

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF COSMETOLOGY

In the matter of :

TOP NAILS
SHAWN CHAU, OWNER
Cosmetology Establishment
License No. 27-06-117285

Docket No. 2002-617
Complaint No. 27-02-0147-00

FINAL ORDER ADDENDUM

WHEREAS, this matter having come before the Michigan Board of Cosmetology, hereafter the "Board", on October 14, 2002, on consideration of the Findings of Fact and Conclusions of Law in the Hearing Report of James L. Karpen, Administrative Law Judge, dated August 2, 2002 and the Board having issued its Final Order dated November 20, 2002; and

WHEREAS, the Board in their October 14, 2002, meeting having also determined that Respondent Cosmetology Establishment Top Nails, Shawn Chau, Owner, should be assessed under MCL 339.309 the penalty of revocation of license under MCL 339.602(d) as well as the other penalties prescribed in the Board's Final Order dated November 20, 2002;

IT IS HEREBY ORDERED, that the following penalty authorized by Section 602 of the *Occupational Code*, 1980 P.A. 299, *as amended*, is hereby imposed by this Final Order Addendum in addition to those penalties previously imposed by the Board's Final Order dated November 20, 2002:

1. The Cosmetology Establishment License No. 27-06-117285 of Respondent shall be and hereby is REVOKED effective the date of mailing of this Final Order Addendum.
2. No application for licensure, renewal, registration or reinstatement shall be considered by the Department unless proper application and/or petition is filed for relicensure, reregistration or reinstatement as provided under Article 4/ Article 5 of the *Occupational Code*, *supra*, *as amended*.

This Final Order Addendum is effective immediately upon its mailing.

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

**Bureau of Commercial Services,
Petitioner**

v

**Top Nails
Shawn Chau, Owner,
Respondent**

Docket No. 2002-617

Agency No. 27-02-0147-00

Agency: Bureau of Commercial Services

Case Type: Sanction

**Issued and entered
this 2nd day of August, 2002
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Lisa Funkhouser, Attorney at Law, appeared on behalf of the Petitioner, Bureau of Commercial Services. Neither Respondent, Top Nails, nor an attorney on behalf of Respondent, appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated April 10, 2002, scheduling a hearing for June 17, 2002. The Notice of Hearing was mailed to the parties' last known addresses. Further, the Notice of Hearing informed the parties that if either party failed to appear at the scheduled hearing, a default may be entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA). After one adjournment, the hearing was held on July 26, 2002.

The Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (Code).

At the hearing, Petitioner's counsel requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the APA, and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

(1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by... default... .

The Judge granted the Petitioner's motion for default. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The specific issues in this case are whether Respondent violated the following sections of the Code and rules promulgated under the Code: Sections 604(c), (h); 1204(6); 1999 MR10, R 338.2171(1)(c) and (e); 1999 MR10, R 338.2173(2); 1999 MR 10 R 338.2179(2)(c); 1999 MR 10, R 338.2179a(4); 1999 MR 10, R 338.2179c(1)(d) and (2); and 1999 MR 10, R 338.2179g(1)(a). These Code sections and rules state in pertinent part:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or

who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

* * *

(c) Violates a rule of conduct of an occupation.

* * *

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

Sec. 1204.

* * *

(6) The license of the establishment and of each individual working in the establishment shall be displayed in a prominent place which is visible to the public at all times. The license of an individual working in the establishment may be posted at the individual's work station.

Rule 71. (1) An owner of an establishment or school shall ensure that the establishment or school has all of the following:

* * *

(c) Adequate lighting and ventilation in all rooms.

* * *

(e) A source of drinking water in an area other than that used to mix chemicals.

Rule 73.

* * *

(2) The licensee or owner of an establishment or school shall keep chairs and work station surfaces clean and sanitary at all times, covering the headrest of a patron chair and the working surface of any table or chair with fresh, clean paper, linen, or cloth before the chair or table is used.

* * *

Rule 79.

(2) The licensee or owner of an establishment or school shall ensure all of the following:

* * *

(c) Soiled towels and linens are stored in a covered container until laundered.

Rule 79a.

