

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

IN THE MATTER OF:

Case No. BC-17-49-INS

Essence Spa & Nails, License No. EST12494  
Tony Nguyen, License No. MP22082,

Respondent.

**FINAL DECISION AND ORDER**

THIS MATTER came before a quorum of the Board of Barbers and Cosmetologists (hereinafter the “Board”) at an open meeting held on December 3, 2018, at the Regulation and Licensing Department, located at 5500 San Antonio Dr. NE, Albuquerque, NM 87109, based on an inspection conducted by the Board where inspectors alleged that Essence Spa & Nails (“Respondent”) violated the Barbers and Cosmetologists Act, NMSA 1978, 61-17A-1 to -25 (1993, as amended through 2017) (“the Act”). A formal evidentiary hearing was held in this matter on September 12, 2018, by designated Hearing Officer Arlene Nonnemacher, pursuant to the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017), the Barbers and Cosmetologists Act, and the Board’s rules. Upon review of the matter, the Board voted to adopt the Hearing Officer’s Proposed Findings of Fact, find that the Respondent violated the Board’s rules, and impose a fine in the amount of \$1,149. Pursuant to the Act and ULA, the Board issues the following:

**FINDINGS OF FACT**

The Board adopts the proposed Findings of Fact from the Hearing Officer’s Report, and such findings are hereby attached and incorporated into this order. *See Exhibit 1 (Hearing Officer’s Report, BC-17-49-INS) (October 12, 2018).*

### CONCLUSIONS OF LAW

1. The Respondent was, at all relevant times, subject to the jurisdiction of the Board.
2. Pursuant to Section 61-1-3, the Board held a proper hearing on the matter after previously providing Respondent with proper notice of the general nature of the allegations and evidence against him. *See* Exhibit 2 (Notice of Contemplated Action, BC-17-49-INS) (June 4, 2018).
3. Respondent was provided timely notice of the hearing and advised of his rights.
4. The Board's rules provide that single-use items, specifically including buffing blocks and emery boards, "shall be disposed of immediately after use." 16.34.7.9(B)(1) NMAC.
5. The Act requires all manicurist-pedicurists and related establishments practicing for compensation to be licensed by the Board. *See* NMSA 1978, § 61-17A-5 (prohibiting individuals and establishments without a license from practicing as manicurist-pedicurists without a license).
6. Based on testimony and the exhibits admitted at the formal evidentiary hearing in this matter, including the statements of the Respondent, a preponderance of the evidence supports the findings that the Respondent did not immediately dispose of single-use items and engaged in the unlicensed practice of manicuring and pedicuring.
7. The Board finds that the Respondent violated 16.34.7.9(B)(1) NMAC.
8. The Board finds that the Respondent violated Section 61-17A-5.
9. Upon finding that a licensee has violated the Act or the Board's rules, the Board is authorized to take disciplinary action. *See* § 61-17A-21 (providing that the Board "shall... issue a fine or penalty" for a violation of the Act or "any sanitary regulation promulgated by the board").

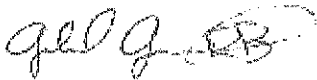
## ORDER

Based on these Findings of Fact and Conclusions of Law, a quorum of the Board voted to find that the Respondent violated Section 61-17A-5 and 16.34.7.9(B)(1) NMAC by engaging in unlicensed practice and not immediately disposing of single-use items. IT IS THEREFORE ORDERED that the Respondent pay a \$999 fine for violating 16.34.7.9(B)(1) NMAC, and a \$150 fine for violating Section 61-17A-5. The total fine is \$1,149, to be paid within ninety (90) days. This Order constitutes formal disciplinary action by the Board and may be reported to the applicable professional licensing national database, if any. Additionally, this Order and the original complaint are public records and may be provided for inspection if requested, pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). The Board may also publish this Order or a summary of this Order to the public, which may include posting to the Board's website.

IT IS FURTHER 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 the

Respondent has complied with the terms of this agreement, or take other enforcement action as permitted by law. If Respondent's non-compliance constitute 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.



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Gabriel Garduno, Chair  
Barbers and Cosmetologists

\_\_\_\_\_  
Date 12/11/2018

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, Section 61-1-17, and NMSA 1978, Section 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of filing of the final decision. Any pleadings filed with the district court must be served on the Board's counsel, Assistant Attorney General Angela Macdonald.

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:

Tony Nguyen  
6501 Wyoming Blvd. NE BLDG D  
Albuquerque, NM 87109  
Certified Mail No. 9171 9690 0935 0079 1608 79

\_\_\_\_\_  
/s/ Elisa Salazar  
Elisa Salazar

\_\_\_\_\_  
12/11/2018  
Date

9171 9690 0935 0079 1608 79

Tony Nguyen  
6501 Wyoming Blvd. NE BLDG D  
Albuquerque, NM 87109