

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS

**In Re: Simply Nails & Spa
Shop License #4401**

Docket No.: 24-BAR-013

**Owner: Thien Pham
Personal License # 29019**

**NOTICE OF ADJUDICATIVE HEARING -
11/18/2024 @ 9:30 AM**

I. CASE SUMMARY/PROCEDURAL HISTORY:

On 11/15/23, the New Hampshire Office of Professional Licensure and Certification (“OPLC”), acting on behalf of the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board"), conducted a routine inspection of Simply Nails & Spa (“Licensee”) and assessed 3,145 violation points for multiple hygiene, safety, and license related violations found on the premises. On 01/16/24 the Board reviewed the inspection report and voted to initiate a disciplinary proceeding. This Notice of Adjudicative Hearing follows.

II. ORDERS:

(a) Pursuant to RSA 310:10, X and N.H. Code Admin. R. Plc 206.06(a) (“Rules”), the Board hereby notifies the parties that the Board has scheduled an **adjudicative/disciplinary hearing** for:

Date: 11/18/2024

Time: 9:30 am

Place: OPLC, 7 Eagle Square, Concord, NH 03301. If you require reasonable accommodations, a translator, or wish to participate remotely (Rule 206.08(f)), you may file a motion with the Board.

Please advise if this hearing is anticipated to last longer than 1 hour by filing a motion explaining with particularity the necessity for the additional time. **PLEASE ALLOT AT LEAST 3 HOURS OF YOUR TIME AS MULTIPLE HEARINGS ARE SCHEDULED AT THIS TIME.**

(b) STATUTORY AUTHORITY: This adjudicative/disciplinary hearing shall be conducted pursuant to RSA 313-A:23, RSA 310, and Rule 206.06 et seq. To the extent that the Plc rules do not address an issue of policy or procedures, the Board shall rely upon RSA 313-A, RSA 541-A, RSA 310, and N.H. Admin. R. Ann., Title Jus, Part 800.

(c) ISSUES PRESENTED: Pursuant to Rule 206.06(b)(3), the issues to be considered at the hearing in this matter are as follows:

- (1) Whether or not the Licensee violated RSA 313-A:22, II(c), RSA 313-A:22, II(d), and/or RSA 313-A:22, II(i) (see Rules 302.05, 302.07, 501.01, 501.02) by allegedly operating a shop with one or more of the related sanitation, health, and/or safety violations, as set out in the inspection report and/or memorandum dated November 15, 2023.
- (2) Whether or not the Licensee violated RSA 313-A:22, II(c) and/or RSA 313-A:22, II(i) (see Rules 302.07, 404.01, 501.01, 501.02, RSA 313-A:17, and/or RSA 313-A:9) by allegedly operating a shop with one or more of the related licensing violations, as set out in the inspection report and/or memorandum, dated November 15, 2023.
- (3) If the Board makes a finding of misconduct pursuant to issues 1 and/or 2 above, whether and to what extent the Respondent should be subject to discipline pursuant to RSA 313-A:22, III, Bar 402, Bar 404, and/or RSA 310:12.
- (4) If the Board makes a finding of misconduct pursuant to issue 1 and/or 2 above, whether and to what extent the Board should adjust the administrative fine amount on account of any aggravating or mitigating factors pursuant to Bar 404.11 (see RSA 313-A:22, II(g)).

(d) PRESIDING OFFICER: Pursuant to RSA 310:10, IV, V, and VI and Rule 206.03 et seq., an individual employed as Administrative Law Judge with the New Hampshire Office of Professional Licensure & Certification shall act as the presiding officer in this proceeding with the authority to do, among other things, the following: preside, regulate and control the course of a hearing; issue oaths or affirmations to witnesses; rule on questions of law and other procedural matters; issue final orders based on factual findings of the Board; issue subpoenas; hold prehearing conferences; render legal opinions; and make conclusions of law.

(e) HEARING COUNSEL/ADMINISTRATIVE PROSECUTOR: Pursuant to RSA 310:10, III, the Chief Prosecutor, OPLC Division of Enforcement, 7 Eagle Square, Concord, N.H., 03301 (or his/her designee) shall serve as Hearing Counsel to represent the public interest.

(f) ATTORNEYS: Pursuant to RSA 310:10, XI and Rule 206.06(b)(10), each party has the right to have an attorney represent them at the party's own expense.

(g) VOLUNTARY EXCHANGE OF DOCUMENTS: Pursuant to Rule 206.18, the parties shall attempt to agree among themselves concerning the mutual exchange of relevant information.

If these efforts prove unsuccessful, upon motion, discovery shall be further ordered when the parties cannot adequately address said issues voluntarily.

(h) MOTIONS: Pursuant to Rule 206.12, parties shall file any motions or other requested relief in this matter with the Presiding Officer's Office, and provide a copy to the other parties. Unless good cause exists, all motions shall be filed at least ten (10) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief.

