

BEFORE THE NEVADA STATE BOARD OF COSMETOLOGY

NEVADA STATE BOARD OF
COSMETOLOGY,

Petitioner,

vs.

ABILITY SCHOOL OF ESTHETICS,
License No. SC-44984; Business ID No.
NV20201934767, NATHAN O' HARA,
owner/operator, Jerry Xu,
operator/registrar,

Respondent.

Case No. C-2022-02115

FILED JANUARY 22, 2024

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER OF DISCIPLINE

The above-entitled matter came before the Nevada State Board of Cosmetology, ("Board") on Monday, January 8, 2024 at CJC Properties, LLC, 6920 Cimarron Road, Suite: 110, Las Vegas, Nevada 89113. Board members present were the following: Board Chair, Molly O'Bryant, Anita Douglass, Roxanne Harris, Karen Moreno, Jennifer Sweetland-Jeffers, William Dettrey, Jr., and Sierra Wold. ¹ At all times present at the hearing, Deputy Attorney General Matthew P. Feeley served as Counsel for the Board, Deputy Attorney General Chricy E. Harris served as Counsel for the Petitioner and Kirk. T. Kennedy served as Counsel for the Respondent.

During the preliminary matters portion of the hearing, both parties stipulated on the record to the admission of all of Petitioners' proposed exhibits into evidence. Respondent did not offer any exhibits for admission into evidence. Additionally, neither Petitioner nor Respondent had any objection to witnesses being present during the hearing. Accordingly, all witnesses for the Petitioner and Respondent were not excluded from the hearing.

Prior to the Petitioner's case-in-chief, both parties were permitted to give opening arguments. During the Petitioner's case-in-chief, the Board heard testimony

¹ Board members Sweetland-Jeffers, Dettrey and Wold appeared via videoconference. The remaining board members appeared in person.

1 from Chief Compliance Officer Janie Huggins, and Chief Operating Officer Bertha
2 Jackson. Also, during the Petitioner's case-in-chief the Board reviewed Petitioner's
3 admitted evidence, Exhibits A - L. Following Petitioner's case-in-chief, as part of the
4 Respondent's case the Board heard testimony from owner, Nathan O' Hara and school
5 registrar, Jerry Xu. Prior to deliberation, both parties were permitted to give closing
6 arguments. After closing arguments, the matter was submitted to the Board for
7 deliberation and decision.

8 The Board having received, read, and considered the Complaint filed against
9 Ability School of Esthetics and all admitted exhibits proceeded to make a decision
10 pursuant to the provisions of NRS Chapter 233B, NRS Chapter 622A, NRS Chapter
11 644A and NAC Chapter 644A. The Board after due consideration of the record,
12 evidence, and law, and being fully advised in the premises, makes it FINDINGS OF
13 FACT, CONCLUSIONS OF LAW AND ORDER in this matter as follows:

14 **FINDINGS OF FACT**

15 **I.**

16 The Board finds by a preponderance of the evidence that Respondent, Ability School
17 of Esthetics, by and through owner Nathan O'Hara is a licensed cosmetology school subject
18 to the jurisdiction of the Board and the provisions of NRS 644A and NAC 644A.

19 **II.**

20 The Board finds by a preponderance of the evidence that On December 13, 2023,
21 Executive Director, Steven McDonald filed the Complaint in this matter alleging violations
22 of NRS 644A and NAC 644A. Respondent was served the Complaint and Exhibits on
23 December 15, 2023 in advance of January 8, 2024 hearing. See Exhibit L, Proof of Service.

24 **III.**

25 The Board finds by a preponderance of the evidence that on March 10, 2023,
26 Inspectors Pamela Hayes-Fitzgerald, Tiana Polar, Jennifer Keane and Dana Lopez
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1 conducted an inspection of Ability during its class instruction hours. During the inspection,
2 the inspectors noted discrepancies regarding student attendance. *See Exhibit A.*

3 **IV.**

4 The Board finds by a preponderance of the evidence that on March 20, 2023,
5 Nathan O' Hara and Jerry Xu contacted Janie Huggins, Chief Compliance Officer and
6 Lauren Gossage, Regulatory Compliance Specialist regarding their own concerns over the
7 student record discrepancies discovered during the March 10, 2023 inspection. The Board
8 further finds that a meeting was held on March 28, 2023 and that during the meeting Mr.
9 O'Hara and Mr. Xu requested Ms. Huggins and Ms. Gossage to arrange and conduct a
10 follow-up inspection of Ability.

