

MINUTES OF MEETING

BOARD FOR BARBERS AND COSMETOLOGY INFORMAL FACT-FINDING CONFERENCES

JUNE 14, 2004 (9:30 A.M.)

The Board for Barbers and Cosmetology convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Marion S. Cooper, Presiding Officer, presided. No Board members were present.

Douglas W. Schroder appeared for the Department of Professional and Occupational Regulation.

The conference was recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case
Lic=Licensing Application
RF=Recovery Fund Claim
Trades=Tradesmen Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney
Inv = Investigator
T = Translator

Participants

Wonder Nails
File Number 2003-02338 (Discp)

Nham Thi (Nancy) Le -- R
David Dorner – Inv

Linh Doan
File Number 2004-04049 (Discp)

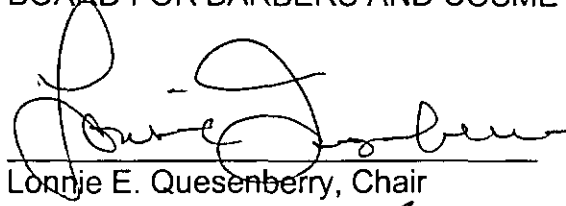
Linh Doan – R
Kim Doan – W
Lisa Pham -- T
Sherrell Queen -- Inv

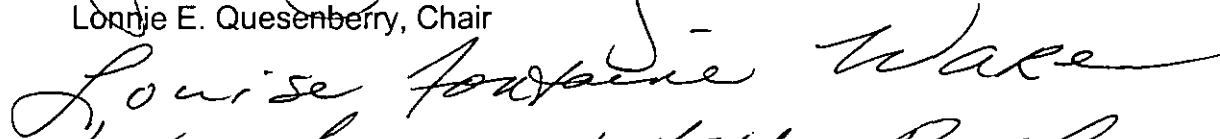

McNair Family Barber Shop
File Number 2004-03188 (Discp)

Linh Doan, Owner – R
Sherrell Queen – Inv

The meeting adjourned at 12:45 P.M.

BOARD FOR BARBERS AND COSMETOLOGY


Lonnie E. Quesenberry, Chair



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR BARBERS AND COSMETOLOGY**

**IN RE: WONDER NAILS
LICENSE NUMBER: 1208 000684**

FILE NUMBER: 2003-02338

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 12, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Myly Nguyen, Owner, Wonder Nails on December 1, 2003. The following individuals participated at the conference: Marci Clark, Complainant (By Phone); David Dorner, Investigator; Douglas W. Schroder, Staff Member; and Gloria Howard-Seldon, Presiding Board Member. No one appeared on behalf of Wonder Nails.

On June 14, 2004, the IFF was reconvened following the Board for Barbers and Cosmetology's decision, at their meeting held on April 26, 2004, to remand this matter back to an IFF. By a letter dated May 11, 2004, W. Mark Broadwell, attorney for Myly Nguyen, owner of Wonder Nails, was notified that the IFF would reconvene on June 14, 2004. The following individuals participated at the conference: Nham Thi (Nancy) Le, on behalf of Wonder Nails, Respondent; David Dorner, Investigator; Douglas W. Schroder, Staff Member; and Marion S. Cooper, Presiding Officer.

**Summation of Facts
January 12, 2004 IFF**

1. On or about February 19, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Marci Clark (Clark) regarding an infection she sustained to her legs after receiving a pedicure on or about December 29, 2001, at Wonder Nails located at 1401 Greenbrier Parkway, Chesapeake, Virginia.
2. On or about December 29, 2001, Clark received a pedicure and a foot-spa treatment from an unidentified technician during her visit to Wonder Nails. The technician used a razor blade on Clark's feet as well as a cuticle stick, clippers and some type of exfoliating stone. Clark's feet were then soaked in the foot-spa for approximately twenty minutes. The technician completed the service by massaging Clark's legs with a lotion. Clark compensated Wonder Nails \$50.00 for the services.

3. Approximately two weeks after Clark's visit to Wonder Nails, she noticed blemishes developing on her legs. On or about February 5, 2002, Clark visited Bebe K. Edmonds, MD, who initiated a series of treatments during the month of February for what she described as "blemishes on the leg." A biopsy was performed for pathology, which revealed a Mycobacterium infection.

4. On or about May 2, 2002, the New England Journal of Medicine printed an article titled "An Outbreak of Mycobacterial Furunculosis Associated with Footbaths at a Nail Salon". The article detailed an investigation, which linked an outbreak of Mycobacterial Furunculosis that affected 100 customers, to a nail salon in northern California, where they had received footbaths and pedicures. The article went on to state that an inspection of the whirlpool footbaths revealed large amounts of hair and skin debris behind the inlet suction screen of every whirlpool bath.

