

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

IN THE MATTER OF:)	
)	
Van Hillman)	CASE NO. 05-032
)	
dba)	
)	
Helen's Nails, Clive, Iowa)	COMBINED STATEMENT OF
License No. 002-011007)	CHARGES, INFORMAL
)	SETTLEMENT AGREEMENT,
RESPONDENT.)	AND CONSENT ORDER

The Iowa Board of Cosmetology Arts and Sciences Examiners (Board) and Van Hillman dba Helen's Nails (Respondent) enters into this Combined Statement of Charges, Informal Settlement Agreement, and Consent Order (Agreement) pursuant to Iowa Code sections 17A.10(2), 272C.3(4)(2005), and chapter 645 Iowa Administrative Code (IAC) rule 12.1.

1. Helen's Nails, Clive, presently possesses license number 002-011007 to operate a nail technology salon in the state of Iowa. The license is current and will next expire on December 31, 2006. Board records indicate that the salon license was issued to Van Hillman on October 4, 2005, and the salon is located at 9753 University Ave., Clive, Iowa 50325.

2. Van Hillman applied for this license on or about January 14, 2005 and owned the salon on both June 30, 2005 and September 12, 2005, the dates of the alleged violations.

3. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 157, and 272C (2005). Licenses issued by the Board are subject to the laws of the State of Iowa and the administrative rules promulgated by the Board.

STATEMENT OF CHARGES

COUNT I

4. Van Hillman dba Helen's Nails is charged under 147.55, 157.6, 157.9, 157.13, 272C.3(2) and 645 IAC rules 65.2(3) and 65.2(13) by engaging in practices that are harmful or detrimental to the public and operating his nail technology salon in violation of 645 IAC rules 63.12(1), 63.14, 63.16(1), 63.17(4) and 65.2(13).

CIRCUMSTANCES

5. During an inspection of Respondent's salon on September 12, 2005, it was found that some dispensers containing chemicals were not labeled.

6. Emery boards that can not be sanitized were not discarded or given to clients after use.

7. "Clorox Clean-Up", a non-approved disinfectant for pedicure bowls, was in use to clean pedicure bowls.

COUNT II

8. Respondent Van Hillman 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 63.3(2), 63.4(1) and 65.2(23) and (28).

CIRCUMSTANCES

9. During an investigation of Respondent salon on June 30, 2005, it was found that two unlicensed persons were engaged in activities requiring a license. One

of the two, Cindy D. Nguyen, became licensed on September 28, 2005. The second unlicensed person, Tam N. Huynh, was also providing nail technology services during an inspection of the salon on September 12, 2005. One practitioner's license posted, that of Phung Kim Nguyen, had expired.

COUNT III

10. Respondent is charged with operating an unlicensed salon in violation of Iowa Code section 157.11 and 645 IAC 61.2.

CIRCUMSTANCES

11. The salon license (002-009711) for Helen's Nails at 9753 University Avenue to Danh Ho and Hang Ho lapsed on December 31, 2004. Respondent signed an application for licensing at this location on January 14, 2005. The application indicated and expected opening date of January 14, 2005. Rule 61.2(1)(a) requires the submission of the application 30 days in advance of the anticipated opening date. The application was received in the mail by the Board on January 19, 2005. Rule 61.2(3) allows services to commence following receipt of the license. Respondent operated Helen's Nails prior to receipt of a license in 2005.

SETTLEMENT AGREEMENT

12. Respondent, without admission of wrongdoing or guilt, agrees not to contest the above stated charge before the Board.

13. Respondent has a right to receive notice of the charge and to request a hearing before the Board on the merits of the charge, but waives its right to notice and a hearing and all attendant rights, including the right to appeal or seek judicial review of

the Board's actions, by freely and voluntarily entering into this Agreement. This Agreement shall constitute the final order of the Board in this case.

14. Respondent agrees that the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

15. This Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of future violations.

16. Any failure by Respondent to comply with the terms and conditions of this Agreement shall subject Respondent to further licensee disciplinary action which could be initiated by the Board through the filing of a statement of charges with a hearing to be held on the merits.

17. This Agreement is subject to approval by the Board:

- (a) If the Board does not approve this Agreement, it shall be of no force or effect on either party and it shall not be admissible for any purpose in further proceedings in this matter.
- (b) If the Board approves this Agreement, it shall fully dispose of all issues in this case.

18. This Agreement is a public record pursuant to Iowa Code sections 272C.3(4) and 272C.6(4)(2005).

19. This Agreement shall not be binding as to any new complaints received by the Board.

CONSENT ORDER

IT IS THEREFORE ORDERED:

20. Respondent's salon license shall be placed on probation for a period of one (1) year.

21. This Agreement shall not restrict or otherwise limit Respondent's operation of a nail technology salon in the state of Iowa except as expressly stated by the terms of this Agreement. During the probationary period, Respondent Van Hillman dba Helen's Nails, shall comply with the following terms.

- (a) Respondent shall comply with all relevant statutes and administrative rules in the course of its operations as a nail technology salon.
- (b) Respondent shall specifically comply with all sanitary, labeling and licensing rules.
- (c) Respondent shall file quarterly reports with the Board listing the salon's employees, whether licensed by the State of Iowa to provide nail technology services or not, and the approximate number and type of nail technology services performed by each employee. The quarterly employee reports shall be typewritten and shall attest to the following information, at a minimum, for each and every person who performed nail technology services within the Respondent salon during the three months immediately preceding the report.
 - i) the name of the employee who performed nail technology services;
 - ii) the license number and expiration date for each employee's Iowa cosmetology and/or nail technology license;
 - iii) the type of services performed by each employee;
 - iv) each employee's date of hire;
 - v) each employee's date of termination, if applicable.

The failure of Respondent to provide complete and truthful information in the quarterly reports shall constitute a violation of this Agreement.

The Board or its designee may verify the information provided in the quarterly reports through an examination of Board records by interviewing persons listed as salon employees, or by conducting unannounced inspections of the Respondent's salon.

- (d) Upon request of the Board, the owner of the salon shall appear before the Board to report on the status of Respondent's operations as a nail technology salon and to answer any questions or concerns the Board may have regarding Respondent's compliance with this Agreement. The Board shall provide Respondent with reasonable notice of the date, time, and place of any requested appearance. Respondent agrees that any such appearance would be governed by 645 Iowa Administrative Code rule 9.7 and that it waives any and all objections to the members of the Board both participating in the appearance and later participating as decision makers in a contested case proceeding.

22. Respondent salon agrees to pay to the Board a civil monetary penalty of \$1000 in total for the safety and sanitation violations in Count I and licensing violations in Counts II and III. Respondent shall remit the full \$1,000 total payment of the civil monetary penalties to the Board within 30 days of the date this Agreement is executed by the Board.

23. Upon full compliance with the above terms and conditions, Respondent's license to operate a nail technology salon in the state of Iowa shall be restored to its full privileges free and clear of all probationary restrictions.

WHEREFORE, the terms of this Statement of Charges, Informal Settlement Agreement, and Consent Order are agreed to and accepted by the Iowa Board of Cosmetology Arts and Sciences and Respondent.

This combined amended statement of charges, settlement agreement and consent order is approved by the Board on February 1, 2006.