

STATE OF IOWA
BEFORE THE IOWA BOARD OF COSMETOLOGY

IN THE MATTER OF:)	
)	NO. CO-03-006
FANCY NAILS)	DIA NO. 03DPHCE005
License No. 002-09439)	
)	FINDINGS OF FACT,
RESPONDENT)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On February 21, 2003 the Iowa Board of Cosmetology (Board) issued a Statement of Charges charging Fancy Nails (Respondent), a salon licensed in the state of Iowa, with permitting unlicensed persons to perform activities requiring a license. A Notice of Hearing was issued on February 24, 2003. An Order Rescheduling the time of the hearing was issued on August 4, 2003, at the request of the Respondent.

The Statement of Charges alleged that the Respondent salon permitted two unlicensed employees or persons under the licensee's control to perform activities requiring a license, in violation of Iowa Code sections 157.2, 157.3, 157.13 (2003) and 645 IAC 65.1(9)"a".

A hearing was held on August 6, 2003 at 9:00 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Uyenthanh Thi Nguyen, the owner of the Respondent salon, appeared for the hearing and was not represented by counsel. The state was represented by Shauna Shields, Assistant Attorney General. The following Board members were present for the hearing: Jack Morlan, Chairperson; Sheila O'Hern; Mary Beth Myers; Lois Leytem; Jerry Talbott; and Michael Salvner. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board with the conduct of the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2003), and was recorded by a certified court reporter.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2003) to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing, Rescheduling Order, the testimony of the witnesses, and the following exhibits:

State Exhibit 1: Statement of Charges
State Exhibit 2: Licensee Status Sheet
State Exhibit 3: DIA Inspection Report, 12/31/02

FINDINGS OF FACT

1. On November 18, 2002, the Board issued cosmetology salon license number 002-009439 to Fancy Nails (Respondent) for a salon located at 5717 H. Elmore Ave. in Davenport, Iowa. Respondent's cosmetology salon license is current through December 31, 2004. According to the records maintained by the Board, the owner of the Respondent salon is Uyenthanh Thi Nguyen. (Testimony of Audrey Mitchell; State Exhibits 1-2)

2. Fancy Nails opened for business on December 1, 2002. On December 31, 2002, an inspector from the Iowa Department of Inspections and Appeals went to Fancy Nails to perform an inspection. The inspector observed and identified two persons performing nail technology services at the salon. One of the persons performing nail technology services was the salon owner, Uyenthanh Thi Nguyen. Ms. Nguyen had an Illinois cosmetology license, but did not have an Iowa cosmetology license. The second person performing nail technology services was identified as Ho Tung Ngoc. Ho Tung Ngoc had a Texas cosmetology license but was not licensed in Iowa. (Testimony of Audrey Mitchell; State Exhibit 3)

3. Upon receipt of the inspection report, board staff checked the licensure records and determined that neither Uyenthanh Thi Nguyen nor Ho Tung Ngoc were currently licensed nail technicians in Iowa. (Testimony of Audrey Mitchell; State Exhibits 1, 3)

4. Uyenthanh Thi Nguyen admits that she and Ho Tung Ngoc were performing nail technology services on December 31, 2002, even though they did not have Iowa cosmetology licenses. Ms. Nguyen testified that Ho Tung Ngoc was not an employee, but was a friend who was visiting her from Texas. He helped her in the salon for about a week while he was visiting but then decided to return to Texas. (Testimony of Uyenthanh Thi Nguyen)

At the hearing, Uyenthanh Thi Nguyen explained the circumstances leading to her violations and her efforts to become licensed in Iowa. Ms. Nguyen attended cosmetology school in Illinois and obtained her Illinois cosmetology license in November 2002. She originally intended to open a nail salon in Illinois but was unable to find a suitable location and decided to open a salon in Davenport, Iowa. When she applied for the salon license, she satisfied the requirements for licensure because her salon manager had an Iowa cosmetology license. Ms. Nguyen intended to obtain her own Iowa license as soon as possible. The salon manager initially provided all nail technology services in the salon, but then quit shortly after the salon opened.

Ms. Nguyen made multiple inquiries about obtaining her Iowa license, but soon discovered that she had to have a copy of her high school diploma. She had not needed to produce the diploma to obtain licensure in Illinois. Ms. Nguyen attended high school in Viet Nam and had many difficulties obtaining her diploma because the records were not computerized. Eventually, she obtained a notarized letter verifying that she had a high school diploma and was allowed to sit for the nail technology examination. She was required to take the examination because she had been licensed in another state for less than a year. Ms. Nguyen was issued an Iowa cosmetology license on May 13, 2003. Her license is now current until March 31, 2005. (Testimony of Uyenthanh Thi Nguyen; Audrey Mitchell)

5. Ms. Nguyen admitted that she continued to provide nail technology services without an Iowa license until May 13, 2003, when her Iowa license was issued. She explained that she did not want to violate the law but felt she had no choice because she had to pay the substantial rent on the salon each month. (Testimony of Uyenthanh Thi Nguyen)

CONCLUSIONS OF LAW

I. Allowing Unlicensed Persons To Practice Cosmetology

The Iowa Board of Cosmetology Arts & Sciences Examiners was created by the legislature, pursuant to Iowa Code chapters 147 and 157, and was directed to adopt rules to implement the provisions of Iowa Code chapter 157. Iowa Code section 157.14 (2003). Any license issued by the department can be suspended, revoked, or renewal denied for violation of any provision of

Iowa Code chapter 157 or the rules promulgated by the Board. Iowa Code section 157.9 (2003).