5. On or about October 17, 2002, the Virginian-Pilot reported Clark filed a lawsuit in the Circuit Court against Wonder Nails and the owner, Myly Thi Nguyen. The suit alleges that Clark received a mycobacterium infection on her legs as a result of a visit to Wonder Nails on December 29, 2002.

6. As a result of the newspaper article, on November 6, 2002, the Board's agent, Investigator David C. Dorner (Investigator Dorner) conducted an unannounced inspection of Wonder Nails. Investigator Dorner observed that the middle of three whirlpool foot spas was found to have hair and/or other unidentifiable substances clogged in the drain. The small holes of the "suction fitting cover" were clogged with an unidentifiable substance.

7. Investigator Dorner asked Nguyen when she last cleaned the foot spa and she stated after each customer. The Board's investigator asked Nguyen if she had an owner's manual for the foot spa and she stated yes.

8. After receiving the owner's manual, the Board's investigator turned to the "Cleaning and Care of Your Footspa" section and asked Nguyen to explain and demonstrate how she cleaned the foot spa. Nguyen picked up a bottle labeled "fungicide" and a sponge and stated that after each customer she sprayed the foot spa with the fungicide and wiped it down with a sponge. The Board's investigator asked her to explain other care instructions as outlined in the owner's manual. Nguyen stated that she did not know, and that her husband normally cleaned the foot spas.

9. During the IFF held on January 12, 2004, it was noted that the exfoliating stone was not taken from a new package. From Clark's observation the stone was not new. The investigator did not observe the use of a thermometer to test the temperature of the water that was used from a coffee pot to clean the foot spas to determine if it was hot enough to sterilize the foot spa. It appears Nguyen was dishonest about the cleaning of her foot spas. The bottle of sanitizing solution

shown to the investigator by Nguyen did not have a commercial label, only a hand written label. The toe separators were not taken from a new package, and appeared to have been previously used.

June 14, 2004 IFF

10. During the IFF held on June 14, 2004, Nham Thi (Nancy) Le (Le) testified that she appeared at the IFF on behalf of Wonder Nails at the request of the salon's owner, Myly Thi Nguyen.

11. During the IFF, Le testified that since the commencement of her employment at Wonder Nails in April of 2003, Wonder Nails has made modifications to the sterilization and sanitizing processes at the salon. Le testified that for each customer, the foot spas are cleaned with a fungicide and that each foot spa is wiped with a clean towel instead of a sponge. Le also stated that prior to each pedicure, the customer's legs are sprayed with alcohol, which is left on the customer's legs briefly, and that the water in the foot spa is then checked to determine if the temperature is sufficiently warm enough to proceed with the pedicure.

12. During the IFF, Le also testified that after commencement of her employment at Wonder Nails, the salon's employees began to make use of jars containing Barbicide solution for the sanitization of tools that are to be cleaned before and after each use.

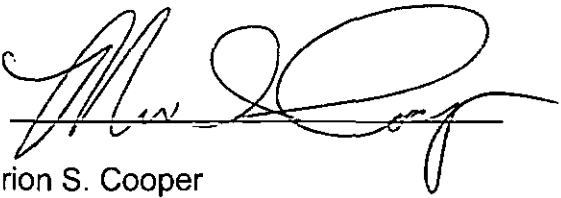
13. Le testified at the IFF that she is not sure if the instructions in the "Cleaning and Care of Footspa" section of the owner's manual of the foot spa at Wonder Nails are currently being followed. Le also stated that she has been instructed to clean the foot spas by unscrewing and removing the suction fitting cover cups, immersing them in solution, then replacing and flushing them. Le further stated that Kevin Nguyen, Myly Thi Nguyen's husband and Le's supervisor at Wonder Nails, cleans the foot spas with an unidentified "green solution." He then removes the jet balls and the suction fitting cover cups, cleans them, and rinses them with lukewarm water.

Conclusion and Recommendation

Count 1: 18 VAC 55-22-350(2) (Effective November 1, 1999)

Wonder Nails' failure to maintain equipment per manufacturer's instructions, preventing the spread of harmful bacteria, constitutes negligence and incompetence and is a violation of the Board's Regulation 18 VAC 55-22-350(2).

Nothing presented at the June 14, 2004 IFF appears to contradict the findings of the January 12, 2004 IFF. Accordingly, I recommend that the Board find a violation and impose an appropriate sanction.

