STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:	)	
	)	NO. 08-031
Nevaeh Day Spa	)	DIA NO. 09DPHCE002
License No. 011603	)	
	)	FINDINGS OF FACT,
Destini Hoth	)	CONCLUSIONS OF LAW,
License No. 065736	)	DECISION AND ORDER
	)	
RESPONDENTS	)	

On January 5, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Nevaeh Day Spa, a licensed cosmetology salon in the state of Iowa, and its owner, Destini Hoth, a licensed nail technician and esthetician in the state of Iowa. Respondents were charged with the following five counts:

Count I: Practicing esthetics and nail technology without a current license, in violation of 645 IAC 63.4(1)"a" and 65.2(28).

Count II: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to properly clean and disinfect whirlpool foot spas and by failing to document the cleanings, in violation of 645 IAC 63.25(2)-(5).

Count III: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to discard used instruments after use on a client, in violation of 645 IAC 63.14, 63.17(4) and 63.18(3), and by failing to change disinfectant solution and failing to store instruments as required in 645 IAC 63.12(1).

Count IV: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to post a copy of the most recent sanitation rules at eye level in the salon pursuant to 645 IAC 63.2.

The hearing was scheduled for April 6, 2009 at 9:00 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent Destini Hoth appeared for the hearing and was self-represented. The state was represented by Assistant

Attorney General Julie Bussanmas. The following Board members were present for the hearing: Becky J. Brockmann, Vice-Chairperson; Kimberly Setzer; Richard Mosley; Dana Atkins; Jerry Talbott; and Karen Thomsen. Administrative Law Judge Margaret LaMarche assisted the Board with the conduct of the hearing. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2009), 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)(2009), 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 testimony of the witnesses and the following exhibits:

State Exhibit 1:	Notice of Hearing and Statement of Charges
State Exhibit 2:	Certified Mail Receipt
State Exhibit 3:	Complaint
State Exhibit 4:	Investigative Report and Attachments 5/20/08
State Exhibit 5:	Corrective Action Verification
State Exhibit 6:	Investigative Report and Attachments, 11/24/08
State Exhibit 7:	Rules

FINDINGS OF FACT

1. On December 21, 2006, the Board issued Iowa salon license number 011603 to Nevaeh Day Spa, located at 1731 Boyson Rd, Hiawatha, Iowa. License No. 011603 expired on December 31, 2008 and is now inactive. Destini Hoth, the owner of Nevaeh Day Spa, was issued esthetic license no. 65736 on September 20, 2002, and a nail technology license on February 24, 2003. These licenses were not renewed by their expiration date of March 31, 2008 and were administratively placed on inactive status on May 1, 2008. (Testimony of Rosemary Bonanno; State Exhibit 6)

2. On March 14, 2008, the Board received a complaint from the Iowa Dental Board. The Iowa Dental Board had issued an Order to Nevaeh Day Spa requiring it to cease and desist engaging in acts that constitute the practice of dentistry, i.e. offering the "BrightWhite Teeth Whitening system" service at the spa. (State Exhibit 3)

3. On April 29, 2008, DIA Investigator Kimberly Groves made an unannounced visit to Nevaeh Day Spa at the request of the Board. Ms. Groves prepared an Investigative Report following the visit and documented the following violations that she observed at Nevaeh Spa:

- No sanitation rules were posted;
- No salon license was posted;
- Professional licenses were not posted in the reception area;
- No whirlpool spa cleaning documentation;
- Four whirlpool spa screens contained debris and had not been removed for cleanings;
- Bi-weekly whirlpool spa cleaning was not performed;
- Used nail buffers, emery boards, and toe separators were present in the salon;
- Disinfectant solution was very cloudy and needed to be changed;
- No biohazard bags were present.

