

MINUTES OF MEETING

BOARD FOR BARBERS AND COSMETOLOGY INFORMAL FACT-FINDING CONFERENCES JANUARY 12, 2004 (9:00 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.

Gloria Howard-Seldon, Board member, presided. No other 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

Participants

Anh Tran Thuy Sadevy
File Number 2003-00822 (Disc)

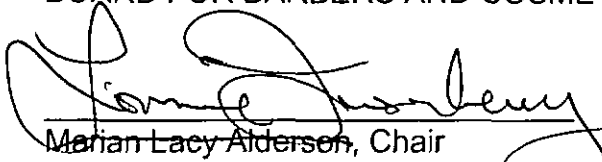
Anh Sadevy – R
Mohammad Jalali - R's Translator
Nathan Matthews – Invest.

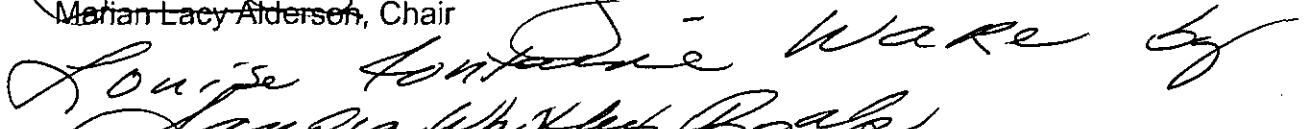
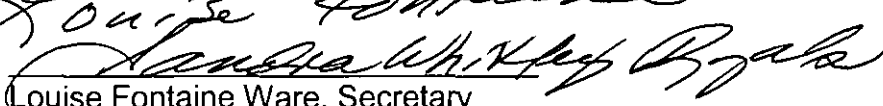
Wonder Nails
File Number 2003-02338 (Disc)

Marci Clark – C (By Phone)
David Dorner, Invest.

The meeting adjourned at 11:45 a.m.

BOARD FOR BARBERS AND COSMETOLOGY


Marian Lacy Alderson, 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: ANH TRAN THUY SADEVY
LICENSE NUMBER: 1206-11830**

FILE NUMBER: 2003-00822

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 Anh Tran Thuy Sadevy on November 24, 2003. The following individuals participated at the conference: Anh Tran Thuy Sadevy, Respondent; Mohammad Jalali, Interpreter; Nathan Mathews, Investigator; Douglas W. Schroder, Staff Member; and Gloria Howard-Seldon, Presiding Board Member.

Summation of Facts

1. On or about March 16, 2001, Experior Assessments, LLC received a Cosmetology & Nail Technician Examination Application from Ly Thi Hong Vo (Vo) to take the nail technician examination.
2. On or about April 23, 2001, Vo passed the practical part of the examination but failed the theory part. During the period June 11, 2001 to February 5, 2002, Vo re-tested for the theory part of the examination thirteen (13) times at the Richmond Experior testing center without passing the examination.
3. On or about March 20, 2002, Anh Tran Thuy Sadevy (Sadevy) went to Experior Assessment LLC, located at 3813 Gaskins Road, Richmond, Virginia, and attempted to register under the name, Ly Thi Hong Vo (Vo), to take the nail technician examination.
4. Sadevy used Vo's Virginia driver's license and social security card to identify herself as Vo. Sadevy also completed an answer sheet at Experior Assessments LLC in Vo's name, and signed Vo's name on the sheet certifying that she is the candidate listed on the answer sheet.
5. Prior to March 20, 2002, Sadevy met her friend, Vo, at a shopping center in Falls Church, Virginia where Vo gave Sadevy her driver's license and social security card and asked Sadevy to take the nail technician examination for her. Sadevy agreed to take the examination for VO as a favor.


Conclusion and Recommendation

Count 1: 18 VAC 55-22-350(1) to wit: 18 VAC 55-22-90(A)
(Effective November 1, 1999)

Sadevy's actions as a license holder of registering under Vo's name in order to take the examination on Vo's behalf is violating, inducing another to violate, and cooperating with another in violating the provisions of Chapter 3 (§ 54.1-300 et seq.) and Chapter 12 (§ 54.1-1200 et seq.) of Title 54.1 of the Code of Virginia, in violation of the Board's 1999 Regulation 18 VAC 55-22-350(1) to wit: 18 VAC 55-22-90(A). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with suspension of Sadevy's license for 30 days from the effective date of the order.

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

Sadevy's actions as a nail technician license holder of registering under Vo's name in order to take the examination on Vo's behalf is incompetence and negligence in violation of the Board's 1999 Regulation 18 VAC 55-22-350(2). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By: 

Gloria Howard-Seldon
Presiding IFF Board Member
Board for Barbers and Cosmetology

Date: 1-12-2004

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. 1206-011830) 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: 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.

Summation of Facts

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 outline 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, it was noted that the exfoliating stone was not taken from a new package. From Ms. 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 Ms. Nguyen was dishonest about the cleaning of her foot spas. The bottle of sanitizing solution shown to the investigator by Ms. 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.

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, is incompetence and negligence in violation of the Board's 1999 Regulation 18 VAC 55-22-350(2). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

By: Gloria Howard-Seldon

Gloria Howard-Seldon
Presiding IFF Board Member
Board for Barbers and Cosmetology

Date: 1-12-2004

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.