

STATE OF IOWA  
BEFORE THE IOWA BOARD OF COSMETOLOGY

---

IN THE MATTER OF:	)	
	)	CASE NO. 04-038
LUONG PHAM	)	DIA NO. 06DPHCE003
License No. 840-01619	)	
and	)	
	)	
FASHION NAILS	)	FINDINGS OF FACT,
License No. 002-009986	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER
RESPONDENTS	)	

---

On November 1, 2006, the Iowa Board of Cosmetology (Board) issued a Notice of Hearing, Statement of Charges and Confidential Statement of Matters Asserted charging Luong Pham and Fashion Nails (Respondents), with three counts:

Count I: Violating Iowa Code sections 147.5, 157.6, 157.9, 157.13, 272C.3(2) and 645 IAC 65.2(3) and 65.2(13) by engaging in practices that are harmful and detrimental to the public and operating the nail technology salon in violation of 645 IAC 63.18(2) and 65.2(13).

Count II: Employing individuals to practice cosmetology arts and sciences without a license, in violation of Iowa Code section 157.13(1) and 645 IAC 63.4, 63.18(2) and 65.2(26) and (28).

Count III: Operating a salon with an expired license, in violation of Iowa Code section 157.11 and 645 IAC 61.2, 61.3, and 61.4.

A hearing was held on May 14, 2007 at 1:30 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondents Luong Pham and Fashion Nails were self-represented by Luong Pham. Assistant Attorney General Emily Kimes-Schwiesow represented the state. The following Board members were present for the hearing: Jack Morlan, Chairperson; Mary Beth Myers; Lois Leytem; Jerry Talbott; Becky Brockmann; and Kimberly Setzer. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondents' request, pursuant to Iowa Code section 272C.6(1)(2007), and was recorded by a certified

court reporter. After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2007) to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

#### **THE RECORD**

The record includes the Notice of Hearing and Statement of Charges; Statement of Matters Asserted; Continuance Order; the testimony of the witnesses; and State Exhibits 1-7 (see index for description).

#### **FINDINGS OF FACT**

1. On September 25, 2003, the Board issued cosmetology salon license number 002-009986 to Fashion Nails (Respondent) for a salon located at 5800 Merle Hay Rd. in Johnston, Iowa. Respondent's cosmetology salon license is now current. The owner of the Respondent salon is Luong Pham. On October 4, 2005, the Board issued cosmetologist license number 840-01619 to Luong Pham, and his license is current through March 31, 2008. (Testimony of Darby Matteson; Luong Pham; State Exhibit 7)

2. On June 8, 2004, the Board received a complaint alleging that Respondents Luong Pham and Fashion Nails employed unlicensed persons to perform nail technology services. The complaint further alleged that one of the employees, Luong Pham<sup>1</sup>, used a razor blade when providing services. The complaint was referred to the Department of Inspections and Appeals for an investigation, but the investigation was delayed due to a backlog of complaints. (Testimony of Darby Matteson; State Exhibit 4)

3. On October 7, 2004, an inspector from the Iowa Department of Inspections and Appeals went to Fashion Nails to perform a routine inspection. The inspector observed the salon's owner,

---

<sup>1</sup> The complaint describes Luong Pham as female, although Respondent Luong Pham is male. The DIA investigator later attempted to contact the complainant on several occasions but no one answered the telephone number provided with the complaint, and the complainant did not live at the address appearing on the complaint. (Testimony of Darby Matteson; State Exhibit 6) Due to the investigator's inability to reach the complainant, the Board did not rely on the information contained in the complaint in reaching this decision.

Luong Pham, performing a manicure. Luong Pham was licensed in Minnesota but not in Iowa. The inspector also noted that another nail technician employee, Le Bich Su, was not licensed. (Testimony of Darby Matteson; State Exhibit 5)

4. On April 21, 2006, DIA investigator Darby Matteson conducted an unannounced visit at the Fashion Nails salon. She observed that the salon had six nail tech stations and four pedicure stations. When Ms. Matteson arrived, there were six nail techs providing services to customers and two more customers were waiting.

