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

| IN THE MATTER OF: |) |
|---------------------------|----------------------------|
| Top Nails, Altoona |) CASE NO. 06-083 |
| License No. 010090 |) |
| and |) |
| Thao Huynh, owner |) NOTICE OF HEARING |
| License No. 00677 |) 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. 010090 on December 12, 2003. 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 550 36th Avenue SW, Suite F, Altoona, Iowa 50009.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on February 25, 2008 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 1:00 PM and shall be located in the Lucas State Office Building, Fifth Floor Conference Rooms 517 & 518, 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.

<u>Presiding Officer</u>. 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.

<u>Pre-hearing Conference</u>. 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.

<u>Prosecution</u>. 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.

<u>Communications</u>. 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

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

<u>Legal Authority</u>. 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.

<u>Default</u>. 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 violating a regulation, rule, or law of this state pursuant to 645 Iowa Administrative Code 65.2(13) by failing to meet the minimum requirements for cleaning and disinfecting whirlpool foot spas and for failing to document the date and time of each cleaning and disinfecting of the whirlpool foot spas in violation 645 Iowa Administrative Code 63.25.

COUNT II

Respondent is charged with allowing individuals employed by the salon to provide services that exceed their scope of practice in violation of 645 IAC rules 63.4(1)(b) and 65.2(29).

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 post a copy of the most recent inspection and a copy of the sanitation rules in a conspicuous place in the salon in violation of 645 Iowa Administrative Code 63.2.

D. FACTUAL CIRCUMSTANCES

- 1. During the investigation on March 8 and December 13, 2007, there was unsatisfactory evidence of whirlpool foot spas meeting daily cleaning and disinfecting requirements in violation of 645 Iowa administrative Code 63.25(2)-(5).
- 2. During an investigation of the salon on March 8, 2007, a licensed nail technologist was observed engaging in eyebrow waxing, an activity that exceeds the employee's scope of practice. The owner is responsible for allowing licensed employees to exceed their scope of practice pursuant to 645 Iowa Administrative Code 63.4(1).
- 3. The investigation completed on March 8, and December 14, 2007 revealed that a copy of the most recent inspection report and a copy of the current sanitation rules were not posted in a conspicuous place, in violation of 645 IAC 63.2. In its Report of Corrective Action received by the Board on April 30, 2007, Respondent falsely reported that the sanitation rules and most recent inspection report "were displayed near customer view in reception area," a violation of 645 IAC rule 65.2(3).
- 4. On February 4, 2004, Respondent salon was placed on probation for one year for operating without proper salon licensure in excess of six (6) months, failure to properly post licenses, and for use of products containing methyl methacrylate.

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 Bussanmus, Assistant Attorney General, at 515-281-4419.

F. PROBABLE CAUSE FINDING

On November 7, 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.