the provisions of W.Va. Code R. § 3-7-2.12 by Respondent at Royal Nails, his salon. Tr. at 21; *see* Exhibits C-3 and C-6.

h. A May 27, 2010, citation, again for an unlicensed person (named Thuy Nguyen) working on a client, which was a violation of the provisions of W.Va. Code R. § 3-7-2.12. Tr. at 22; *see* Exhibits C-4 and C-6.

5. Under cross-examination at hearing, Respondent admitted all the above-cited violations, including the July 29, 1999, violation, and his paying a \$500 fine for that violation; the June 13, 2000, violation, and his paying an \$100 fine for that violation; the June 1, 2001, violation, and his paying a \$500 fine for that violation; the September 18, 2001, violation, and his paying a \$1,000 fine for that violation; the November 15, 2009, violation, and his paying a \$500 fine for that violation; the May 27, 2010, violation, and his paying a fine for that violation. Tr. at 53-55.

6. The said complaints received in November and December of 2010 were forwarded to Ralph Reed ("Reed"), one of the Board's investigators, who conducted an investigation with regard to the same. Tr. at 14, 39-40.

7. Reed testified that on November 16, 2010, he visited Respondent's salon (Royal Nails) in Huntington, West Virginia. Upon his arrival, Reed saw a woman performing a pedicure on a customer. The woman performing the pedicure left the salon through the back door. Tr. at 25-27. Although Dang's wife was doing a manicure with another customer in a different location in the salon, she told Reed that she was doing the pedicure. Tr. at 26. When Respondent arrived, Reed told him that he was in violation by having an unlicensed worker performing services in the salon. Tr. at 26; *see* Exhibits C-5 and C-6.

as a rebuttal witness. Reed testified that during his visit to Royal Nails on November 16, 2010, he personally witnessed the unlicensed person actually working on the left foot of a customer. Tr. at 57.

13. It is therefore found, based on the evidence adduced at hearing, that on November 16, 2010, there was an unlicensed person performing a pedicure on a customer at Royal Nails, a service that requires a license from the Board to perform, which act was a violation of the provisions of W.Va. Code R. § 3-7-2.12, and it is further found that such offense was the third violation by Respondent having unlicensed persons performing services at his salon that require a license of the Board, all as was charged in the Violation Notice of the Board issued against Respondent on that day. Exhibit C-5.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to conduct investigations into complaints to determine if probable cause existed that the licensee was in violation of the provisions of W.Va. Code § 30-27-20(c) or any provision of rule in W.Va. Code R. § 3-1-1 et seq.

2. The Board's authority to discipline licensees is found in the provisions of W.Va. Code § 30-27-20 and W.Va. Code R. § 3-8-1 et seq.

3. The Board has authority to conduct disciplinary hearings and issue orders under the provisions of W.Va. Code § 30-27-5(13).

4. The relevant grounds for discipline with regard to this case include:

- a. Intentionally violating a legitimate rule of the board pursuant to the provisions of W.Va. Code § 30-27-20(g)(4);
- b. Allowing an unlicensed person to practice in a licensed shop and for the third violation the Board shall summon the licensee or shop owner to appear before the Board for the assessment of a fine and/or the proposed revocation, suspension, or refusal to issue a shop license pursuant to the provisions of W.Va. Code R. § 3-7-2.12;
- c. Aiding or abetting the unlicensed practice pursuant to the provisions of W.Va. Code § 30-27-20(g)(6); and,
- d. Engaging in an act while acting in a professional capacity which endangered or is likely to endanger the health, welfare or safety of the public pursuant to the provisions of W.Va. Code § 30-27-20(g)(7).

8. The Violation Notice issued by Reed on November 16, 2010, to Respondent noted on its face that it was for a "3rd Off." [i.e., 3rd Offense] of "Allowing an unlicensed person to operate . . ." Exhibit C-5. Under cross-examination, Respondent testified he was aware that the November 16, 2010, citation was for such third offense. Tr. at 55-56.

8. Respondent, through his interpreter, proffered at the hearing of this matter a letter from whom he asserted was the customer who Reed observed being served on November 16, 2010, by an unlicensed worker; and further asserted that the unlicensed person observed by Reed on that day was not performing any service but was instead just talking to the customer while a licensed worker performed services, and also asserted that the proffered letter from the customer supported that assertion. Tr at 49-52, Respondent's Exhibit ("R-") 1.

9. The Board objected to the said testimony and to admission of the said letter. The examiner sustained the objection as to the testimony from Respondent regarding what the customer may have said. The examiner admitted the said letter over the objection of the Board because it had been discussed in the course of the hearing, but nevertheless observed that the Board's objections would be noted as to that letter. Tr. at 52-53.

10. The said letter (Exhibit R-1) is dated December 31, 2010, and is signed by "Marbeth Thacker." The writer states that she has been a customer of Royal Nails "for some time" and that she was in the salon on November 16 [no year stated, but presumably 2010] for a pedicure. She states that "Cindy" was performing the pedicure and had finished when "Yuonne" [sic] sat down to talk with her while her polish dried.

11. The writer of the letter did not appearing as a witness to authenticate and further explain the circumstances described in the letter. Taken on its face, the document is not sufficiently specific to determine whether the situation described by the writer was the same situation that gave rise to the subject citation of that date. Furthermore, the Board had no opportunity to cross-examine the writer. It is therefore found that the said letter has little or no probative value as to the matters addressed at hearing.

12. After the close of Respondent's presentation of evidence, the Board presented Reed

5. Based upon the above Findings Of Fact, the Board has shown by a preponderance of the evidence that Respondent violated the provisions of W.Va. Code § 30-27-20(g)(4), (6), (7) and (12) and W.Va. Code R. § 3-7-1 *et seq.*

6. The Board served the Complaint and Notice of Hearing in this case upon the Respondent pursuant to and in accordance with the pertinent law and regulations of this State.

7. The Board has jurisdiction to conduct disciplinary hearings and issue orders pursuant to the provisions of W.Va. Code § 30-27-5(13).

8. Based upon the complete record of this case, it is concluded that the allegation as stated in the Violation Notice dated November 16, 2010, that Respondent had an unlicensed person performing services in his salon that require a license of the Board to perform, that such act was a violation of the provisions of W.Va. Code R. § 3-7-2.12, and that such violation was the third such violation by Respondent, should be sustained, and any objection or defense by the Respondent thereto should be denied.

9. It is also concluded that the allegations by the Board that Respondent did intentionally violate a legitimate rule of the board, a violation of the provisions of W.Va. Code § 30-27-20(g)(4); that Respondent did aid or abet unlicensed practice, a violation of the provisions of W.Va. Code § 30-27-20(g)(6); and that Respondent did engage in an act while acting in a professional capacity which endangered or was likely to endanger the health, welfare or safety of the public, a violation of the provisions of W.Va. Code § 30-27-20(g)(7), should each be sustained, and any objection or defense by the Respondent thereto should be denied.

10. Pursuant to the provisions of W.Va. Code § 30-27-20(h), disciplinary action can include reprimand, probation, administrative fine not to exceed \$1,000 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

RECOMMENDED ORDER

It is therefore recommended as follows.

1. That the allegation as stated in the Violation Notice dated November 16, 2010, that Respondent had an unlicensed person performing services in his salon that require a license of the Board to perform, that such act was a violation of the provisions of W.Va. Code R. § 3-7-2.12, and that such violation was the third such violation by Respondent, be SUSTAINED, and any objection or defense by the Respondent thereto be DENIED.
2. That the allegations by the Board that Respondent did intentionally violate a legitimate rule of the board, a violation of the provisions of W.Va. Code § 30-27-20(g)(4); that Respondent did aid or abet unlicensed practice, a violation of the provisions of W.Va. Code § 30-27-20(g)(6); and that Respondent did engage in an act while acting in a professional capacity which endangered or was likely to endanger the health, welfare or safety of the public, a violation of the provisions of W.Va. Code § 30-27-20(g)(7), each be SUSTAINED, and any objection or defense by the Respondent thereto be DENIED.
3. That the Board take such disciplinary action under authorization of law as it deems appropriate.

