

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	NO. CO-01-039
VEGAS NAILS)	DIA NO. 02DPHCE006
License No. 002-008527)	
)	FINDINGS OF FACT,
RESPONDENT)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On August 19, 2002, the Iowa Board of Cosmetology Arts & Sciences (Board) found probable cause to issue a Statement of Charges against Vegas Nails (Respondent), a salon licensed in the state of Iowa. The Statement of Charges alleged that the Respondent salon permitted an unlicensed employee or person under the licensee's control to perform activities requiring a license, in violation of Iowa Code sections 157.2, 157.3, 157.13 (2001) and 645 IAC 65.1(9)(a). A Notice of Hearing was issued on August 19, 2002, setting the hearing for May 7, 2003 at 9:00 a.m. The Statement of Charges and Notice of Hearing were personally served on the owner of the salon at his residence on November 15, 2002.

The hearing was held on May 7, 2003 at 9:10 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent did not appear and was not represented by counsel. The state was represented by John Lundquist, Assistant Attorney General. The following Board members were present for the hearing: Jack Morlan, Chairperson; Sheila O'Hern; Mary Beth Myers; Lois Leytem; Michael Salvner; and Jerry Talbott. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2001), 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. A motion was approved in open session. The administrative law judge was instructed to prepare the Board's decision, in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing, the testimony of the witness, and the following exhibits:

State Exhibit 1:	Statement of Charges
State Exhibit 2:	Licensee Status Sheet
State Exhibit 3:	DIA Inspection Report, 6/27/01
State Exhibit 4:	DIA Inspection Report, 6/12/02
State Exhibit 5:	Investigative Report; Proof of Service

FINDINGS OF FACT

1. On October 30, 2000, the Board issued cosmetology salon license number 002-008527 to Vegas Nails (Respondent) for a salon located at 1111 E. Army Post Road, Des Moines, Iowa. Respondent's license to operate a cosmetology salon was current through December 31, 2002 but has now lapsed. According to the records maintained by the Board, the owner of the Respondent salon is Danh Ho. (Testimony of Audrey Mitchell; State Exhibits 1-2)

2. On June 27, 2001, an investigator from the Department of Inspections and Appeals visited the Respondent salon. His report notes that the salon was open at 10:55 a.m. but there were no licensed nail technicians present, and no licenses were posted. (Testimony of Audrey Mitchell; State Exhibit 3)

3. On June 12, 2002, an investigator from the Department of Inspections and Appeals visited the Respondent salon. Only one person was present at the salon, and she was identified as Oanh Hoang. Ms. Hoang told the inspector that she was present to help the owner with cleaning. She further stated that she was not a licensed nail technician and did not perform nail technology services. A review of the computer database maintained by the Bureau of Professional Licensure confirmed that Oanh Hoang is not a licensed nail technician.

The owner of the salon, Danh Ho, was called at home and arrived at the salon within fifteen minutes. He told the DIA investigator that only one person was employed by the salon, and the person was a licensed nail technician. The investigator informed the owner that both the salon license and the license

of the nail technician must be posted on the wall of the salon. The investigator went to the mall office to inquire about the salon's business and was told that there had been two people performing nail technology services in the salon on June 11, 2002.

The investigator returned to the salon and found Ms. Hoang providing nail technology services to a customer. After about a minute, Ms. Hoang stopped providing services to the customer and told the customer that she would have to return later. Another customer was waiting to have a toenail repolished because it had not been done properly the day before by a male employee of the salon. When Danh Ho returned to the salon, the investigator asked the customer if Mr. Ho was the person who provided services to her the day before. The customer told the investigator that Mr. Ho was not the person who provided nail services to her. Mr. Ho admitted that the male employee who provided services to the customer was not licensed as a nail technician. The investigator told Danh Ho that he must close the salon until a licensed nail technician was working there. (Testimony of Audrey Mitchell; State Exhibit 4)

4. The Statement of Charges and Notice of Hearing were personally served on Danh Ho, owner of Vegas Nails, at his residence on November 15, 2002 at 1:40 p.m. Danh Ho did not respond to the Statement of Charges, and no one appeared at the hearing on behalf of the Respondent salon. (State Exhibit 5)

CONCLUSIONS OF LAW

I. Failure to Appear

645 IAC 11.6(1)"b" provides that the statement of charges and notice of hearing may be served by personal service, as provided in the Iowa Rules of Civil Procedure. The Respondent Vegas Nails was properly served with the statement of charges and notice of hearing by personal service, but failed to appear for the hearing.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of

the party. 645 IAC 11.21(1). The Board was authorized to proceed with the hearing in the absence of the Respondent.

II. Allowing An Unlicensed Person 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 (2001). 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 (2001).

Iowa Code section 157.2(1)(2001) 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...manicuring the nails of any person...nail technology. Iowa Code section 157.1(3)(c) and (f). The "Cosmetology arts and sciences" include nail technology. Iowa Code section 157.1(4)(d) (2001).

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 Vegas 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. This violation was established through the investigator's report and the testimony of the Board's staff member. There is no contrary evidence in the record.

III. 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. The Board has typically imposed a \$500 civil penalty and a one year probationary period for a first violation. However, in this case the salon license lapsed on December 31, 2002 and has not been renewed. Without an active license, the salon must be closed. If the owner takes the proper steps to renew the salon license, the license will be placed on probation for a period of one year.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the owner of Vegas Nails, license no. 002-008527, shall immediately return the lapsed salon license to the Board of Cosmetology Arts and Sciences, Department of Public Health, Bureau of Professional Licensure, Lucas State Office Building-5th Floor, 321 E. 12th Street, Des Moines, Iowa 50319. Since the license has lapsed, the salon must be closed unless and until a renewal license is issued by the Bureau of Professional Licensure.

IT IS FURTHER ORDERED that Vegas Nails, license no. 002-008527, shall pay a civil penalty of five hundred dollars (\$500) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that salon license no. 002-008527, issued to Vegas Nails, may *not* be renewed *until* the \$500 civil penalty and all applicable renewal fees have been paid in full. Upon renewal, license no. 002-008527 shall be placed on probation for a period of (1) year from the date of issuance of the renewal, 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 date the license is renewed, 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"(2001), 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.

This Findings of Fact, Conclusions of Law, Decision and Order was approved by the board on May 14, 2003.

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2001) 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.