

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

IN THE MATTER OF:)	
)	CASE NO. 09-035
Nail Today)	
License No. 102674)	
and)	NOTICE OF HEARING
Charlies Huynh)	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. 102674 on December 22, 2008. Above named Respondent is the owner of Respondent salon, Nail Today, located at 1916 N Sturdevant St., Davenport, Iowa 52804. Respondent's salon license is current and will next expire on December 31, 2010.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on October 5, 2009 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 11:00 AM and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 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.

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: Jordan Esbrook, 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 violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to properly clean and disinfect its whirlpool footspas and by failing to document the cleanings in violation of 645 IAC 63.25(2) - (5).

COUNT II

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to discard used instruments after use on a client in violation of 645 IAC 63.14, 63.17(4) and 63.18(3), and by failing to change

disinfectant solution and failing to store instruments as required in 645 IAC 63.12(1).

COUNT III

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for failing to post a copy of the most recent sanitation rules at eye level in the salon pursuant to 645 IAC 63.2.

COUNT IV

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for having on the premises razor-edged tools in violation of 645 IAC 63.18(3).

COUNT V

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for failing to have hazardous waste containers available for use while services are being performed, in violation of 645 IAC 63.17(3).

COUNT VI

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for having on the premises a prohibited product containing liquid methyl methacrylate monomer, in violation of 645 IAC 63.18(2).

COUNT VII

Respondent is charged with permitting an unlicensed person under the salon's control to perform activities that require a license, in violation of 645 IAC 65.2(28).

COUNT VIII

Respondent is charged with failure to comply with the terms of the settlement agreement entered into with the Board on October 22, 2007, in violation of 645 IAC

65.2(21).

D. FACTUAL CIRCUMSTANCES

1. On October 22, 2007, Respondent entered into an Agreement with the Board, in which Respondent was charged with possessing a product containing methyl methacrylate monomer and with employing individuals not licensed to practice cosmetology. Respondent agreed to pay a \$1000.00 fine and to obey all rules and regulations governing the practice of cosmetology.

2. During an investigation of Respondent salon on May 22, 2009, it was discovered that the salon did have a biohazard container, that chamois buffers were found in the salon, that dirty drawers at the nail stations contained clean nail instruments, used metal nail bits were located in the salon, several boxes containing corn blades were found in the salon, barbicide containers were cloudy with debris, and used nail buffers and files were found throughout the salon.

3. During the investigation, eight heel shavers were found in the Respondent salon.

4. During the investigation, no spa log was found in the salon. Per Respondent Mr. Huynh, a spa log was not kept.

5. During the investigation, sanitation rules were not posted in the salon.

6. During the investigation, an employee who did not possess an Iowa nail technology license was observed providing nail technology services.

7. During the investigation on May 22, 2009, two samples of liquid were taken to test for the presence of methyl methacrylate monomer. The tests came back from the University of Iowa Hygienic Laboratory positive for methyl methacrylate monomer.

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 Jordan Esbrook, Assistant Attorney General, at 515-281-7262.

F. PROBABLE CAUSE FINDING

On the 13th day of July, 2009, 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 6, 2009.