Recommended this 6th day of July, 2011.



JACK C. McCLUNG
HEARING EXAMINER



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbs.org

Director
Adam L. Higginbotham

Board Members

Michael Belcher Justina Gabbert
Sarah Hamrick Susan Poveroni
Jim Ryan Rick Stache

MEMORANDUM

To: Annual Report Status

From: Adam L. Higginbotham
Director
Board of Barbers and Cosmetologists

Date: September 22, 2011

Subject: C2011-21 and C2011-28

The complaint resulted in the license revocation of Tony Dang of Huntington, West Virginia and his shop, Royal Nails, in Barboursville, West Virginia.

Higginbotham, Adam L

From: Matt [greyops1@gmail.com]
Sent: Tuesday, September 28, 2010 2:01 PM
To: Higginbotham, Adam L
Subject: Re: WVBBC Complaint

C 2011 - 22

Please keep my name out of it for the mean time. Ugly divorce coming.

Sent from my iPhone

On Sep 28, 2010, at 1:52 PM, <Adam.L.Higginbotham@wv.gov> wrote:

West Virginia Board of Barbers and Cosmetologists

Complaint Form

Individual Making Complaint

Name: Matthew Rhodes
Address: 115 Preston Ave
Weirton, WV 26062
Phone: 3046704443
E-mail: greyops1@gmail.com

Individual or Business Named in the Complaint

Name: Kristy Miscuk Rhodes
Company: John Michaels
Address: 115 Preston Ave
Weirton, WV 26062
Phone: 3049145011

List of Witnesses

Nancy Rhodes- my mother who has witnessed my kids being neglected while she cuts hair in the kitchen and rinsing in the tub for hours on days she doesnt work at john micheals. 123 preston ave.

Description of Complaint

My wife has been stealing customers from Famous hair now John micheals for years. she cuts colors waxes perms people in my home for years. and never calims the income, now that i am back from a year in afghanistan, she had me served with papers. the courts will need to access her monthly income. which is next to nothingh since she cuts hair under the table. and only accepts cash.



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1201 Dunbar Ave.
Dunbar, WV 25064
Telephone: 304-558-2924
Fax: 304-558-3450
www.wvbbs.org

Board Members

Michael Belcher
Justina Gabheri
Sarah Hamrick
Paula Kurezak
Susan Poveromo
Jim Ryan
Rick Stache

Kristy Miscuk Rhodes
115 Preston Avenue
Weirton, WV 26062

October 6, 2010

COMPLAINT #: C2011-22

Dear Kristy Rhodes:

The Board office has received the enclosed complaint.

The Board office is requesting your response to this complaint.

Additionally, a Cease and Desist is enclosed with this letter.

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Please mail your response to:

WVBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Sincerely,

Adam L. Higginbotham
Director



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1201 Dunbar Ave.
Dunbar, WV 25064
Telephone: 304-558-2924
Fax: 304-558-3450
www.wvbbe.org

Board Members

Michael Belcher
Justina Gabbert
Sarah Hamrick
Paula Kurezak
Susan Poveromo
Jim Ryan
Rick Stache

October 6th, 2010

VIA CERTIFIED MAIL

Dear Kristy Rhodes:

The West Virginia Board of Barbers and Cosmetologists (hereinafter "Board") was created by the legislature to protect the public by regulating the practice of beauty culture in the State of West Virginia. W. Va. Code § 30-27-1 *et seq.* On September 28th, 2010 the Board received a formal complaint regarding:

- Performing services in an unlicensed facility

After reviewing the received complaint it was determined that the issue mentioned above, if accurate, is in violation of West Virginia law.

As a result of you are hereby ordered to CEASE AND DESIST all business relating to the issue mentioned above within the State of West Virginia until such a time that you are properly licensed.

Failure to comply with this cease and desist order will result in further legal consequences. Please feel free to contact the Board's Executive Director at (304) 558-2924 with any questions.

Sincerely,

Adam L. Higginbotham M.B.A.
Executive Director

To whom this may concern:

This is regarding a letter recently sent to me. Matthew Rhodes was complaining that I was neglecting my children while doing hair from my home. First I would like to say I recently filed for divorce. My soon to be ex-husband,

Matthew Rhodes, also the complainant has been trying to hurt me any way he can. He has already filed a report through CPS. And I assure you they have interviewed my children and come to my home and all such charges were dropped. Also the witness is his mother. I filed for divorce so naturally she is trying to hurt me as well. I use to dye her and his families hair for free from my home before working in a salon. I do not do their hair anymore and I work in a salon for all my clients. Sorry if this has caused you any inconvenience.



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbc.org

Director
Adam L. Higginbotham

Board Members

| | |
|-----------------|---------------|
| Michael Belcher | Justina Gabbe |
| Sarah Hamrick | Susan Poveron |
| Jim Ryan | Rick Stache |

Kristy Miscuk Rhodes
115 Preston Avenue
Weirton, WV 26062

January 27, 2011

COMPLAINT #: C2011-22

Dear Kristy Rhodes:

This letter is in regards to the above mentioned complaint.

The Board reviewed the complaint and responses and determined the complaint is, if true, in violation of state law. All services for compensation must be provided in a licensed facility and registered with this Board.

However, a Cease and Desist Order letter (copy enclosed) has already been sent out to you on October 6, 2010. Therefore, the complaint is closed with the execution of the Cease and Desist by not practicing in your home without Board authorization and licensure.

Sincerely,

Adam L. Higginbotham
Director

Cc: complainant



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbc.org

Director
Adam L. Higginbotham

Board Members
Michael Belcher Justina Gabbe
Sarah Hamrick Susan Poveroni
Jim Ryan Rick Stache

October 6th, 2010

VIA CERTIFIED MAIL

Dear Kristy Rhodes:

The West Virginia Board of Barbers and Cosmetologists (hereinafter "Board") was created by the legislature to protect the public by regulating the practice of beauty culture in the State of West Virginia. W. Va. Code § 30-27-1 *et seq.* On September 28th, 2010 the Board received a formal complaint regarding:

- Performing services in an unlicensed facility (in your home)

After reviewing the received complaint it was determined that the issue mentioned above, if accurate, is in violation of West Virginia law.

As a result of you are hereby ordered to CEASE AND DESIST all business relating to the issue mentioned above within the State of West Virginia until such a time that you are properly licensed.

Failure to comply with this cease and desist order will result in further legal consequences. Please feel free to contact the Board's Executive Director at (304) 558-2924 with any questions.

Sincerely,

Adam L. Higginbotham M.B.A.
Executive Director

Higginbotham, Adam L.

From: T WATW [vbs2010grad@gmail.com]
Sent: Thursday, October 07, 2010 7:38 PM
To: Higginbotham, Adam L
Subject: update to what happened today after calls to VBS

Dear Mr. Higginbotham,

I feel it necessary after what I witnessed today to contact you. I know all about the complaint made and the phone call placed to Sherri Greene today. She immediately went outside with Cookie, Laura and Missy and was shouting that WHEN she finds the person that made this claim and she WILL find out....then stopped short and all instructors were talking and calming her down and then she states she doesn't need this black mark on her record from some stupid Fing Piece of White Trash S..t. This is not uncommon behavior from her. She is always threatening ppl with WHEN she finds out what you did, you WILL be sorry. Let's begin with what I know and can confirm with you by your latest student complaint.

1. Instructors DO wear flip flops and a few of the "FAVORITE STUDENTS" do too--one is Janet Clonch.
2. Students DO write themselves in and out and/or lie and say they "forgot to clock in" when they were actually absent. Two of those students that can be verified are Kris Boston and Tabitha Collins.
3. Sherri has felt girl students breasts, had them spend the night, and is "HERESAY" have them worrk in her salon located on RT 47 in Parkersburg. Note also that a rumor circulating is that Janet Clonch is advertising haircuts in her home on the bulletin board in her town laudromat.
4. HER fav students never pay for color or any other service but those she doesnt care about pay 7.50 for haircolor that can be purchased at Sallys for approx 3.49
5. We DON'T have class everyday. We have class the first 400 hours, then we WORK on the floor like slaves until they say we can go to continuing. Every grade I have gotten the entire time on the floor save for the month of Sept were guestimates.

