

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

IN THE MATTER OF:)	
)	CASE NO. 07-095
Regal Nails and Spa)	
License No. 101932)	
and)	NOTICE OF HEARING
Duyen Kim Pham)	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. 010932 on June 21, 2007. The above named Respondent is the owner of Respondent salon, Regal Nails and Spa, located 3101 Floyd Blvd. #4, Sioux City, Iowa 51108. Respondent's salon license is current and will next expire on December 31, 2008. Respondent owner does not hold a cosmetology or nail technology license.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on May 28, 2008 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 10:00 AM and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 526, 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: Julie Bussanmas, 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 the whirlpool foot spas and maintain a cleaning record in violation of 645 IAC 63.25(2) - (5).

COUNT II

Respondent is charged with violating Iowa Code section 147.55(3), 157.6 and 645 IAC 65.2(13) for engaging in unsanitary practices in violation of 645 IAC 63.12(1), 63.13(2), 63.14, 63.17(4), and 63.18(3) and by failing to have required hazardous waste

containers and bags in violation of 645 Iowa Administrative Code 63.17(3).

COUNT III

Respondent is charged with violating Board rules prohibiting salons from having any razor-edged device or tool on its premises which is designed to remove skin unless used by licensed nail technicians to remove cuticles pursuant to 645 IAC 65.2(13) and 63.18(2).

D. FACTUAL CIRCUMSTANCES.

1. During the investigation, there was unsatisfactory evidence of whirlpool foot spas meeting daily cleaning and disinfecting requirements and the whirlpool cleaning schedule was not properly maintained in violation of 645 IAC 63.25(2)-(5), and hazardous waste container bags were not available.

2. During the investigation, the investigator observed supplies sitting on dirty work surfaces, used nail buffers and nail files at stations had not been placed in a waste receptacle or other receptacle to be sanitized before use on the next client, and used carbide heads on electric nail files were not being cleaned and disinfected between clients.

3. During the investigation, one heel shaver was observed in the salon. Pursuant to 645 IAC 63.18(2), the presence of such equipment is prima facie evidence of its use.

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

F. PROBABLE CAUSE FINDING

On the 25th day of February, 2008, 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 April 11, 2008.