11 **V.**

12 The Board finds by a preponderance of the evidence that on May 15, 2023, Ms.
13 Huggins and Ms. Gossage visited Ability during the hours of scheduled class instruction
14 and that during their inspection, students were not provided a textbook, were not provided
15 test kits, and were observed sleeping while clocked in. *See Exhibit B.* The Board further
16 finds that during Ms. Huggins and Ms. Gossage's inspection, students were observed
17 returning to school premises while permitted to remain "clocked in" and that six students
18 were "clocked in" and unaccounted for during the inspection. *Id.* The Board also finds that
19 Ms. Huggins and Ms. Gossage noted issues with the facility including an inoperable AC
20 unit and equipment that was deficient for the "advanced esthetics" program. *See Exhibit H*

21 **VI.**

22 The Board finds by a preponderance of the evidence that on May 17, 2023, Ms.
23 Huggins conducted a follow up inspection of Ability where she noted no improvements were
24 made to the record keeping, equipment and the AC Unit. The Board further finds that
25 during Ms. Huggin's inspection students were observed loitering during purported class
26 instruction times and moving equipment during class instruction times. The Board also
27 finds that during Ms. Huggin's inspection, Ms. Huggins observed that students were
28 permitted to remain "clocked in" as they moved equipment.

1 VII.

2 The Board finds by a preponderance of the evidence that on May 17, 2023, Ms.
3 Huggins emailed Mr. O'Hara requesting time records for all students, a complete copy of
4 all student contracts and the intended closure and start dates for Ability. *See* Exhibit H.
5 The Board further finds that on May 18, 2023, Mr. O'Hara responded with the requested
6 documents and these documents contained the following issues: (1) records were incomplete
7 as to tracking student hours; (2) none of the students were enrolled in the school portal
8 within 45 days; (3) some student records did not contain required information regarding
9 transfer hours and (4) the records did not confirm if the students had at least a 10th grade
10 education or its equivalent and that the records did not include financial forms with the
11 student contracts. The Board also finds that on May 18, 2023, Ms. Huggins emailed Mr.
12 O'Hara inquiring about these record issues, whether the records were modified and how
13 attendance is recorded for instructors. *Id. See also* Exhibit K.

14 VIII.

15 The Board finds by a preponderance of the evidence that on June 6, 2023 Mr.
16 O'Hara responded to Ms. Huggins confirming that the records previously provided were
17 "complete" *See* Exhibit H, Page 1. Notably, the Board finds that the records provided were
18 not complete. The Board further finds that as to the requirement for students to be enrolled
19 in the school portal within 45 days, Mr. O'Hara admitted that they misunderstood this
20 requirement, and that Ability is not in compliance. The Board also finds as to the
21 requirement of maintaining documents to confirm that students completed at least the 10th
22 grade (or equivalent) prior to enrollment, Mr. O'Hara admitted that they did not comply
23 with this requirement to ensure all enrolled students met the minimum education
24 requirement.

25 IX.

26 The Board finds by a preponderance of the evidence that during the June 6, 2023
27 email exchange, Mr. O'Hara stated to Ms. Huggins that modifications to student time
28 records are only made because of a "student mis-punch-usually due to the malfunction of

1 the Wi-Fi system”. *See* Exhibit H, Page 2. The Board further finds on this email exchange,
2 Mr. O’Hara stated that any data entry error would have been corrected by Mr. Xu, with the
3 acknowledgment of both the student and the instructor. The Board further finds on this
4 email exchange that Mr. O’Hara stated to Ms. Huggins that their instructor Tricia Faust
5 signs students both in and out on paper as well in addition to students clocking in. Notably,
6 this Board further finds Mr. O’Hara’s statements were false as some data entry errors were
7 not corrected by Mr. Xu and some edited time punches did not have a signed
8 acknowledgment of both the student and the instructor.

9 **X.**

10 The Board finds by a preponderance of the evidence that from May 19, 2023- June
11 13, 2023, the Board conducted multiple inspections of Ability to determine if in fact Ability
12 was closed and that these inspections were prompted by unclear information from Mr.
13 O’Hara and Mr. Xu about the closure. The Board further finds that the inspections were
14 conducted by Dana Lopez (5/19/2023), Jennifer Keane and Tiana Polar(5/22/2023), Jennifer
15 Keane individually, (5/26/2023; 6/1/2023; 6/9/2023) and Lauren Gossage (5/30/2023). The
16 Board also finds that during Ms. Gossage’s inspection, the issues pertaining to the accuracy
17 of the students’ hours remained unresolved. *See* Exhibit E.