There is a ton more but until something ACTUALLY HAPPENS.....and not BOB coming in and talking to Sherri and her saying these are FALSE claims when they are not-----btw--someone named ROBIN is cluing Sherri in on the inspections.....then I will assume that everyone involved doesn't really care.

Best Regards



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Ave.
Dunbar, WV 25064
Telephone: 304-558-2924
Fax: 304-558-3450
www.wvbbs.org

Board Members

Michael Belcher
Justina Gabbert
Sarah Hamrick
Paula Kurczak
Susan Poveromo
Jim Ryan
Rick Stache

October 25, 2010

Robert Bhavani
Valley Beauty School
1040 Avery Street
Parkersburg, WV 26101

COMPLAINT #: C2011-24

Dear Mr. Bhavani:

The Board office has received the enclosed complaint concerning multiple issues being raised by a possible student.

The Board office is requesting your response to this complaint.

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Please mail your response to:

WVBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Please have your instructors refrain from threatening students that file complaints should the statement in this complaint be true.

Sincerely,



Adam L. Higginbotham
Director



Valley Beauty School

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Ave
Dunbar, WV 25064

November 2, 2010

Reference: Complaint # C2011-24

Dear Mr. Higginbotham,

This letter is written in response to the complaint referenced above. Before any reconstructive investigation can take place, school management must be made aware of all of the facts involving the student's concerns.

In the School Catalog on page 22, a Complain Procedure spells out the method to alert the school managers of any student concerns. A School Catalog is given to every student. The school has set up a complaint committee to review all allegations received. The committee is comprised of four individuals, the school owner, director, instructor and administrative secretary. The committee is under strict reporting guidelines as outlined in the Catalog. Please see attachment A.

Feedback is to be given back to the complainant in writing.

However, in this case the entire complaint procedure of the school was bypassed. Furthermore the possible student concerns were not brought to the attention of the school nor was the writer of the complaint ever identified. The school can not respond to rumors or unsubstantiated opinions.

Feedback can not be given to an unknown individual who may or may not be a student. The alleged misconduct can not be investigated and addressed without detailed dates, specific identification of what happened that was wrong and identified witnesses.

Address all correspondence to: 113 Wildwood Drive • Marietta, OH 45750
• Cambridge Campus • 706 Wheeling Avenue • Cambridge, OH 43725
• Zanesville Campus • 627 Main Street • Zanesville, OH 43701
• Parkersburg Campus • 707 Market Street • Parkersburg, WV 26101



Valley Beauty School

Valley Beauty School is in the business of training students for future careers and has always tried to treat students openly and fairly. It is our deep concern that complaints were made against the school. We have an open door policy to counsel students who have any grievance concerning their training.

Sincerely,



Robert Bhavnani

Address all correspondence to: 113 Wildwood Drive • Marietta, OH 45750
• Cambridge Campus • 706 Wheeling Avenue • Cambridge, OH 43725
• Zanesville Campus • 627 Market Street • Zanesville, OH 43701
• Parkersburg Campus • 707 Market Street • Parkersburg, WV 26101

Complaint Procedure

A student, teacher, or interested party may file a complaint against the school; however, the complaint should be in writing to the school Owner or Director and should outline the allegation or nature of the complaint. If the problem cannot be resolved through discussion the complaint should be referred to the schools complaint committee. The school should document the meeting between the school representative and complainant in writing. The complainant should be provided a copy of this written record after the meeting.

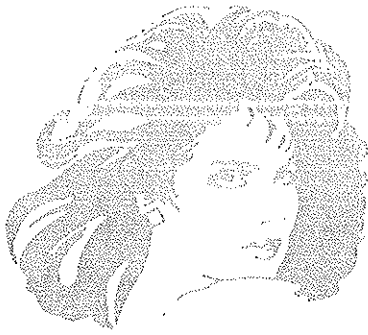
The school has set up a complaint committee with school to review all allegations received. The committee is comprised of four individuals, the school Owner, Director, Instructor and Administrative Secretary.

The schools complaint committee should meet within 21 calendar days of receipt of the complaint and review the allegations. If more information is needed a letter should be written outlining the additional information. If no further information is needed the complaint committee should act on the allegations and a letter will be sent to the complainant within fifteen calendar days stating the steps taken to correct the problem or information to show that the allegations were not warranted or based on the facts.

The complainant is required to try and resolve the problems through the school's complaint process. If the problems cannot be resolved, then a complaint form may be obtained through the state board.

West Virginia State Board of Barbers and Cosmetologists
1201 Dunbar Ave
Dunbar, WV 25064
(304) 558-2924

National Accrediting Commission for Cosmetology Arts and Sciences
4401 Ford Ave
Suite 1300
Alexandria, VA 22302
(703) 600-7600



Valley Beauty School

W.V. State Board of Barbers and Cosmetologists
1201 Dunbar Ave
Dunbar, West Virginia 25064
Ref: Complaint # C2011-24

November 17, 2010

Dear Mr Higginbotham,

This letter is a follow-up regarding the complaint issued to the school dated October 25, 2010. As referenced to your office in the letter written November 2, 2010 from Valley Beauty School regarding the school's complaint procedure which was totally by passed. As stated the school cannot respond to rumors and unsubstantiated opinions.

The school does have a dress code for students and instructors as well. It is always a topic of discussion at regular staff meetings.

Students are not allowed to write themselves in or out, only an instructor can do so. The two students named in the complaint were Kristina Boston and Tabitha Collins, see attached statements made by these students and the statement of Instructor Sherri Greene. Hours are audited every month which is done with a time card, time sheet (that has to be signed off on by instructors) and attendance book which then is put into the computer in the main office.

Apparently the student who sent you the complaint must not have read the catalog and rules and regulations because attendance, curriculum is all laid out for the students prior to starting classes. From the sound of the complaint perhaps this student would be better off to find an occupation that does not require as much work as this field does, otherwise she would know the more hands on that you get only helps you succeed in this field.

Address all correspondence to: 113 Wildwood Drive • Marietta, OH 45750
• Cambridge Campus • 706 Wheeling Avenue • Cambridge, OH 43725
• Zanesville Campus • 627 Main Street • Zanesville, OH 43701
• Parkersburg Campus • 707 Market Street • Parkersburg, WV 26101



Valley Beauty School

The school can not address issues that happened outside of the school, we do not encourage instructors to spend social time with the students after hours, but that is beyond our control. Unless the Board wants to have these issues resolved by the school, then the school should have the right to know who is doing the accusations and have the student set up a meeting with the grievance committee.

Sincerely,

Robert Bhavnani
Owner

Address all correspondence to: 113 Wildwood Drive • Marietta, OH 45750
• Cambridge Campus • 706 Wheeling Avenue • Cambridge, OH 43725
• Zanesville Campus • 627 Main Street • Zanesville, OH 43701
• Parkersburg Campus • 707 Market Street • Parkersburg, WV 26101

Board of Barber and Cosmetologists
1201 Dunbar Ave
Dunbar, WV 25064

Dear Mr. Higginbotham:

My name is Sherri Greene and I am an instructor at Valley Beauty School located in Parkersburg, West Virginia. I am writing in response to the recent anonymous complaint filed against me with the Board. The complaints regarding the alleged behavior that I "...felt students breast, had them spend the night..." and "threatening students" is so egregiously false that I find it difficult to even respond. I am so upset about these defamatory comments that show me in a false light and injure my reputation that I felt the need to address these lies.

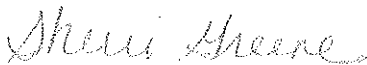
The Board's process of allowing anyone with any type of grievance, whether it be personal, professional, true or false, to be filed against an individual is lackadaisical and provides no protection to those who are receiving the complaints. The fact that I have to defend myself against an anonymous and slanderous complaint without the Board requiring any type of evidence from the complainant is beyond ridiculous. There is no truth to any of the statements, and the fact that the Board, to which I have been licensed with for over 26 years, offers me no protection is extremely irritating.