(i) OBJECTIONS: Pursuant to Rule 206.12(d), any responses or objections to motions or other requested relief shall be filed in similar fashion within ten (10) days of receipt of such motion or other requested relief.

(j) EXHIBITS: Pursuant to Rule 206.18(d), parties shall provide a final witness list, including a brief summary of their testimony, a list of proposed exhibits, and a copy of any proposed exhibits to the Presiding Officer's Office and the other parties no later than fourteen (14) days prior to the hearing. Respondent's exhibits shall be pre-marked for identification with capital letters; Hearing Counsel's exhibits shall be pre-marked for identification with Arabic numerals.

(k) MAILING ADDRESS FOR THE PRESIDING OFFICER'S OFFICE: Pursuant to Rule 206.10(a), any and all petitions, motions, pleadings, proposed exhibits, or other documents shall be filed with the Presiding Officer:

Thomas Pappas, Jr., Hearings Clerk
The Presiding Officer's Office
7 Eagle Square
Concord NH 03301
hearingsclerk@oplc.nh.gov

(l) COMMUNICATIONS WITH THE BOARD AND PRESIDING OFFICER: Routine procedural inquiries may be made by contacting Thomas Pappas, Jr. Any other communications with the Board or Presiding Officer must be in writing and filed as provided above. *Ex parte* communications (meaning "without the other party present and/or included") with the Presiding Officer and/or Board are specifically forbidden by law. *See, i.e.*, Rule 206.10(b) and RSA 541-A:36.

(m) EMAIL COMMUNICATIONS: The parties and the Presiding Officer's Office have the option to agree to exchange e-mail addresses and the parties may agree that e-mail service of any and all documents going forward may be considered in compliance with Rule 206.11(a)(3) and 206.11(b)(3).

(n) CONTINUANCES: Pursuant to Rule 206.16, if you are unable to appear at any scheduled hearing, you must request a continuance from the Presiding Officer in writing and it shall be granted if the Presiding Officer determines that a continuance would assist in resolving the matter fairly under Rule 206.16(b).

(o) **INTERVENTION: COMPLAINANT IS HEREBY NOTIFIED OF ITS RIGHT TO PETITION FOR INTERVENTION PURSUANT TO RULE 206.14. ANY FILED PETITION SHOULD STATE WITH PARTICULARITY: 1) THE PETITIONER'S INTEREST IN THE SUBJECT MATTER OF THE HEARING; 2) WHY THE INTERESTS OF THE EXISTING PARTICIPANTS AND THE ORDERLY AND PROMPT CONDUCT OF THE PROCEEDING WOULD NOT BE IMPAIRED BY ALLOWING THE PETITIONER TO INTERVENE; AND 3) ANY OTHER REASONS WHY THE PETITIONER SHOULD BE PERMITTED TO INTERVENE. THE INTERVENING PARTY SHALL CONTEMPORANEOUSLY COPY ALL PARTIES ON THE FILED PLEADING PURSUANT TO RULE 206.11. COMPLAINANT SHALL FILE ANY SUCH QUALIFYING PETITION TO INTERVENE NO LATER THAN THREE DAYS PRIOR TO THE HEARING.**

(p) **NON-ATTENDANCE AT HEARING: PURSUANT TO RULE 206.25, THE FAILURE OF A PARTY TO APPEAR AT THE TIME/PLACE SPECIFIED ABOVE MAY RESULT IN THE HEARING BEING HELD IN ABSENTIA (WITHOUT THAT PARTY PRESENT) AND THE BOARD MAY ISSUE A FINAL DECISION WITHOUT FURTHER NOTICE OR OPPORTUNITY TO BE HEARD.**

(q) **PREHEARING CONFERENCE:** Pursuant to RSA 310:10, VI and Plc 206.06(b)(6), a non-public Prehearing Conference in this matter **ALREADY OCCURRED**. Either party may request an additional prehearing conference.

(r) **RECORDING:** A recording of the hearings shall be taken and preserved. Each participant has the right to have the board provide a certified shorthand court reporter at the participant's expense and notify all participants that any such request be submitted in writing at least 10 days prior to the proceeding, as provided in RSA 541-A:31, III(f).

(s) **FINDINGS OF FACT:** Pursuant to RSA 310:10, VII: Boards shall be the triers of fact in all disciplinary and non-disciplinary proceedings. If, based upon the Board's findings of fact, the Presiding Officer concludes the Licensee has committed professional misconduct, the Board shall determine what if any sanctions to impose. *See* RSA 310:12.

(t) All prior consistent orders remain in full force and effect.

DATED: 10/16/2024

_____/s/ Nikolas K. Frye, Esq._____
Nikolas K. Frye, Esq., Administrative Law Judge
Presiding Officer
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301