Iowa Code section 157.2(1)(2003) provides that it is unlawful for a person to practice cosmetology arts and sciences with or without compensation unless the person possesses a license issued under section 157.3. Iowa Code section 157.13 provides that it is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless the individual is licensed or has obtained a temporary permit. "Cosmetology" means...nail technology. Iowa Code section 157.1(3)(f). The "Cosmetology arts and sciences" include nail technology. Iowa Code section 157.1(4)(d)(2003).

645 IAC 65.1(9)(a) provides that the Board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2)"a" to "f", including the imposition of a civil penalty which shall not exceed \$1,000, for permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

The preponderance of the evidence established that Fancy Nails violated Iowa Code sections 157.2, 157.13 and 645 IAC 65.1(9)(a) when it permitted unlicensed persons to perform activities (i.e., nail technology) requiring a license.

II. Sanction

In determining the appropriate sanction, the Board considered the factors outlined at 645 IAC 13.2. Allowing an unlicensed person to practice cosmetology is a serious violation that undermines the Board's effort to regulate the cosmetology profession and directly impacts public health and safety. While the Board is sympathetic to the Respondent's financial difficulties, she was legally obligated to close her salon on any day that she was unable to provide nail technology services by a person with a valid Iowa license.

The Board has typically imposed a civil penalty and a one year probation on salons with a first violation of permitting unlicensed persons to perform nail technology services. In this case, the salon owner was very cooperative with the Board. She honestly admitted the violations and appeared to be sincerely remorseful. The Board was convinced that Ms. Nguyen did not

open her salon intending to operate it without properly licensed personnel, but found herself in a difficult position when her manager quit before she could obtain her Iowa license. For these reasons, the Board has significantly reduced the civil penalty that would ordinarily be assessed for this type of violation.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the Respondent Fancy Nails, license no. 002-009439, shall pay a civil penalty of two hundred dollars (\$200) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED, that salon license no. 002-009439 issued to Respondent Fancy Nails, shall be placed on probation for a period of (1) year from the date of issuance of this Decision and Order, subject to the following terms and conditions:

1. The Respondent shall prominently post its probationary license on the salon premises where it is visible to all customers.
2. The Respondent shall comply with all relevant statutes and administrative rules in the course of its operation as a nail technology salon. Within its salon, the Respondent shall only permit nail technology services to be performed by persons who are properly licensed by the state of Iowa.
3. The Respondent shall file quarterly reports with the Board listing the salon's nail technicians. The quarterly employee reports shall be typewritten and shall attest to the following information for each and every person who performed nail technology services with the Respondent salon during the three month period immediately preceding the report:
 - a. The name of the employee who performed nail technology services.
 - b. The license number and expiration date for the employee's Iowa cosmetology and/or nail technology license.
 - c. The employee's date of hire.
 - d. If applicable, the employee's date of termination.

The failure of the Respondent salon to provide complete and truthful information in the quarterly employee reports shall constitute a violation of this order. The first report required by this Order shall be submitted to the Board within thirty (30) days of the service of this Order, and each report thereafter by the first day of every subsequent third month.

4. Upon request of the Board, the owner of the Respondent establishment shall appear before the Board to report on the status of the Respondent's operations as a nail technology salon and to answer any questions or concerns the Board may have regarding the Respondent's compliance with this Order. The Board shall provide the Respondent with reasonable notice of the date, time, and place for any requested appearance.

5. The Board or its designee shall have the right to verify the Respondent salon's compliance with all provisions of this order through established investigative protocols including, but not limited to, examination of Board records, interviews with persons identified as salon employees or clients, and by conducting unannounced inspections of the Respondent salon.

6. If at any time during this probation the Respondent violates any provision of this Order, the Board may hold a hearing pursuant to Iowa Code section 272C.3(2)"a"(2003), because of failure of the Respondent to comply with the terms of this Order. Any such violation would result in consideration by the Board of more serious sanctions, including revocation.

7. Successful completion of the probationary period shall constitute a final disposition of this matter.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that the Respondent shall pay \$75.00 for fees associated with the disciplinary hearing within thirty (30) days of receipt of this decision.

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Dated this 7th day of August, 2003.

This Findings of Fact, Conclusions of and Law, and Decision and Order is approved by the board on August 7, 2003.

Pursuant to Iowa Code section 17A.19(2003) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.