Valley Beauty School gives every student a Student Catalog and Rules and Regulation that outlines proper procedure for complaints. This procedure consist of talking to the school manager if she doesn't resolve the complaint, the student then must go to the Director/Owner. The Director/Owner would then bring it before the school complaint committee to investigate. The school was never given a complaint from the student against me.

I feel that a quality education is extremely important. I myself have a Bachelors Degree in Sociology along with the year I attended Parkersburg Beauty College. I work very hard in my position as an instructor. I care deeply about the students because I wish for them all to succeed and be in a position to better the lives of themselves and their families. Seeing the students who put in the work succeed overshadows most of the other negative aspect of my job; however, the emotional distress caused to me by this recent complaint is proving hard to overcome.

It should be very obvious that I am very upset about this situation. I feel the Board needs to put in place better protocols and checks if they are going to continue to accept grievances from anonymous sources. The fact that I even have to defend myself in this situation when I give so much for my students in order to help them succeed sickens me.

Regards,



Sherri Greene
RT 1 Box 145
Ellenboro, WV 26346

KRISTINA S BOSTON

52123 Joppa Road
Reedsville, Ohio 45772
November 5, 2010

WV State Board of Cosmetology
1201 Dunbar Avenue
Dunbar WV250641201

WV State Board of Cosmetology,

I am writing in regard to a letter received in which I feel compelled to defend myself and deny claims that I have been falsely accused. I have been a student of Valley Beauty School since September of 2009. As a student of Valley Beauty School I have clocked in and out to the best of my ability, I have never received any hours that I have not earned as I have been accused of. I resent these accusations as I have held a very high standard for myself. The vindictive nature of these accusations are just that, accusations made by a small person, perhaps jealousy of my accomplishments.

Mrs. Sherrie Greene has been my instructor for the past year, I hold a very high opinion of this person. Sherrie is an asset to your profession, she is one of the most gifted individuals I have ever had the pleasure of knowing, she is caring thoughtful and takes great pleasure in her job. I have never seen her act in a manner of witch she has been accused. I take personal offense that someone would slander her person in such manner.

Sincerely,

Kristina S. Boston



Dear Mr. Higginbotham,

I am writing a letter in regards to false accusations made against me. I have been a student at Valley Beauty School since September 2009. I have been accused of receiving hours that I did not earn. Under circumstances yes, there has been days that I have been present at Valley Beauty School and had clients waiting in my salon chair, and honestly made the mistake of not clocking in. I have never written myself in or out. There has always been an instructor very aware of me being present at school on the days that I forgot to clock in.

I have had a very good relationship with alot of students as well as Instructors at Valley Beauty School. Sherri Greene has not only been a good instructor, she is a very caring and thoughtful person. She would do anything for any student enrolled at Valley Beauty School. She takes pride in her job and thinks very highly of every student, being that no-one person is treated any different. The vindictive nature of the person wrongly accusing us as students as well as an individuals, obviously has some type of jealousy for my well-being and greatly achieved accomplishments. I have taken personal offense for such a person to make such false accusation.

Sincerely,

Sakitha K. Collins

To Whom It May Concern:

My name is Janet Clonch. I am a student at Valley Beauty School in Parkersburg West Virginia. I am writing to say that the accusations of me posting signs for advertisement to do hair in my home is false.

Sincerely,
Janet Clonch

A handwritten signature in cursive script that reads "Janet Clonch". The signature is written in dark ink and is positioned below the typed name.



State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

Earl Ray Tomblin
Governor

p: 304.558.2924
f: 304.558.3450
www.wvbbs.org

Director
Adam L. Higginbotham

Board Members

| | |
|-----------------|---------------|
| Michael Belcher | Jusrina Gabb |
| Sarah Hamrick | Susan Poveror |
| Jim Ryan | Rick Stache |

Robert Bhavani
Valley Beauty School
1040 Avery Street
Parkersburg, WV 26101

January 27, 2011

COMPLAINT #: C2011-24

Dear Mr. Bhavani:

This letter is in regards to the above mentioned complaint.

The Board reviewed the complaint and responses and determined more information is needed.

The Board has requested copies of time cards for each of the following students.

- Kristina Boston
- Tabitha Collins

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Sincerely,

Adam L. Higginbotham
Director

Cc: Complainant



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbc.org

Director
Adam L. Higginbotham

Board Members
Michael Belcher Justina Gabbe
Sarah Hamrick Susan Poveron
Jim Ryan Rick Stache

Robert Bhavani
Valley Beauty School
1040 Avery Street
Parkersburg, WV 26101

January 27, 2011

COMPLAINT #: C2011-24

Dear Mr. Bhavani:

This letter is in regards to the above mentioned complaint.

The Board reviewed the complaint and responses and determined more information is needed.

The Board has requested copies of time cards for each of the following students.

- Kristina Boston
- Tabitha Collins

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Sincerely,

Adam L. Higginbotham
Director

Cc: Complainant



Valley Beauty School

Adam Higginbotham
State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

March 8, 2011

Re: Complaint # C2011-24

Dear Mr. Higginbotham,

In response to your letter regarding the above mentioned complaint, we are here with enclosing copies of time cards for Kristina Boston and Tabitha Collins.

If you have any questions please feel free to call me at 740-373-3617.

Sincerely,

Robert Bhavnani

Address all correspondence to: 113 Wildwood Drive • Marietta, OH 45750
• Cambridge Campus • 706 Wheeling Avenue • Cambridge, OH 43725
• Zanesville Campus • 627 Main Street • Zanesville, OH 43701
• Parkersburg Campus • 707 Market Street • Parkersburg, WV 26101



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wybbc.org

Director
Adam L. Higginbotham

Board Members

| | |
|-----------------|-----------------|
| Michael Belcher | Justina Gabbert |
| Sarah Hamrick | Susan Poveroni |
| Jim Ryan | Rick Stache |

September 22, 2011

Valley Beauty School
1040 Avery Street
Parkersburg, WV 26101

COMPLAINT #: C2011-24

Dear Valley Ownership:

The Board reviewed the above reference complaint at the September 19th, 2011 board meeting. The Board voted to dismiss the complaint due to no grounds, the passing of the owner, and the closure of the beauty school.

Sincerely,

Adam L. Higginbotham
Director

Cc: Complainant

Higginbotham, Adam L.

From: Adam.L.Higginbotham@wv.gov
Sent: Monday, October 18, 2010 1:07 PM
To: Higginbotham, Adam L; Western, Patrick L
Cc: dsdcaruthers@hotmail.com
Subject: WVBBC Complaint

West Virginia Board of Barbers and Cosmetologists

Complaint Form

Individual Making Complaint

Name: Destiny Caruthers
Address: 502 Clayton Ave.
Hurricane , WV 25526
Phone: 304-767-0422
E-mail: dsdcaruthers@hotmail.com

Individual or Business Named in the Complaint

Name: Traci (owner)
Company: Tracies Beauty Cottage & Day Spa
Address: 506 50th St. South East
Charleston , WV 25526
Phone: 304-925-1772

List of Witnesses

Ashley Mann- 826 Coal River Rd. St.Ablans, WV 25177 Becky Gatewood- 1415 Robinhood Rd.
Charleston, WV 25314 Lynae Stone- 130 Wells Drive Marmet, WV 25315 Renee Vaughan-Rt. 1 Box
266-B Liberty, WV 25124

Description of Complaint

My Office and I went to Tracies Beauty Cottage on September 14th 2010, our experience was quite disappointing. We first noticed the mildew in the pedicure tubs. As the employees began our pedicures and manicures they used non sterial instruments and did not sterilize between each use after each of us. We also noticed that we did not see one employee wash or sanitize there hands. After each pedicure they did not clean the unit or the tubs. As they started our manicures another girl and I noticed that they had used the same bowl with the same water for each of us to soak our hands.

