

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

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IN THE MATTER OF:	)	
	)	
Fancy Nails	)	CASE NO. 04-050
License No. 002-009439	)	
	)	
and	)	COMBINED STATEMENT OF
	)	CHARGES, INFORMAL
Uyen Thanh T. Nguyen	)	SETTLEMENT AGREEMENT,
License No. 840-01269	)	AND CONSENT ORDER
	)	
RESPONDENTS.	)	

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The Iowa Board of Cosmetology Arts and Sciences Examiners (Board) and Fancy Nails, through its owner Uyen Thanh T. Nguyen and Uyen Thanh T. Nguyen, individually, (Respondents) enter 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. Respondent Fancy Nails presently possesses license number 002-009439 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 Respondent's salon license was issued November 18, 2002, and the salon is located at 5717 Elmore Avenue, Unit H, Davenport, Iowa 52807. Uyen Thanh T. Nguyen's nail technology license number 840-01269, was issued on May 13, 2003, and will expire on March 31, 2007.

2. 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**

3. Respondents are 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 its nail technology salon in violation of 645 IAC rules 63.16(1) and 65.2(13).

### **CIRCUMSTANCES**

4. During an inspection of Respondent salon on September 23, 2004, it was found that some containers containing cosmetic chemicals were not labeled.

5. Material Safety Data Sheets (MSDS) were not on file in the salon as required by OSHA.

### **COUNT II**

6. Respondents are charged with employing an individual(s) 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) and (3) and 65.2(28).

### **CIRCUMSTANCES**

7. During an inspection of Respondent salon on September 23, 2004, it was found that at least one unlicensed person, David Ngo, and possibly a second, "Billy", Mrs. Nguyen's husband, were engaged in activities requiring a license. No license was posted for the unlicensed individuals. The owner is responsible for allowing unlicensed persons to practice.

## SETTLEMENT AGREEMENT

8. Respondents, without admission of wrongdoing or guilt, agree not to contest the above stated charge before the Board.

9. Respondents have a right to receive notice of the charge and to request a hearing before the Board on the merits of the charge, but waive 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.

10. Respondents agree that the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

11. This Agreement shall be part of the permanent record of Respondents 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.

12. Any failure by Respondents 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.

13. 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.

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

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

### **CONSENT ORDER**

#### **IT IS THEREFORE ORDERED:**

16. Respondents' salon license and nail technology license shall be placed on probation for a period of two (2) years.

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

- (a) Respondents shall comply with all relevant statutes and administrative rules in the course of its operations as a nail technology salon.
- (b) Respondents 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 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 salon to provide complete and truthful information in the quarterly employee 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 salon.

- (d) Upon request of the Board, the owner of Respondent 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.

18. Respondent salon agrees to pay to the Board a civil monetary penalty of \$500 and Respondent owner shall pay an additional \$200. Respondents shall remit full payment of the civil monetary penalty to the Board within 30 days of the date this Agreement is executed by the Board.

19. 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 Statement of Charges, Informal Settlement Agreement, and Consent Order is approved by the board on May 4, 2005.**