18 **XI.**

19 The Board finds by a preponderance of the evidence that on July 11, 2023, after its
20 reopening, Ms. Huggins conducted a follow-up inspection of Ability to confirm if instructor
21 Tricia Faust was present during class instruction hours. The Board further finds that
22 during Ms. Huggin’s inspection, she noted that the student hours were incomplete,
23 inaccurate, and not properly updated. *See* Exhibit F. The Board further finds that Board
24 Compliance made additional visits as part of its mass collection of Ability’s student records.
25 *See* Exhibit G and Exhibit J.

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XII.

The Board finds by a preponderance of the evidence that at all times material to the December 13, 2023 Complaint, Chief Compliance Officer, Bertha Jackson reviewed student records provided by Ability to determine if the students were eligible for testing. *See* Exhibit I. The Board further finds that the records reviewed by Ms. Jackson contained the following issues: attendance discrepancies; course “completions” that were both incomplete and unsubstantiated; time records with missing signatures from students, registrar, and/or instructors; documentation that appeared to be altered, and missing information and/or or missing documents confirming whether the student has met the Board’s minimum education requirement. *See* Exhibit I pages 2-37 and 176-180 (Connie Wright); Exhibit I pages 38-63 and 181-185 (Mei Lu); Exhibit I pages 64-86 and 186-200 (Suwipa Kusonwong), Exhibit I pages 87- 137 and 201-205 (Xinyu Chen), and Exhibit I pages 138-175 (Yuqin Geng). The Board also finds that Ability’s timecards were not modified properly. *See* Exhibit G, pages 3-4, Exhibit J, pages 10-12 and Exhibit A, page 2.

XIII.

The Board finds by a preponderance of the evidence that from September 28, 2023-October 18, 2023, following Ms. Jackson’s review and findings, board letters were issued to these students informing them that their applications were being denied and that they did not qualify for testing due to these issues associated with their records. *See* Exhibit I pages 1, 38, 64, 87, and 138. The Board further finds that the students were further informed on their denial letters that they may petition to appear before the Board to have the decision reconsidered. *Id.*

XIV.

The Board finds by a preponderance of the evidence that after consulting with Ms. Jackson and based on the numerous issues found in Ability’s student records, Ms. Huggins and Ms. Gossage forwarded this matter to Executive Director, Steven McDonald to determine if there were sufficient facts to warrant an administrative hearing.

1 **CONCLUSIONS OF LAW**

2 **I.**

3 The Board has jurisdiction over the Respondent, Ability School of Esthetics.

4 **II.**

5 Respondent was timely served the Complaint and Exhibits on December 15, 2023
6 in advance of January 8, 2024 hearing. Respondent was timely served with notice of the
7 hearing before the Board, pursuant to NRS Chapter 644A, NAC Chapter 644A, NRS
8 Chapter 233B and NRS Chapter 241.

9 **III.**

10 The Board finds by a preponderance of the evidence that Respondent violated
11 NAC 644A.603(5) by failing to provide at least one textbook for each student in attendance
12 during class instruction and therefore discipline is warranted pursuant to NRS
13 644A.850(1)(a) for this violation.

14 **IV.**

15 The Board finds by a preponderance of the evidence that Respondent violated NAC
16 644A.603(9)(j) by failing to provide test kits to each student in attendance during class
17 instruction and therefore discipline is warranted pursuant to NRS 644A.850(1)(a) for this
18 violation.

19 **V.**

20 The Board finds by a preponderance of the evidence that Respondent violated NAC
21 644A.610(3) and NAC 644A.610(5)(a)(b)(d) by failing to register its students with the Board
22 within 45 days after the students were enrolled and by failing to maintain required student
23 documentation including identification and supporting documentation that the student has
24 completed at least 10th grade in high school or its equivalent, as well as any other
25 documentation required by the Board, and therefore discipline is warranted pursuant to
26 NRS 644A.850(1)(a) for these violations.