Another girl noticed at her station a ash tray filled with cigerates. As the owner started what I thought was going to be a normal pedicure I felt this extreme pain, as I looked down I seen my big left toe was bleeding. She then informed me that she had just removed a what she refered to as a ingrown toe nail I feel she should not be preforming precedures that clearly should be preformed by a doctor. As a result I now have an infection in my toe which I have had to be placed on an antibiotic for 10 days. If it is not healed in that time 1/2 of my toe nail will have to be removed. I feel that this is very unexceptable and I would not want anyone else to have to go through this. I have tried to contact Tracie to be reimbursed for my doctor bills for which I also have no insurane to help but she will not get back in touch. with me.



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1201 Dunbar Ave.
Dunbar, WV 25064
Telephone: 304-558-2924
Fax: 304-558-3450
www.wvbbs.org

Board Members

Michael Belcher
Justina Gabbert
Sarah Hamrick
Paula Kurczak
Susan Poveromo
Jim Ryan
Rick Stache

Traci Wilson
Traci's Beauty Cottage and Day Spa
506 50th Street South East
Charleston, WV 25526

October 25, 2010

COMPLAINT #: C2011-25

Dear Mrs. Wilson:

The Board office has received the enclosed complaint concerning your shop.

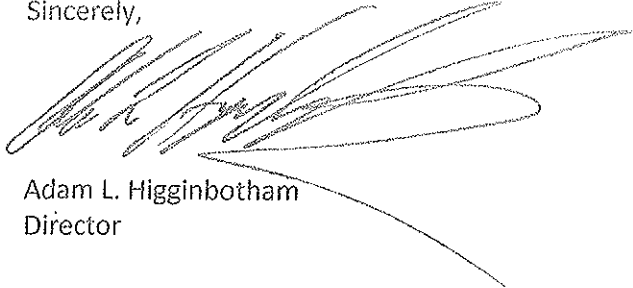
The Board office is requesting your response to this complaint.

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Please mail your response to:

WVBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Sincerely,



Adam L. Higginbotham
Director

Higginbotham, Adam L

From: Casto, Lamona R
ent: Sunday, October 24, 2010 8:54 PM
to: Higginbotham, Adam L
Cc: Western, Patrick L
Subject: Tracie's Beauty Cottage & Day Spa (10453), 506 50th. Street, Charleston

October 22, 2010: Tracy Wilson, Owner/Manager of this beauty shop has cosmetologist and an aestitician license. Her licenses are the only ones that I saw. She said she was the only one. There were 3 pedi spas and one was dirty. I told her that she needed to clean the spa after each client and she said that she did. I said that I didn't think that this much dirt would build up after only one client. She said that the lady's feet were very dirty and she had not cleaned the spa last night since she was her last client. Whatever was on the spa did not look like mold but it was dirty. The other spas were clean and the rest of the shop was clean. I did not issue a violation notice but emphasized cleaning the spas after each client.



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbc.org

Director
Adam L. Higginbotham

Board Members
Michael Belcher Justina Gabb
Sarah Hamrick Susan Povero
Jim Ryan Rick Stach

Traci Wilson
Traci's Beauty Cottage and Day Spa
506 50th Street South East
Charleston, WV 25526

March 17, 2011

COMPLAINT #: C2011-25

Dear Mrs. Wilson:

This is the third request for response for complaint C2011-25. Please understand that your response is required, not voluntary.

Should your response not be received by April 1st, 2011, the Board will seek your attendance to the next scheduled board meeting in Parkersburg on May 23rd, 2011.

The board may seek to impose disciplinary actions against your license due to your disregard for Title 3 Series 9 rule of the West Virginia State Board of Barbers and Cosmetologists.

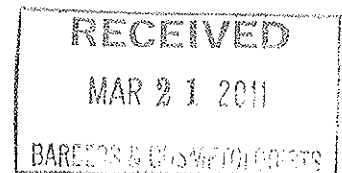
Sincerely,

Adam L. Higginbotham
Director

Tracie's Beauty Cottage & Dayspa

Dear Sir or Madam

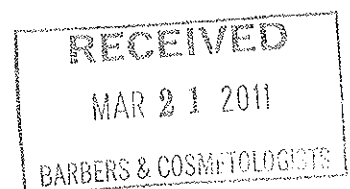
I would like to address the complaint that was sent about my salon and spa. As an owner and working technician it is my number one goal to have happy customers walk out of my facility. My establishment has always been noted for great service and exceptional cleanliness, the complaint I received was very shocking to me in large part because the issues complained about are fabricated and unreasonable. I was one of the working techs for this service, this was a small party of 6 or 7 ladies that received pedicures, manicures, massage and facials. Very disturbing that only 4 out of that group received the pedicures and manicures yet all of the attendees signed an inaccurate complaint against our shop. One of the issues was the cleanliness of our pedicure spas, it was stated that there was a mold build up. Our chairs are not idle long enough to possess such a thing first of all and secondly I do not believe anyone who sat in such a chair would actually put their feet in it. Each of our stations is equipped with state board code marvicide and clorox clean-up. These ladies work for a doctors office and have been to my establishment in the past years, I do not believe anyone would frequent a place that held poor sanitation as they have described, and being of the medical field they know high standards of disinfection and that is one reason they have come to us in the past. We also give manicures at the same stations, I have at least 10 manicureing bowls to accomplish multiple requests for this service. I personally broke down each station I worked from in front of each patron before executing the next service. This is our standard practice which these ladies are very aware of. I have been in practice for 19 years, and if you look at our sanitation history it is more than within the standards of state board criteria. I have included pictures of our pedicure and manicure stations to show the layout and disinfection practices we use. It is also mandatory to unscrew the filters and clean the hidden pipes incased within the station. We do this twice weekly. My staff takes pride in the service we provide, and this bogus complaint is an insult to our profession and intelligence, certainly business I am glad to lose. Shame on these ladies for the disrespect of such a nice gift from their employer. My staff has informed me that they have no problem signing statements or coming forth on this matter if they are asked to. Sanitation is not only for the client, it is im-



Tracie's Beauty Cottage & Dayspa

perative to the health and safety of the technician as well. Myself as well as my staff are perplexed at what the actual goal to this ridiculous claim was intended for, it is a waste of your time and mine.

David D. Wilson





Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbs.org

Director
Adam L. Higginbotham

Board Members

Michael Belcher Justina Gabb
Sarah Hamrick Susan Poveroni
Jim Ryan Rick Stache

Traci Wilson
Traci's Beauty Cottage and Day Spa
506 50th Street South East
Charleston, WV 25526

September 22, 2011

COMPLAINT #: C2011-25

Dear Mrs. Wilson:

The Board reviewed the complaint filed against your salon at the September 19th, 2011 board meeting.

The Board voted to dismiss the complaint but to have following up inspections in the next six months to ensure infection control procedures are followed.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam L. Higginbotham", with a long, sweeping horizontal line extending to the right.

Adam L. Higginbotham
Director

Cc: Complainant

COPI-26

Nov. 1, 2010

Complaint

I had a pedicure 3-4 mos ago
at Rainbow Nail Salon in City.
When the polish was removed
recently I found I had a
fungal infection (B) Great Toe nail.

I paid for my service with
cash since credit cards aren't
acceptable there. Also the foot
bath was prepared by a
sleazebag under age girl.

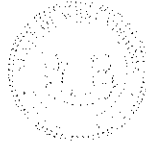
B Todd Bailey

PO Box 141

Cannelton WV

25036

Phone 304-442-8316



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1201 Dunbar Ave.
Dunbar, WV 25064
Telephone: 304-558-2924
Fax: 304-558-3450
www.wvbbs.org

Board Members

Michael Belcher
Justina Gabbert
Sarah Hamrick
Paula Kurczak
Susan Poveromo
Jim Ryan
Rick Stache

Rainbow Nails
Hoang Nguyen
5400 A MacCorkle Avenue
Charleston, WV 25304

November 9, 2010

COMPLAINT #: C2011-26

Dear Hoang Nguyen:

The Board office has received the enclosed complaint concerning your shop.

The Board office is requesting your response to this complaint.