Darby Matteson had already determined that the salon's license had lapsed in December 2004 and that a renewal application had not been filed. Luong Pham identified himself to Ms. Matteson as the salon owner, and she asked him for verification of the licenses for his salon and his employees. Mr. Pham was unable to produce the license renewal card for his salon and told Ms. Matteson that he had not yet received it. Ms. Matteson confirmed that four of the nail technicians, including Luong Pham, had current Iowa nail technician licenses that were posted on the wall of the salon. A fifth employee was able to produce his current Iowa license wallet card but did not have his license posted. A sixth employee, who left the room shortly after Ms. Matteson arrived, was later identified as Maria Mn Le. Maria Mn Lee had a Florida nail tech license posted on the wall but did not have an Iowa license. Mr. Pham advised Ms. Matteson that Maria Mn Lee had just moved to Iowa and would be getting an Iowa license. (Testimony of Darby Matteson; State Exhibit 6)

5. Darby Matteson also asked to see one of Mr. Pham's pedicure kits, and he directed her to a nail technician who had just finished a pedicure. Ms. Matteson looked in a plastic box containing the technician's pedicure tools and found a tool resembling a small cheese slicer with a blade in it. She also found a box of spare blades for the tool. The device described by Ms. Matteson could not be used for cuticle removal. At the hearing, Mr. Pham produced a tool that has a removable metal scraper used for removing calluses. This was not the same tool observed by Ms. Matteson in the pedicure tool kit. (Testimony of Darby Matteson; Luong Pham; State Exhibit 6)

6. Ms. Mattson also asked Luong Pham if she could see the Material Safety Data Sheets (MSDS) that should accompany his

supplies. The MSDS list the ingredients in each product. Mr. Pham was unable to provide any MSDS and stated that they were probably thrown away with the empty boxes. (Testimony of Darby Matteson; State Exhibit 6)

## CONCLUSIONS OF LAW

### *Applicable Statutes and Rules*

The Iowa Board of Cosmetology Arts & Sciences Examiners was created by the legislature, pursuant to Iowa Code chapters 147 and 157, and was directed to adopt rules to implement the provisions of Iowa Code chapter 157. Iowa Code section 157.14 (2003, 2005).

The department of public health is authorized to prescribe sanitary rules for salons, including the sanitary conditions necessary for practice of cosmetology arts and sciences and for the prevention of infectious and contagious diseases. Iowa Code section 157.6 (2005). A salon shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each salon biennially...An inspection of a salon shall also be conducted upon receipt of a complaint by the department. Iowa Code section 157.11 (2003,2005). Any license issued by the department can be suspended, revoked, or renewal denied for violation of any provision of Iowa Code chapter 157 or the rules promulgated by the Board. Iowa Code section 157.9 (2003, 2005).

It is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless that individual is licensed or has obtained a temporary permit under this chapter. It is unlawful for a licensee to practice with or without compensation in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop...Iowa Code section 157.13(2003, 2005).

The Board has promulgated rules at 645 IAC chapters 61, 63, and 65. 645 IAC 61.2 provides that all salon owners must submit an application for a salon license with appropriate fees to the Board 30 days prior to the anticipated opening day and that business may commence *following receipt* of the license. 645 IAC 61.3(1) provides that salon licenses begin on January 1 of every

odd-numbered year and end on December 31 two years later. The salon owner must renew the license biennially and failure to receive the renewal application does not relieve the owner of the obligation to pay the biennial renewal fee on or before the renewal date. 645 IAC 61.3(2). When all requirements for license renewal are met, the salon shall be sent a license renewal card by regular mail. 645 IAC 61.3(5). A salon that has not renewed the license within the required time frame shall have an inactive license and shall not provide cosmetology services until the license is reactivated. 645 IAC 61.4(2).

Each salon owner shall ensure that individuals employed for cosmetology services hold a current and valid license or temporary permit issued by the Board. 645 IAC 63.4. It is grounds for discipline to represent oneself as a licensed individual or entity when one's license has been suspended or revoked, or when one's license is on inactive status. 645 IAC 65.2(26). It is also grounds for discipline to permit an unlicensed employee or person under the licensee's control to perform activities that require a license. 645 IAC 65.2(28).

It is grounds for discipline for a licensee to engage in practices harmful or detrimental to the public or to violate any regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession. 645 IAC 65.2(3), (13). Salons are prohibited from having on the premises any razor-edged or other device or tool which is designed to remove skin unless used by licensed nail technicians to remove cuticles. If such equipment is on site, it is prima facie evidence of its use. 645 IAC 63.18(2).

*COUNT I*

The preponderance of the evidence established that Respondent Fashion Nails engaged in practices harmful or detrimental to the public, in violation of Iowa Code sections 157.6, 157.13(2) and 653 IAC 65.2(3), 65.2(13), 63.18(2), when it permitted a razor edged device to be on the premises in a pedicure tool kit, when that device was not designed to be used for the removal of nail cuticles. Darby Matteson's observation of the razor edged device on the premises is prima facie evidence that the device was used. 645 IAC 63.18(2). Moreover, a nail technician employed by Respondents admitted that the spare blades in her tool kit were used for this device.