* * *

(4) The licensee or owner of an establishment or school shall ensure that, after sanitization, the equipment, tools, implements, and supplies are put in a dry sanitizer, closed cabinet or drawer, or covered container.

Rule 79c. (1) A licensee or owner shall ensure all of the following:

* * *

(d) Vaporous chemical waste materials are disposed of by placing the materials in an airtight, covered waste container.

(2) The owner of an establishment or school shall ensure that there is adequate ventilation or filtration to prevent the concentration of chemical vapors and strong odors.

Rule 79g. (1) A student, apprentice, or licensee shall not do any of the following:

- (a) Use methyl methacrylate monomers.

FINDINGS OF FACT

Based upon the record, I make the following findings of fact:

1. On January 10, 2002 Respondent's establishment was inspected by one of Petitioner's inspectors.
2. The inspection established the following facts:
 - a. The licenses of individuals working in the establishment were not displayed in a prominent place, visible to the public.
 - b. The establishment lacked adequate ventilation.
 - c. The establishment lacked a source of drinking water in an area other than that used to mix chemicals.
 - d. The working surfaces of tables were not covered with fresh clean paper, linen or cloth before use.
 - e. Soiled towels and linens were not stored in a covered container.
 - f. After sanitization, equipment, tools, implements and supplies were not put in a dry sanitizer, closed cabinet, drawer or covered container.
 - g. Vaporous chemical waste materials were not placed in an airtight, covered waste container.
 - h. There was a concentration of chemical vapors and strong odors due to inadequate ventilation.
 - i. Respondent kept methyl methacrylate monomers for use by staff.

- j. Respondent violated a rule of conduct governing a cosmetology establishment.
- k. Respondent violated a provision of the Code or rule for which a penalty is not otherwise prescribed.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, page 230. The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248; 406 NW2d 825 (1987). Based upon the facts described herein, the Petitioner has proven, by a preponderance of the evidence, that the Respondent violated the following sections of the Code and the rules promulgated thereunder as alleged in the Complaint: 604(c) and (h); 1204(6); Rule 338.2171(1)(c) and (e); Rule 338.2173(2); Rule 338.2179(2)(c); Rule 338.2179a(4); Rule 338.2179c(1)(d) and (2); and Rule 338.2179g(1)(a).

RECOMMENDED SANCTION

I concur in the recommendations of Petitioner's counsel that the establishment

Docket No. 2001-1609

Page 7

license for Top Nails be revoked and that a civil penalty in the amount of \$4,000.00 be imposed on Top Nails.

James L. Karpen
Administrative Law Judge

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TOP NAILS
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Docket No. 2002-617
Complaint No. 27-02-0147-00

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Cosmetology, hereafter the "Board", on October 14, 2002; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of James L. Karpen, Administrative Law Judge, dated August 2, 2002;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Top Nails, by its owner Shawn Chau, License No. 27-06-117285, hereafter "Respondent", having been found in violation of Sections 604(c); 604(h); 1204(6) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(c); MCL 339.604(h); MCL 339.1204(6), and Rules 71(1)(c); 71(1)(e); 73(2); 79(2)(c); 79a(4); 79c(1)(d); 79c(2); 79g(1)(a) of the State Board of Cosmetology General Rules, *promulgated hereunder*, being 1999 MR 11, R 338.2171(1)(c); 1999 MR 11, R 338.2171(1)(e); 1999 MR 11, R 338.2173(2); 1999 MR 11, R 338.2179(2)(c), 1999 MR 11, R 338.2179a(4), 1999 MR 11, R 338.2179c(1)(d); 1999 MR 11, R 338.2179c(2); 1999 MR 11, R 338.2179g(1)(a) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:

1. Respondent shall pay a FINE in the amount of Ten Thousand Dollars and 00/100 Cents (\$10,000.00), said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the date of mailing of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 27-02-0147-00 clearly indicated on the check or money order, made

payable to the State of Michigan, and sent to the Department of Consumer & Industry Services, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.

2. No application for licensure or relicensure shall be considered until the fine is paid-in-full. Failure of Respondent to comply with any term of this Final Order shall result in a denial of future applications for licensure until such time as all of the terms of this Final Order have been met.