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Please mail your response to:

WVBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Sincerely,

Adam L. Higginbotham
Director

5400 MacCorkle Avenue
Charleston, WV 253043
Telephone: 304-925-0777

Adam L. Higginbotham
WVBBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Dear Mr. Higginbotham:

I am writing to respond to the complaint of B. Joanne Baily and the letter from your office with which we received on November 12. While I do not specifically recall Ms. Baily's appointment I can also say I did not notice any infection at that time. We've been operating at this location for fourteen years and to our knowledge this was the first complaint that we've had registered. I believe Ms. Baily was a one time customer, which is not our normal customer base. Most of our clients are regular repeat customers. We don't have a lot of walk-in business, we operate by appointments. Our policy has always been that if a customer is dissatisfied that they come back and work it out so we can try to make the customer happy. Since Ms. Baily did not return in the three to four months after her appointment we don't know if she received other pedicure appointments after that time and where they might've occurred. We've had no other complaints of Onychomycosis at our shop. My daughter is sixteen and she does help out in cleaning the shop, but this is something that she has always done and is supervised by me and my

wife. The pedicure implaments are always kept in Barbicide solution for a total of thirty minutes before we use them on each customer. Our pedicure chairs are pipe free "CRYSTAL CLEAN" chairs and cleaned after each customer with 100% Lysol. Thank you for your assistance with this. Please feel free to contact me for any additional information.

Sincerely,

Hoang Le Nguyen 11/12/10

Hoang Le Nguyen

Higginbotham, Adam L

From: Casto, Lamona R
Sent: Wednesday, November 17, 2010 8:55 PM
To: Higginbotham, Adam L
Subject: Rainbow Nails (11374), 5400 A MacCorkle Ave., S.E., Hoang Le Nguyen (M00684), Owner/Manager

Nov. 17, 2010, 3:55 PM: There are two licensed nail techs at this shop: Hoang Le Nguyen (M00684) and his wife, Nhi Ai Thi Dang (M00515). She had the only client when I went in. I checked licenses and inspected the shop looking in most drawers in the manicure tables, checked the pedi spas and he told me what and how he disinfected after each client, took one spa apart. Housekeeping was good, the restroom was in good condition, and the supply room was clean and orderly. I saw no sanitation issues. He talked about how they had return clients and that his business was a family business. He has two teenage children, a son and a daughter who were there. He said his kids helped. I asked if they helped him clean and he said that they did. I said they don't do nails do they? and he said "Oh no, the customers would not stand for that, and they don't know what to do". His kids were in an exercise room. He said they came there after school until time to go home. One of his clients came in while I was there. He also told me that things had been kinda slow. I saw no sanitation issues and there were no indications that an underage/unlicensed child was doing nails. I have never seen anything questionable in this shop.



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbc.org

Director
Adam L. Higginbotham

Board Members

| | |
|-----------------|--------------|
| Michael Belcher | Justina Gabb |
| Sarah Hamrick | Susan Povero |
| Jim Ryan | Rick Stach |

Rainbow Nails
Hoang Nguyen
5400 A MacCorkle Avenue
Charleston, WV 25304

January 28, 2011.

COMPLAINT #: C2011-26

Dear Hoang Nguyen:

This letter is in regards to the above mentioned complaint.

The Board reviewed the complaint, responses and the investigation conducted in result of this complaint. Due to the satisfactory inspection report at the time of the inspection, the Board decided to close the complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam L. Higginbotham".

Adam L. Higginbotham
Director

Cc: Complainant

Higginbotham, Adam L

From: Adam.L.Higginbotham@wv.gov
Sent: Wednesday, November 03, 2010 2:28 PM
To: Higginbotham, Adam L; Western, Patrick L
Cc: sawshahall@yahoo.com
Subject: WVBBC Complaint

C 2011-27

West Virginia Board of Barbers and Cosmetologists

Complaint Form

Individual Making Complaint

Name: Chuck Hall
Address: 27 Mapleglen Trail
Sumerco, WV 25567
Phone: 304-553-3303
E-mail: sawshahall@yahoo.com

Individual or Business Named in the Complaint

Name: Ashley McClanahan
Company: Befor And After Beauty
Address: 1318 Bigley Avenue
Charleston, WV 25301
Phone: disconnected

List of Witnesses

none

Description of Complaint

Complaint includes: dirty floor. dirty towels stacked high. ceiling and wall water damaged. combs and color brushes were in sink when I arrived for a cut When she finished she placed the comb and scissors back into the sink. Water standing in the sink. sink was very dirty. combs and scissors were picked up off the counter and used (not clean). back bar not clean very dirty. I work in charleston When I need a haircut I would get one while at work on lunch break. Went to her two times second time could not go back (Shop very unclean) I have a barber license that is inactive Charles E. Hall (Peach Creek,Wv). I know how important it is to keep your shop clean for the public. Former shop owner. Thank you Charles Hall



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1201 Dunbar Ave.
Dunbar, WV 25064
Telephone: 304-558-2924
Fax: 304-558-3450
www.wvbbs.org

Board Members

Michael Belcher
Justina Gabbert
Sarah Hamrick
Paula Kurczak
Susan Poveromo
Jim Ryan
Rick Stache

November 9, 2010

Ashley McClanahan
Before and After Beauty
1318 Bigley Avenue
Charleston, WV 25301

COMPLAINT #: C2011-27

Dear Mrs. McClanahan:

The Board office has received the enclosed complaint concerning your shop.

The Board office is requesting your response to this complaint.

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Please mail your response to:

WVBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Sincerely,

Adam L. Higginbotham
Director

November 12, 2010

WVBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Attn: Adam L. Higginbotham

Ref: Complaint #C2011-27

Dear Mr. Higginbotham:

This is my written response to the above complaint against my beauty salon (Before and After Beauty, LLC), which is located at 1318 Bigley Avenue, Charleston, WV 25302.

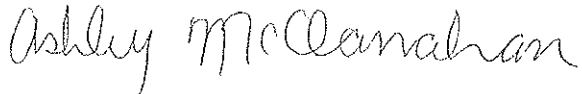
The following addresses each complaint in the letter I received:

1. Dirty Floor – Floor has glue residue from when the tile was placed. Once glue seeped up between tiles and dried, it was not able to be removed. The floor is also color stained. Floor has been buffed and mopped regularly but continues to look discolored.
2. Dirty Towels Stacked High – Towels are placed in a dirty towel bin which, when full and the lid will no longer close, are taken home and washed.
3. Ceiling and Wall Water Damage – Roof has been leaking for several months. Landlord never came to fix roof, therefore my father came and patched the roof. Damage inside shop was never fixed by landlord.
4. Combs and color brushes were in sink when I arrived for a cut, when she finished she placed the comb and scissors back into the sink – First, there is no sink in the room in which I cut hair. Second, the sink he must be referring to is a washtub sink, which is in my shampoo room. I only have two male customers who get their hair washed and this gentleman is not one of them, so how he saw the washtub sink is not clear. This sink is where I place color bowls, color brushes, scissors, combs and brushes to be cleaned. The combs and brushes are washed prior to being placed in my barbicide jar for the respected disinfecting time. Color bowls and color brushes are washed before placing them back onto a shelf. I have never picked a comb or scissors up off of my station unless an appointment had been made and I knew the client was coming. It is only then that I would go ahead and get a comb and my scissors out of a clean, closed cabinet, no more than 5 minutes in advance.
5. Water standing in sink – The only time water is ever standing in the wash tub sink or hair washing sink is when they are being cleaned with barbicide or bleach. Water is never left standing unattended.
6. Sink was very dirty – The wash tub sink in which we clean our color bowls and color brushes, along with other hair styling tools, is white. Sink has many color stains that have been bleached and scrubbed but will not come off. The black hair washing sink is cleaned and disinfected after each client. Neither sink is dirty.
7. Combs and Scissors were picked up off the counter and used (not clean) – As addressed in item four, combs and scissors are only placed on my counter when I know a client is coming and no more than 5 minutes in advance. They are never unclean. They are always properly cleaned and disinfected before being placed in a clean, closed cabinet.

8. Back bar not clean very dirty – My salon has a small bar that is used to hold shampoo, conditioner, and waxing supplies. There is also a bar used for storage. Neither is ever unclean or dirty.
9. Shop very unclean – My salon stays busy but is never unclean. Things are always put away in the proper containers and properly disinfected before doing so. It is cleaned regularly.