By: 

Marion S. Cooper
Presiding Officer
Designee, Board for Barbers and Cosmetology

Date: 7-27-07

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE (LICENSE NO. 1208-000684) UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR BARBERS AND COSMETOLOGY

**IN RE: LINH P. DOAN
LICENSE NUMBER: 1301 011437**

FILE NUMBER: 2004-04049

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 14, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Linh P. Doan on May 10, 2004. The following individuals participated at the conference: Linh P. Doan, Respondent; Kim Doan, Witness; Lisa Pham, translator for Respondent; Sherrell Queen, Investigator; Douglas W. Schroder, Staff Member; and Marion S. Cooper, Presiding Officer.

Summation of Facts

1. On or about February 06, 2004, the Department of Professional and Occupational Regulation received a written complaint from Michel E. Kugler (Kugler) against McNair Family Barber Shop (McNair) located at 2465-J14 Centreville Rd., Herndon, Virginia. The complaint filed by Kugler alleged that he developed an infection on his neck as the result of hair cutting services received from McNair.
2. On February 27, 2004, at approximately 11:10 a.m. Investigator Sherell Queen, the Board's agent, conducted a shop inspection of McNair based on authority granted to the Board by § 54.1-705 of the Code of Virginia.
3. During the shop inspection, the Board's agent observed the owner Linh P. Doan (Doan) license #1301011437, working at station one perform a hair cutting service on the patron without the use of a towel or neck strip under the haircloth. The haircloth was touching the skin.
4. Doan's actions of performing hair cutting services without the use of a towel or neck strip under the haircloth, is in violation of the Board's 2003 Regulation 18 VAC 41-20-270(E)(2).
5. During the IFF, Doan testified that she typically uses a clean towel and/or a neck strip when performing a hair cut. Doan further stated that she regrets the situation and that she will use neck strips and/or clean towels with all of her clients.

6. During the IFF, Investigator Queen testified that at the time of her inspection at the shop, she did observe a box of neck strips on the counter at station one. Investigator Queen further stated that the shop, on the whole, was clean.

Conclusion and Recommendation

Count 1: 18 VAC 41-20-270(E)(2) (Effective July 1, 2003)

Doan's failure to place a clean towel or neck strip around the neck of the patron when a haircloth is used is a violation of Board Regulation 18 VAC 41-20-270(E)(2). Therefore, I recommend that the Board find a violation and impose an appropriate sanction.

By: _____


Marion S. Cooper
Presiding Officer
Designee, Board for Barbers and Cosmetology

Date: 7-27-04

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE (LICENSE NO. 1301 011437) UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR BARBERS AND COSMETOLOGY**

**IN RE: MCNAIR FAMILY BARBER SHOP
LICENSE NUMBER: 1304 002093**

FILE NUMBER: 2004-03188

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 14, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Linh P. Doan of McNair Family Barber Shop, on May 10, 2004. The following individuals participated at the conference: Linh P. Doan, on behalf of McNair Family Barber Shop, Respondent; Kim Doan, Witness; Lisa Pham, translator for Respondent; Sherrell Queen, Investigator; Douglas W. Schroder, Staff Member; and Marion S. Cooper, Presiding Officer.

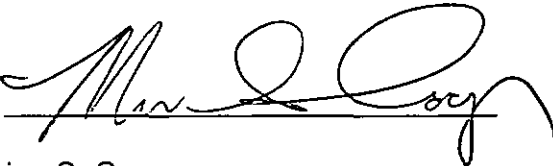
Summation of Facts

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3. During the shop inspection, the Board's agent observed the owner Linh P. Doan (Doan) license #1301 011437, working at station one perform a hair cutting service on the patron without the use of a towel or neck strip under the haircloth. The haircloth was touching the skin.
4. During the IFF, Doan testified that she typically uses a clean towel and/or a neck strip when performing a hair cut. Doan further stated that she regrets the situation and that she will use neck strips and/or clean towels with all of her clients.
5. During the IFF, Investigator Queen testified that at the time of her inspection at the shop, she did observe a box of neck strips on the counter at station one. Investigator Queen further stated that the shop, on the whole, was clean.

Conclusion and Recommendation

Count 1: 18 VAC 40-20-270(E)(2) (Effective July 1, 2003)

McNair's failure to ensure that whenever a haircloth is used, a clean towel or neck strip is placed around the neck of the patron is a violation of Board Regulation 18VAC 41-20-270(E)(2). Therefore, I recommend that the Board find a violation and impose an appropriate sanction.

By: 

Marion S. Cooper
Presiding Officer
Designee, Board for Barbers and Cosmetology

Date: 7-27-04

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE (LICENSE NO. 1304 002093) UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.