BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Case No. BC-17-28-COM

L.C. NAILS, License EST11711
LAN CHI NGUYEN, License MP027228
Respondent.

FINAL DECISION AND DEFAULT ORDER

THIS MATTER came before a quorum of the Board of Barbers and Cosmetologists (the "Board") at an open public meeting held on April 1, 2019, at 2550 Cerrillos Rd, Santa Fe, NM 87505, based on a complaint filed with the Board alleging that L.C. NAILS, License EST11711 (LAN CHI NGUYEN, License MP027228) (hereinafter "Respondent") violated the Barbers and Cosmetologists Act, NMSA 1978, 61-17A-1 to -25 (1993, as amended through 2017) ("Act"). Respondent did not request a hearing and the matter was presented to the Board as a default action. Upon review of the matter, the Board voted to issue a fine of $999.99 for the violations herein. Pursuant to the Act, and the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017) ("ULA"), the Board issues the following:

FINDINGS OF FACT

1. Respondent is licensed as an establishment owner and Manicurist/Pedicurist under the Act and is therefore subject to the jurisdiction and discipline of the Board.
2. The Board voted to issue a Notice of Contemplated Action (NCA) against Respondent stating that the Board had sufficient evidence to justify revoking or taking other disciplinary action against Respondent's license based on alleged violations of the Act.
3. The NCA alleged that On May 15, 2017, Inspector Clyde Segura from the Boards and Commissions Division/Regulation & Licensing Department conducted an inspection of L.C. Nails, License EST11711, located at 908 North Riverside Drive, Unit 2B, Espanola,

New Mexico 87532. The inspection revealed that Stephanie T. Huynh had an expired license. There was a trash can full of recently-used wax paper and cotton balls and no one in the shop is licensed to do wax removal. The walls surrounding the waxing station were dirty with wax and there were numerous used emery boards, buffing blocks and sponges.

4. The NCA stated that, unless explained or rebutted at a formal hearing, the alleged conduct justified the Board in taking disciplinary action, including suspending or revoking Respondent's license.
5. The Board mailed the NCA to Respondent, via certified mail, return receipt requested, to the address on file with the Board.
6. All licensees are required to maintain a current address with the Board, and pursuant to the ULA, notice "shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice." NMSA 1978, § 61-1-5.
7. The ULA provides if a licensee "does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review." NMSA 1978, § 61-1-4(E).
8. Respondent failed to request a hearing in response to the NCA.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent, Respondent's license, and the subject matter of this proceeding pursuant to the Act and the ULA.
2. In accordance with Sections 61-1-4 and -5 of the ULA, Respondent was deemed to be served with the NCA on the date of delivery or last attempted delivery of the notice.

3. The Board has complied with all notice and other procedural requirements of the Act and the ULA.
4. The Board may proceed to take the action contemplated in the NCA and such action shall be final and not subject to judicial review, as provided by Section 61-1-4 of the ULA.
5. The Board finds by a preponderance of the evidence that Respondent violated 16.34.7.9(A)(l-3);(13);(18-29);(35-38) and 16.34.7.9(B)(l) NMAC by failing to operate enterprise or establishments in compliance with the required minimum infection control and safety standards; and failing to cleaning and disinfect all single-use instruments, items, tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) and cannot be disinfected (including, but not limited to: eyebrow thread, disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, toe separators, porous files and porous buffers, etc.) which shall be disposed of immediately after use.
6. Having reviewed the matter, the Board finds there is sufficient evidence to justify taking disciplinary action against Respondent as contemplated in the NCA.

ORDER

Based on these Findings of Fact and Conclusions of Law, a quorum of the Board voted to fine the Respondent $999.99 (nine-hundred-ninety-nine dollars and ninety-nine cents), due within 60 (sixty) days.

IT IS THEREFORE ORDERED that Respondent pay a fine of $999.99 within 60 days. This Order constitutes formal disciplinary action by the Board and may be reported to the applicable professional licensing national database, if any.

IT IS ULTIMATELY ORDERED that failure to comply with the terms of this Order will result in further Board action. Any violation of this Order will result in the immediate, automatic filing of an administrative Notice of Non-Compliance by

Board staff. Upon the filing of a Notice of Non-Compliance, the matter shall be scheduled for the next public meeting of the Board, at which time the Board shall hear from Board staff regarding the alleged non-compliance. Respondent shall have the opportunity to address the allegations or offer any other relevant argument or evidence regarding the reasons for non-compliance. Such argument or evidence may be provided in writing prior to the meeting or in person at the Board meeting. Any presentation regarding the Notice of Non-Compliance shall be limited to evidence surrounding Respondent's alleged failure to comply with the Order. Upon finding such violation occurred, the Board may suspend Respondent's license(s), provided that this suspension may only remain in effect until such time as Respondent has complied with the terms of this agreement, or take other enforcement action as permitted by law. If Respondent's non-compliance constitutes acts that are prohibited under the Board's statute or rules, the Board may also initiate a new disciplinary action and refer that matter for administrative prosecution.

IT IS SO ORDERED.

Gabriel Garduno, Chair
New Mexico Board of Barbers and Cosmetologists

5/6/19
Date

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review. An aggrieved party may request review of this Order by filing a Petition for Writ of Certiorari under Rule 1-075 NMRA within thirty (30) days of the date of this final decision. A default order issued pursuant to NMSA 1978, Section 61-1-4(E) is not subject to judicial review as a matter of right under the ULA or the Act but is a matter of discretion made only by the District Court. Any pleadings filed should be served on the Board's counsel, Assistant Attorney General Angela Macdonald, amacdonald@nmag.gov, at the New Mexico Office of the Attorney General.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by certified mail on the date below to:

Lanchi Nguyen 516 Martha NE Albuquerque, NM 87123 Certified Mail No. 9171 9690 0935 0155 2569 84	Date
/s/ *Elisa Salazar* Elisa Salazar	5/6/2019 Date