I do not recognize Chuck Hall. I am on a first-name basis with all of my clients and not sure who this complaint is coming from. I typically stick to appointments only and think I would know someone who has been in twice. I keep my salon clean and organized. This is an old building which I have been renting but am moving out of. We have had some issues with the landlord in the past and I suspect that he was unhappy about my leaving. He was seen looking in the windows after receiving his notice via certified mail. I feel this is not a legitimate complaint and may have been falsely written. We are regularly inspected by the Board of Barbers and Cosmetologists and have never had anything that needed correcting. We have always passed inspection.

Thank you,

A handwritten signature in cursive script that reads "Ashley McClanahan". The signature is written in dark ink and is positioned above the printed name.

Ashley McClanahan

C2011-27

Higginbotham, Adam L

From: Casto, Lamona R
Sent: Friday, November 19, 2010 8:49 PM
To: Higginbotham, Adam L
Subject: RE: Inspection
Attachments: image003.jpg

Nov. 16, 2010: I stopped by this shop this morning and the sign was down and it appeared that the shop was out of business. I wanted to make sure so I stopped again this evening. The shop was open and Tracy Roberts (35613), a Booth Renter, was working. They have been in the process of moving so that is why it took 6 times to find anybody there. The owner, Ashley McClanahan, had not made an application for the new location so Tracy brought enough stuff back to the old shop to do her clients. Everything was legal but the shop did look pretty dirty, especially the floor. Tracy said that was because of water problems and that is why they are moving. The utility sink/tub was stained with color. That was the only issues that I saw and I did not issue any violation notices because Tracy said that would be their last day there. I e-mailed this report to you on Tuesday, Nov. 16, 2010, but I didn't get a reply so that is why I am doing it now. I guess you didn't get the first time.

From: Higginbotham, Adam L
Sent: Wed 10/27/2010 12:15 PM
To: Casto, Lamona R
Cc: Western, Patrick L
Subject: Inspection

Lamona,

Please inspect shop # 14506 Before and After Beauty Salon on Bigley Ave in Charleston near our old office.

Please check for unsanitary issues.

Thanks.

Should you have any further questions, please feel free to contact me.

Adam L. Higginbotham M.B.A.
Director
1201 Dunbar Avenue
Dunbar, WV 25064
304-558-2924
adam.l.higginbotham@wv.gov



Visit us on the web at www.wvbbc.org.



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

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Director
Adam L. Higginbotham

Board Members
Michael Belcher Justina Gabbe
Sarah Hamrick Susan Poveroni
Jim Ryan Rick Stache

Ashley McClanahan
Before and After Beauty
1318 Bigley Avenue
Charleston, WV 25301

January 28, 2011

COMPLAINT #: C2011-27

Dear Mrs. McClanahan:

This letter is in regards to the above mentioned complaint.

The Board reviewed the complaint, responses, and the inspection performed on this shop due to the complaint. The Board dismissed the complaint due to the salon being in the process of moving from one location to another. Multiple inspection attempts by the Board verified the salon moved locations.

It is the Board impression that the salon owner could not reach an agreement with the landlord to correct several unsatisfactory items that fall under the landlord's responsibility. Therefore, the complaint is closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam L. Higginbotham", written over a horizontal line.

Adam L. Higginbotham
Director

Cc: complainant

Higginbotham, Adam L.

From: Adam.L.Higginbotham@wv.gov
Sent: Monday, November 15, 2010 7:12 PM
To: Higginbotham, Adam L; Western, Patrick L
Cc: wyattzbabygurl_4lyfe@yahoo.com
Subject: WVBBC Complaint

West Virginia Board of Barbers and Cosmetologists

Complaint Form

Individual Making Complaint

Name: Erica Ross
Address: 7005 Beech Drive
Huntington, WV 25705
Phone: 304-412-2029
E-mail: wyattzbabygurl_4lyfe@yahoo.com

Individual or Business Named in the Complaint

Name: Royal Nail And Spa
Company: Royal Nail & Spa
Address: 5636 US Route 60
Huntington, WV 25705
Phone: 304-736-7770

List of Witnesses

Jessica Adkins 7006 Beech Drive Huntington WV 25705

Description of Complaint

Me An My Neighbor Went To Royal Nail & Spa, Located On K-mart Plaza. We Went To Get Our Eyebrows Waxed And The Lady That Was Doing Our Eyebrows Used The Same Stick, Gauze And Comb, Sizzors On The Both Of Us Without Sanitizing Anything, And The Stick Was For Putting The Wax On Our Eyebrow And She Continously Kept Dipping It Back In The Hot Wax That Had Been Contaminated. And I Didn't Realize That Untill We Had Gotton In The Car Ready To Leave. So I Called In The And The Lady That Did Our Eyebrows Said She Was Doing Her Job, So I Ask To Talk To Someone Else And All I Got From Him Was " What Do You Want Me To Do ". An I Had Notice A

Couple Days Later I Recieved Tiny Bump Under My Skin. I Would Greatly Appriciate If Something
Could Be Done Thank You Erica Ross

C 2011-28

Higginbotham, Adam L

From: Adam.L.Higginbotham@wv.gov
Sent: Wednesday, November 03, 2010 1:20 PM
To: Higginbotham, Adam L; Western, Patrick L
Subject: WVBC Complaint

West Virginia Board of Barbers and Cosmetologists

Complaint Form

Individual Making Complaint

Name: Matt D Johnson
Address: 230 Route 20
Barboursville, WV 25705
Phone: 304 667 4050
E-mail:

Individual or Business Named in the Complaint

Name: Royal Nails And Spa Royal Nails And Spa
Company: Royal Nails And Spa
Address: 5636 US ROUTE 60 EAST 5
Huntington/Barboursville, WV 25705
Phone: 304 736 7770

List of Witnesses

Matt D Johnson(boyfriend) & Amanda Smith

Description of Complaint

i was there to do a balance(fill-in) and the owners where training someone to do a fill-in on me, i asked for a license or Manicurist number and they didn't have one, i looked around for one and only 3 out of 6 had one. I also saw that they were using a razor on someone's pedicure, i knew its ILLEGAL because i was cut once. PLEASE do something about it because it's unacceptable you guys are the only ones that can because the owners didn't.

C2011-2

Higginbotham, Adam L

From: Adam.L.Higginbotham@wv.gov
Sent: Saturday, October 30, 2010 5:33 AM
To: Higginbotham, Adam L; Western, Patrick L
Subject: WVBBC Complaint

West Virginia Board of Barbers and Cosmetologists

Complaint Form

Individual Making Complaint

Name: MaryAnn Lee
Address: 340 Route 20
Barboursville , WV 25701
Phone: 304 693 4450
E-mail:

Individual or Business Named in the Complaint

Name: Royal Nails & Spa, Excotic Nails Nails
Company: Royal Nails & Spa... Excotic Nails
Address: 5636 Us Route 60 Huntington, WV 25705
Barboursville, WV 25705
Phone: 304 736 7770

List of Witnesses

Mary Ann Lee

Description of Complaint

Royal Nails & Spa have unlicensed workers about 4 of which are training there. They used a razor on my pedicure. When they heard the inspectors were in-town they stopped working for a few days

Higginbotham, Adam L

From: Adam.L.Higginbotham@wv.gov
Sent: Monday, November 08, 2010 11:38 AM
To: Higginbotham, Adam L; Western, Patrick L
Subject: WVBC Complaint

West Virginia Board of Barbers and Cosmetologists

Complaint Form

Individual Making Complaint

Name: Cindy Nguyen
Address: 1712 Verick St
Teays Valley, WV 23948
Phone: 2383434033
E-mail:

Individual or Business Named in the Complaint

Name: Royal Nails And Spa Royal Nails And Spa
Company: Royal Nails And Spa
Address: 5636 US ROUTE 60 EAST 5
Huntington/Barboursville, WV 25705
Phone: 304 736 7770

List of Witnesses

Cindy Nguyen

Description of Complaint

unlicensed workers!!! worst nail job ever.. none of whom have any experience because the owners were training them on my acrylic nails!..



