

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

IN THE MATTER OF:)	
)	
New Nails)	CASE NO. 06-205; 06-206; 06-230;
License No. 006959)	06-315
and)	
Son Kim Huynh)	NOTICE OF HEARING
)	AND STATEMENT OF CHARGES
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. 006959 on February 13, 1995. The above named Respondent is the owner of Respondent salon, Top Nails. Respondent's salon license is current and will next expire on December 31, 2008. Salon is located at 1821 22nd St., # 105, West Des Moines, Iowa 50266.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on November 6, 2007 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 9:00 AM 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: Emily Kimes-Schwiesow, 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 violation of Iowa Code section 147.55(3), 157.6 and 645 IAC 65.2(13) for engaging in an unsanitary practices in violation of 645 IAC 63.25 (2)-(5).

COUNT II

Respondent is charged with a violation of 645 IAC 65.2(13) for failure to post sanitation rules and inspection report pursuant to 645 IAC rule 63.2.

D. FACTUAL CIRCUMSTANCES

1. Between May 2006 and September 2006 four customers developed lesions on their

lower leg area after receiving pedicures at the Respondent Salon. All four customers sought medical attention and were diagnosed with an infection requiring antibiotic treatment.

2. During an investigation at Respondent Salon on November 16, 2006, Respondent Owner, Son Kim Huynh, reported that whirlpool foot spas are cleaned after each use and at the end of each day. However, Respondent Owner could not say if the jets within the whirlpool foot spas were cleaned or not. Respondent Owner was unable to provide any records of the cleaning and disinfecting of whirlpool foot spas.

3. During an investigation at Respondent Salon on June 21, 2007, a whirlpool cleaning schedule was present but did not include the signature of a licensee beside each cleaning event as required.

4. The investigation completed on June 21, 2007 revealed several deficiencies including:
- a) A copy of the most current sanitation rules were not posted in violation of 645 IAC 63.2
 - b) A copy of the most recent inspection report was not posted in violation of 645 IAC 63.2
 - c) A red, sealable, rigid container for the disposing of sharp objects was not available in violation of 645 IAC 63.17(2)
 - d) A hazardous waste container bag was not available in violation of 645 IAC 63.17(3)

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 Emily Kimes-Schwiesow, Assistant Attorney General, at 515-281-5637.

F. PROBABLE CAUSE FINDING

On this 1st day of August, 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 August 1, 2007.