The salon was no longer offering teeth whitening services. Ms. Groves interviewed Destini Hoth, and she admitted that the salon had stopped keeping a whirlpool cleaning log. Ms. Hoth was unable to remove the screens from the whirlpools because she did not have a screwdriver available. Ms. Hoth further reported that the salon had been open since December 27, 2006 but had not yet been inspected. (Testimony of Kimberly Groves; State Exhibit 4)

4. On June 9, 2008, the Board sent Respondents written notification of the violations observed during the April 29, 2008 salon inspection. Respondents were required to submit written documentation of their corrective actions by July 9, 2008. On July 14, 2008, Respondents faxed a letter to the Board stating that the violations had been corrected. The letter did

not describe the steps taken to correct the violations. (State Exhibit 5)

5. On November 14, 2008, DIA Investigators Tamara Adams and Kimberly Groves returned to Nevaeh Day Spa at the Board's request for a follow-up inspection. Destini Hoth's licenses had expired on March 31, 2008 and were not posted in the reception area. Upon entering the spa, the investigators asked to speak to Ms. Hoth but were informed that she was unavailable because she was providing services (a Brazilian wax) to a client. In addition to esthetician services being provided by an unlicensed person, Investigators Groves and Adams documented the following violations on November 14, 2008:

- No sanitation rules posted in the reception area; the sanitation rules were found on the back of clipboard in the manicure/pedicure area;
- Whirlpool spa cleaning schedule dates were entered only sporadically; an employee admitted that some schedules had been thrown away;
- Destini Hoth was unable to verbally explain the bi-weekly requirements for cleaning whirlpool spas;
- Pedicure whirlpools #1 and #2 had debris caught in the screens and also had debris around the drains, jets, and screens which could be scratched off with a fingernail; whirlpools #3 and #4 were in use;
- Disinfection solution (Cavicide) was cloudy and contained debris;
- There were used nail buffers and emery boards present in the salon;
- Used files that could not be sanitized were placed with unused files;
- Supplies, such as nippers and clippers, were placed in the sanitizer machine on top of each other.

(Testimony of Kimberly Groves; State Exhibit 6)

CONCLUSIONS OF LAW

Count I: Practicing Esthetics and Nail Technology Without A Current License

Iowa Code section 157.13(1)(2007) provides that it is unlawful to employ an individual to practice cosmetology arts and sciences unless that individual is licensed or has obtained a temporary permit under this chapter. 645 IAC 63.4(1)"a" provides that it is a salon owner's responsibility to ensure that individuals employed for cosmetology arts and sciences services hold a current and active license issued by the Board. 645 IAC 65.2(28) provides that the Board may impose any of the disciplinary sanctions provided in rule 645-65.3 when the Board determines that a licensed salon has permitted an unlicensed employee or person under the salon's control to perform activities requiring a license.

The preponderance of the evidence established that Respondents Nevaeh Spa and Destini Hoth violated 645 IAC 63.4(1)"a" and 65.2(28) when Ms. Hoth provided services to clients on November 14, 2008 after she allowed her combined licenses to expire on March 31, 2008 and become inactive on May 1, 2008.[1] The violation is supported by the credible testimony and observations of the DIA investigator. Although Respondent Destini Hoth appeared for the hearing, she did not testify and did not deny that she had provided esthetic and nail technology services after her licenses expired on March 31, 2008.

Count II: Violating a Regulation, Law Or Rule By Failing To Properly Clean and Disinfect the Whirlpool Spas and Failing to Document the Cleaning and Disinfecting of a Whirlpool Foot Spa

645 IAC 65.2(13) provides authority for the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

645 IAC 63.25 provides the procedures for proper cleaning and disinfecting of whirlpool foot spas after each use, at the end of each day, and biweekly. In addition, the rule requires

[1] 645 IAC 60.1 provides a 30-day grace period following license expiration.

salons to maintain a record of cleaning and disinfecting. 645 IAC 63.25 provides, in relevant part:

> **645-63.25(157) Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths.**
>
> **63.25(1)** As used in this rule, "whirlpool foot spa," "foot spa," "whirlpool," or "spa" is defined as any basin using circulating or still water.
>
> **63.25(2)** After use for each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner:
>
> *a*. All water shall be drained and all debris shall be removed from the spa basin.
>
> *b*. The spa basin must be cleaned with soap or detergent and water.
>
> *c*. The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.
>
> *d*. The spa basin and hydrotherapy bath must be wiped dry with a clean towel.
>
> **63.25(3)** At the end of each day, the whirlpool foot spa must be cleaned and disinfected in the following manner:
>
> *a*. The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and inlet shall be washed with soap or detergent and water.
>
> *b*. Before the screen is replaced, it shall be completely immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.
>
> ...
>
> **63.25(4)** Every other week (biweekly), after being cleaned and disinfected as provided in subrule 63.25(3), each whirlpool foot spa and hydrotherapy bath shall be cleaned and disinfected in the following manner:;
>
> *a*. The spa basin...shall be filled completely with water and one teaspoon of 5.25 percent bleach or recommended whirlpool disinfectant for each one gallon of water, or a solution of sodium hypochlorite

(bleach) of approximately 50 ppm used according to the manufacturer's instructions.

b. The spa...shall be flushed with the bleach or recommended whirlpool disinfectant and water solution...for five to ten minutes and allowed to sit for six to ten hours.

c. The sap...shall be drained and flushed with water before use for a patron.