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists

1201 Dunbar Ave.
Dunbar, WV 25064
Telephone: 304-558-2924
Fax: 304-558-3450
www.wvbhc.org

Board Members

Michael Belcher
Justina Gabbert
Sarah Hamrick
Paula Kurczak
Susan Poveromo
Jim Ryan
Rick Stache

Royal Nails and Spa
Tony Dang
5636 US Route 60 East 5
Huntington, WV 25705

November 17, 2010

COMPLAINT #: C2011-28

Dear Mr. Dang:

The Board office has received the enclosed complaints concerning unlicensed workers in your salon.

The Board office is requesting your response to this complaint.

According to 3CSR9, you are required to respond to the complaint enclosed in writing within 15 days of receipt of this letter.

Please mail your response to:

WVBBC Response
1201 Dunbar Avenue
Dunbar, WV 25064

Sincerely,

Adam L. Higginbotham
Director



Joe Manchin III
Governor

Adam L. Higginbotham
Director

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Ave.
Dunbar, WV 25064
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Jim Ryan
Rick Stache

Chantelle Wandling
36557 Teays Valley Road
Hurricane, WV 25526

November 17, 2010

COMPLAINT #: C2011-03

Dear Chantelle Wandling:

Please see the previously sent letter attached to this notification.

You are now more than three months in default of your response to the Board for the complaint that has been filed against you.

Disciplinary charges will be petitioned to the Board against your license should you not respond to the complaint by December 1st, 2010.

According to 3CSR9, you have 15 days to respond to this letter in writing.

Please mail your response to:

WVBBC
1201 Dunbar Avenue
Dunbar, WV 25064

Sincerely,

Adam L. Higginbotham
Director

11-16-2016

In your own words describe the events at Roger Nails to the best of your ability.

Came in and owner's wife Cindy was at Front Desk with child. Child was eating. There was a man sitting down talking and a young woman doing a pedicure on a client. Cindy started doing a manicure on me. This was about 5 min until Ralph entered. The young woman got up and walked in the back. The young woman was the only person I saw doing a pedicure on the client. As soon as Ralph walked in Cindy called someone. Mr Dang came in after awhile and started talking to Ralph he was not there when I first showed up. She finished and I walked out before I left, Ralph asked who the young lady was and she said her name was YVONNE. I paid \$14 for the service. Charles Ramsey

Dear Adam L Higginbotham

My name is Tony Dang and I'm owner of Royal Nail and Spa.

I have received 04 letters of complaints from customers and I check what is false, then 03 is also a real (# C2011-28). Here is the name of 03 fake letters:

1 - Matt D Johnson and Amanda Smith

3-Cindy Nguyen

2-Mary and Lee

After checking and calling people of that letters I had no body answer , that's just special fabrications and slander to my shop.

And Mr.Adam also visit my shop and you knows all my employees have a license, and no one training.Beside that, all the nail tools were cleaning very carefully with Sterilier machine

We also have comment books for customer and they compliments are always clean and the service attentive always be our first order
Actually I was very surprised about the incident and look forward to the truth

We hope you understand and help us!

Regards

Tony Dang

Cardy & Tony are the best ever
and I would not say other
any place better than of most. Thanked
Charmaine for all the help &
for the info. I was able to
I really felt good about the
I was able to find the
This is a great place & I enjoyed
very much. I am definitely I will come back
again. I hope I will give you 10/10

Don't get the wrong impression

Bestest I've ever had EVER
Cathy does not understand
get the best of all the
Thank you I will give you a 10/10

Wendy is awesome! The best I
have ever had to do my nails.
Great shop and people!

Best Nail Salon in Huntington
Area - Cinsy is a true
professional - all the
other employees are so
attentive as well -
P;

Awesome Nail Salon
Love you, guys
Ann

Thank you to most people
- excellent - friendly -
❤️

Good Thank
you
Bobbie

They are the best

30

Dear Adam L Higginbotham

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We hope you understand and help us!

Regards

Tony Dang



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
f: 304.558.3450
www.wvbbc.org

Director
Adam L. Higginbotham

Board Members

| | |
|-----------------|---------------|
| Michael Belcher | Justina Gabbe |
| Sarah Hamrick | Susan Poveron |
| Jim Ryan | Rick Stache |

Royal Nails and Spa
Tony Dang
5636 US Route 60 East 5
Huntington, WV 25705

January 27, 2011

COMPLAINT #: C2011-28

Dear Mr. Dang:

This letter is in regards to the above mentioned complaint.

The Board reviewed the complaint and responses and determined the complaint to be true.

An investigation into the complaint led to the citation of an unlicensed worker. Therefore, the above mentioned complaint number is closed and the violation notice is upheld.

Further proceedings are pending regarding the multiple citations of unlicensed workers. Please wait for our office to contact you regarding your 3rd offense for allowing an unlicensed worker to practice in your salon.

Sincerely,

Adam L. Higginbotham
Director

Cc: Multiple complainants



Earl Ray Tomblin
Governor

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Director
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Michael Belcher Justina Gabbe
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Jim Ryan Rick Stache

Royal Nails and Spa
Tony Dang
5636 US Route 60 East 5
Huntington, WV 25705

January 27, 2011

COMPLAINT #: C2011-28

Dear Mr. Dang:

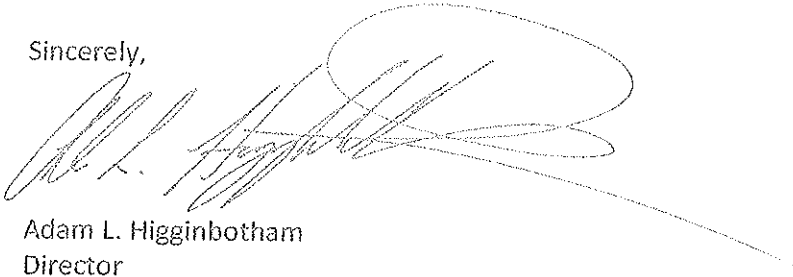
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Sincerely,



Adam L. Higginbotham
Director

Cc: Multiple complainants



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Director
Adam L. Higginbotham

Board Members

| | |
|-----------------|-----------------|
| Michael Belcher | Justina Gabbert |
| Sarah Hamrick | Susan Poverom |
| Jim Ryan | Rick Stache |

MEMORANDUM

To: Annual Report Status

From: Adam L. Higginbotham
Director
Board of Barbers and Cosmetologists

Date: September 22, 2011

Subject: C2011-28

Please see complaint C2011-21 for documentation concerning this complaint.

The complaint resulted in the license revocation of Tony Dang of Huntington, West Virginia and his shop, Royal Nails, in Barboursville, West Virginia.



Earl Ray Tomblin
Governor

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Board of Barbers and Cosmetologists
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Director
Adam L. Higginbotham

Board Members
Michael Belcher Justina Gabbert
Sarah Hamrick Susan Poveromo
Jim Ryan Rick Stache

MEMORANDUM

To: Annual Report Status

From: Adam L. Higginbotham *AKH*
Director
Board of Barbers and Cosmetologists

Date: September 22, 2011

Subject: C2011-29

Complaint C2011-29 is still under investigation and will not be referenced in the 2011 Annual Report.



Earl Ray Tomblin
Governor

State of West Virginia
Board of Barbers and Cosmetologists
1201 Dunbar Avenue
Dunbar, WV 25064

p: 304.558.2924
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Director
Adam L. Higginbotham

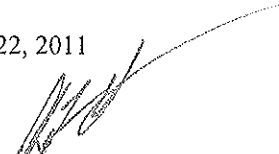
Board Members
Michael Belcher Justina Gabbert
Sarah Hamrick Susan Poveromo
Jim Ryan Rick Stache

MEMORANDUM

To: 2011 Annual Report

From: Adam L. Higginbotham
Director
Board of Barbers and Cosmetologists

Date: September 22, 2011

Subject: C2011-30 

C2011-30 is still under investigations.

