

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

IN THE MATTER OF:)	
)	CASE NO. 08-068
Fancy Nails & Spa)	
License No. 102202)	
and)	NOTICE OF HEARING
Hang L Ly)	AND STATEMENT OF CHARGES
License No. 00489)	
)	
RESPONDENT)	
)	

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing pursuant to Iowa Code §17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) § 11.6. Respondent Fancy Nails & Spa was issued Iowa salon license no. 102202 on March 11, 2008, and is located at 5350 Council St. NE, Suite B, Cedar Rapids, IA 52402. Fancy Nails & Spa's salon license is current and will next expire on December 31, 2010. Respondent Ly was issued nail technology license no. 00489 on November 6, 1996, which license will next expire on March 31, 2012.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on April 5, 2010 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 1:30 p.m. 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 of Iowa) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Scott Galenbeck, 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 § 17A.12(3) and 645 IAC § 11.21.

C. CHARGES

COUNT I

Respondent is charged under 645 IAC § 65.2(13) with failing to fully document cleanings of pedicure spas in violation of 645 IAC §§ 63.25(2-5).

COUNT II

Respondent is charged under 645 IAC § 65.2(13) with engaging in unsanitary practices in violation of Iowa Code § 157.6 and 645 IAC §§ 63.12(1), 63.14, 63.17(3) and 63.18(3).

COUNT III

Respondent is charged under 645 IAC 65.2(13) with failing to properly post a copy of the most recent inspection report in the reception area at eye level in violation of 645 IAC § 63.2.

COUNT IV

Respondent is charged under 645 IAC 65.2(29) with permitting a licensed person to perform activities outside the scope of the person's license.

COUNT V

Respondent is charged under 645 IAC § 65.2(13) with having a product containing liquid methyl methacrylate (MMA) on its premises in violation of 645 IAC § 63.18(1).

D. FACTUAL CIRCUMSTANCES

1. During an investigation on December 4, 2009, an investigator observed that sanitation rules were posted in the reception area but the inspection report was posted behind the sanitation rules and was not visible to the public. Used files and buffers were found in the manicure stations drawers along with unused, clean buffers.
2. The foot spa log was incomplete by not indicating daily or biweekly cleaning, and the record did not include the licensee's license number.
3. Two samples of nail liquid were taken and one sample tested positive for methyl methacrylate acid.
4. Although Respondent indicated that only arms and legs were waxed at the salon, no large waxing strips were available. Also, there was melted wax on a table and no licensed esthetician or cosmetologist employed by the salon during the time of the investigation. An investigator called on December 10th and asked about eyebrow waxing. The employee who answered the call stated the woman who did eyebrow waxing was no longer there.

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 Scott Galenbeck, Assistant Attorney General, at 515-281-6658.

F. PROBABLE CAUSE FINDING

On the 11th day of January, 2010, 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 March 4, 2010.