63.25(5) For each foot spa and hydrotherapy bath, a record shall be made of the date and time of each cleaning and disinfecting as required by subrules 63.25(3) and 63.25(4), and shall indicate whether the cleaning was a daily or biweekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting must be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event.

The preponderance of the evidence established that the Respondents, Nevaeh Day Spa and Destini Hoth, violated 645 IAC 65.2(13), by failing to properly clean and disinfect the whirlpool foot spas and by failing to maintain and make available a record of the whirlpool foot spa cleanings, in violation of 645 IAC 63.25(2)-(5).

Count III: Failing to Discard Used Instruments and Failure To Change Disinfection Solution and Properly Store Instruments

645 IAC 63.14 provides that all instruments and supplies that come into direct contact with a patron and cannot be disinfected, including emery boards, must be disposed of in a waste receptacle immediately after use. 645 IAC 63.17(4) provides that emery boards, cosmetic sponges, cosmetic applicators, toe separators and orangewood sticks must be discarded after use or given to the client. 645 IAC 63.18(3)"a" provides, in relevant part, that a nail buffer that can be sanitized may be used more than once, but it must be sanitized before use on the next client. If a nail buffer cannot be sanitized, the nail buffer shall not be used for more than one client.

The preponderance of the evidence established that Respondents violated 645 IAC 65.2(13) by failing to discard used nail buffers and emery boards that could not be sanitized, in violation of 645 IAC 63.14, 63.17(4), and 63.18(3). Investigator Groves observed used nail buffers and emery boards stored in a basket with unused nail buffers and emery boards.

645 IAC 63.12(1) provides that before use upon a client, all non-electrical instruments shall be disinfected with an EPA-registered, hospital grade disinfectant with demonstrated bactericidal, fungicidal and virucidal activity and used according to the manufacturer's instructions. Disinfectant solutions shall be changed at least once per week or whenever visibly cloudy or dirty. The preponderance of the evidence established that Respondents violated 645 IAC 63.12(1) by failing to replace disinfection solutions that had become visibly cloudy and that contained debris.

Count IV: Violating a Regulation, Law Or Rule By Failing to Post the Most Current Sanitation Rules

645 IAC 65.2(13) provides authority for the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession. 645 IAC 63.2 provides that a copy of the most current sanitation rules shall be posted in the reception area at eye level in the salon for the information and guidance of the general public. The preponderance of the evidence established that Respondents Nevaeh Day Spa and Destini Hoth violated 645 IAC 65.2(13) by failing to post the current sanitation rules in the reception area, in violation of 645 IAC 63.2.

Sanction

Respondents' multiple violations directly affect the public health, safety, and welfare. The violations justify indefinite license suspensions and the maximum civil penalty of $1,000.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 011603, issued to Respondent Nevaeh Day Spa, is hereby INDEFINITELY SUSPENDED.

IT IS FURTHER ORDERED that combined license number 065736, issued to Respondent Destini Hoth, is hereby INDEFINITELY SUSPENDED.

IT IS FURTHER ORDERED that Respondents Nevaeh Day Spa and Destini Hoth shall pay a total civil penalty of one thousand dollars ($1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that the Respondents shall pay $75.00 for fees associated with the disciplinary hearing and $55.00 for the court reporter fees. The total fees of $130.00 shall be paid within thirty (30) days of receipt of this decision.

IT IS FURTHER ORDERED that prior to reinstatement of either license, Respondent Destini Hoth must appear before the Board and establish her full compliance with the terms of this Decision and Order and must further establish that the reasons for the indefinite suspensions no longer exist and that it is in the public interest for the licenses to be reinstated. 645 IAC 11.31.

If Respondents fail to comply with any of the terms of this Decision and Order, the Board may hold a hearing, pursuant to Iowa Code section 272C.3(2)"a"(2009), and impose further sanctions, including license revocations.

This findings of fact, conclusions of law, decision and order is approved by the board on April 13, 2009.

Pursuant to Iowa Code section 17A.19(2009) 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.