

**BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES
OF THE STATE OF IOWA**

| | | |
|---------------------------|---|---------------------------------|
| IN THE MATTER OF: |) | |
| |) | CASE NO. 07-047 |
| Q Nails |) | |
| License No. 010330 |) | |
| and |) | NOTICE OF HEARING |
| James Nhan Le |) | AND STATEMENT OF CHARGES |
| License No. 01272 |) | |
| |) | |
| RESPONDENT |) | |
| |) | |

COMES NOW the Iowa Board of Cosmetology Arts and Sciences and files this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued Iowa salon license no. 010330 on June 2, 2004. The above named Respondent is the owner of Respondent salon, Elegant Nails, located at Southern Hills Mall, 4400 Sergeant Rd., Sioux City, Iowa 51106. Respondent's salon license is current and will next expire on December 31, 2008. Respondent owner was issued nail technology license no. 01272 on May 22, 2003 and the license will next expire on March 31, 2009.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on February 26, 2008 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 2:00 PM and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer.

The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges.

Pleadings shall be filed with the Board at the following address: Board of Cosmetology Arts and Sciences, 5th Floor, Lucas State Office Building, Des Moines, Iowa, 50319.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 645 IAC 11.17.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 157, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 157, and 272C and 645 IAC chapter 65.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 645 IAC 11.21.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

Respondent is charged with employing individuals to practice cosmetology arts and sciences without a license in violation of Iowa Code section 157.13(1) and 645 IAC rules 65.2(28).

COUNT II

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 Iowa Administrative Code 65.2(13) by using a nail buffer and pumice stone on different clients without sanitizing the instruments or discarding the used instruments between clients in violation of 645 Iowa Administrative Code 63.14 and 63.18(3) and for failing to disinfect nonelectrical instruments with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity in violation of 645 IAC 63.12(1).

COUNT III

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 Iowa Administrative Code 65.2(13) by failing to properly clean whirlpool foot spa in violation of 645 Iowa Administrative Code 63.25(2)-(5).

COUNT IV

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 Iowa Administrative Code 65.2(13) by having a product containing liquid methyl methacrylate monomer on its premises in violation of 645 Iowa Administrative Code section 63.18(1).

COUNT V

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by possessing a razor-edged device or tool in violation of 645 IAC 63.18(2).

COUNT VI

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for failing to post a copy of the most recent

inspection report in a conspicuous place in the salon pursuant to 645 IAC 63.2(157).

D. FACTUAL CIRCUMSTANCES

1. During an investigation on August 29, 2007, an unlicensed individual was providing services that require an Iowa nail technology license.
2. During the investigation, the investigator observed used nail buffers and a pumice stone being used on different customers without first disinfecting the buffers and pumice stone or discarding the used implements.
3. The Respondent admitted to not sanitizing or sterilizing nail clippers or other metal instruments between using on clients.
4. During the investigation, there was unsatisfactory evidence of whirlpool foot spa daily and biweekly cleaning and disinfecting practices. No current record of whirlpool cleaning was being maintained.
5. During the investigation, three samples of liquid were obtained. The samples were tested for the presence of methyl methacrylate at the University of Iowa Hygienic Laboratory. Test results revealed all three of the samples of liquid taken from Respondent salon contained methyl methacrylate.
6. An employee was observed using a heel shaver on a customer during the investigation on August 21, 2007.
7. The last inspection report was not posted in the salon at the time of the investigation.
8. On November 1, 2006, Respondent salon was disciplined for employing

individuals who did not possess an Iowa license to practice cosmetology arts and sciences in violation of Iowa Code section 157.13(1) and 645 IAC rules 63.4 and 65.2(28), and for engaging in unsanitary practices in violation of 645 IAC 63.2, 63.5(5), 63.14, 63.17(1), 63.18(3) and 63.25(2)-(5).

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC Chapter 12. If you are interested in pursuing settlement of this matter, please contact Julie Bussanmas, Assistant Attorney General, at 515-281-4419.

F. PROBABLE CAUSE FINDING

On this 7th day of November, 2007, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.

This notice of hearing and statement of charges is approved by the board on November 7, 2007.