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1 **VI.**

2 The Board finds by a preponderance of the evidence that Respondent violated NAC
3 644A.615(1)(2)(3) by and through its registrar, by failing to (1) keep required records
4 showing daily attendance, (2) keep training time for each student and (3) ensure that the
5 records are current, complete, and accurate, and therefore discipline is warranted pursuant
6 to NRS 644A.850(1)(a) for this violation.

7 **VII.**

8 The Board finds by a preponderance of the evidence that Respondent violated NAC
9 644A.620(4) by failing to keep proper time records of its students for validation by the
10 Board upon the completion by the student, and therefore discipline is warranted pursuant
11 to NRS 644A.850(1)(a) for this violation.

12 **VIII.**

13 The Board finds by a preponderance of the evidence that Respondent violated NAC
14 644A.625 by failing to (1) keep proper time records of its students (2) keep records showing
15 the number of hours the student completed in each subject of training and (3) keep records
16 signed by both the registrar and the student, and therefore discipline is warranted
17 pursuant to NRS 644A.850(1)(a) for this violation.

18 **IX.**

19 The Board finds by a preponderance of the evidence that discipline is also
20 warranted pursuant to NRS 644A.870(1)(h) for Respondent providing false information to
21 the Board as to the maintenance, completeness, and accuracy of its student records.

22 **ORDER**

23 Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause
24 appearing therefore, IT IS HEREBY ORDRED that:

- 25 1. Respondent, Ability School of Esthetics has violated NAC 644A.603(5), NAC
26 644A.603(9)(j), NAC 644A.610(3), NAC 644A.610(5)(a)(b)(d), NAC 644A.615(1)(2)(3),
27 NAC 644A.620(4), NAC 644A.625 and NAC 644A.870 (1)(h), and that discipline is
28 warranted.

2. Respondent, Ability School of Esthetics is ordered to pay an administrative fine in the amount of \$1,000.00 for each violation for a total administrative fine of **\$8,000.00**. Payment for all fines is due to the Board no later than **January 8, 2025**. Respondent may contact the Executive Director to enter into a payment arrangement. Any payment arrangements may not exceed the January 8, 2025 deadline for payment.
3. Respondent is ordered to reimburse the Board for costs incurred in the investigation and prosecution of this case. The amount not to exceed \$10,000.00. The total cost incurred as of date of this Order is \$13,232.07. Accordingly, Respondent is ordered to issue payment for Board costs in the amount of **\$10,000.00**. Payment for all costs is due to the Board no later than **January 8, 2025**. Respondent may contact the Executive Director to enter into a payment arrangement. Any payment arrangements may not exceed the January 8, 2025 deadline for payment.
4. Respondent is ordered to reimburse the Board for attorneys' fees incurred in the investigation and prosecution of this case. The amount not to exceed \$10,000.00. The total amount of attorneys' fees incurred as of date of this Order is \$7,537.92. Accordingly, Respondent is ordered to issue payment for all attorneys' fees in the amount of **\$7,537.92**. Payment for all attorneys' fees is due to the Board no later than **January 8, 2025**. Respondent may contact the Executive Director to enter into a payment arrangement. Any payment arrangements may not exceed the January 8, 2025 deadline for payment.
5. Respondent's cosmetology school license (SC-44984) as of January 8, 2024 is hereby suspended for three (3) months. Respondent is ordered to not resume operations or consider new student applications for its cosmetology school until it has (1) submitted a formal petition to the Board to resume operations and (2) it has received Board approval to resume operations in a Board meeting conducted in compliance with NRS 241 (Open Meeting Law).

...

6. Upon receipt of credible information that Respondent, Ability School of Esthetics has failed to comply with any term or condition of this Order, the Board shall prepare and file such documents as are necessary to allow the Board to impose further discipline, up to and including continued suspension or revocation of Respondent's cosmetology school license.

7. Furthermore, any failure to pay any fine, fee or cost ordered herein will also result in such legal action as Board staff determines to be necessary to collect the unpaid fine, fee or cost.

DATED this 22nd day of January, 2024.

NEVADA STATE BOARD OF COSMETOLOGY

By: Molly O'Bryant

Molly O' Bryant
Board Chair

Date: January 19, 2024

Submitted by:

AARON D. FORD

Attorney General

By: Chricy Harris

Chricy E. Harris

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Counsel for the Petitioner

Date: January 22, 2024

Approved as to form and content by:

AARON D. FORD

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