In addition, Respondent Fashion Nails did not have Material Safety Data Sheets (MSDS) for any of the products used in the salon. Luong Pham admitted that the MSDS were likely thrown out. This constituted a practice harmful or detrimental to the public because Respondent could not promptly provide customers or inspectors with an accurate list of the ingredients in the salon's products should a question or problem arise concerning use of the products.

*COUNT II*

The preponderance of the evidence established that Fashion Nails and Luong Pham violated Iowa Code sections 157.13(1) and 645 IAC 63.4, 65.2(26) and (28) when they permitted unlicensed persons to perform activities (i.e., nail technology) requiring a license. On October 7, 2004, Respondent Luong Pham and one of his employees were providing nail technology services when they did not have an Iowa license. On April 21, 2006, another employee who did not have an Iowa license was observed providing nail technology services.

*COUNT III*

The preponderance of the evidence established that Respondent Fashion Nails operated a salon with an expired license from January 1, 2005 until March 16, 2006, in violation of Iowa Code section 157.11 and 645 IAC 61.2, 61.3, and 61.4. Mr. Pham asserted that he was having a problem with mail delivery at the salon and did not receive his renewal application. Even if this is true, it does not excuse the violation. 645 IAC 61.3(2). Moreover, Respondents continued to operate the salon for nearly sixteen months without applying for renewal.

*SANCTION*

In determining the appropriate sanction, the Board considered the factors outlined at 645 IAC 13.2. While this is the first disciplinary action against these Respondents, these are serious violations that directly impact public health and safety. Respondents have repeatedly allowed unlicensed persons to practice cosmetology at Fashion Nails, and Fashion Nails was operated for nearly 16 months without a current salon license. The circumstances of the violations merit significant civil

penalties and continuing education, as well as a period of probation during which Respondents are monitored for compliance with all applicable statutes and rules.

#### **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Respondents Fashion Nails and Luong Pham, license nos. 002-009986 and 840-01619, shall pay a total civil penalty of nine hundred dollars (\$900) (\$300 on each count) within sixty (60) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that Respondent Luong Pham shall complete two (2) hours of continuing education in Iowa Law and Sanitation within six (6) months of the issuance of this Decision and Order. Respondent shall provide the Board with documentation verifying his attendance. The two hours of continuing education shall be *in addition* to those hours required for renewal of Respondent's license and may not be counted towards license renewal.

IT IS FURTHER ORDERED that the licenses issued to Fashion Nails and Luong Pham shall both be placed on probation for a period of (1) year from the date of issuance of this Decision and Order, subject to the following terms and conditions:

1. Respondents shall prominently post their probationary licenses on the salon premises where they are visible to all customers.
2. Respondents shall comply with all relevant statutes and administrative rules when operating the nail technology salon and providing nail technology services. Respondents shall only permit nail technology services to be performed by persons who are properly licensed by the state of Iowa.
3. Respondents shall file quarterly reports with the Board listing the salon's nail technicians. The quarterly employee reports shall be typewritten and shall attest to the following information for each and every person who performed nail technology services within the Respondent salon during the three month period immediately preceding the report:

- a. The name of the employees who performed nail technology services.
- b. The license number and expiration date for the employees' Iowa cosmetology and/or nail technology license.
- c. The employees' date of hire.
- d. If applicable, the employees' date of termination.

The failure of Respondents to provide complete and truthful information in the quarterly reports shall constitute a violation of this order. The first report required by this Order shall be submitted to the Board within thirty (30) days of the service of this Order, and thereafter each report shall be submitted by the first day of every subsequent third month.

4. Upon request of the Board, Respondent Luong Pham shall appear before the Board to report on the status of the Respondents' operations and to answer any questions or concerns the Board may have regarding the Respondents' compliance with this Order. The Board shall provide the Respondent with reasonable notice of the date, time, and place for any requested appearance.

5. The Board or its designee shall have the right to verify Respondents' compliance with all provisions of this order through established investigative protocols including, but not limited to, examination of Board records, interviews with persons identified as salon employees or clients, and by conducting unannounced inspections of the Respondent salon.

6. If at any time during this probation Respondents violate any provision of this Order, the Board may hold a hearing pursuant to Iowa Code section 272C.3(2)"a"(2007), because of failure of the Respondents to comply with the terms of this Order. Any such violation would result in consideration by the Board of more serious sanctions, including revocation.

7. Successful completion of the probationary period shall constitute a final disposition of this matter.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents shall pay a \$75.00 hearing fee and \$82.50 in costs for the court reporter. The \$157.50 in hearing fees and costs shall be paid within thirty (30) days of receipt of this decision. The cost of a transcript will be charged to the party requesting it. Iowa Code section 272C.6; 645 IAC 11.23.

Dated this 2nd day of July, 2007.

**This findings of fact, conclusions of law, decision and order is approved by the board on July 2, 2007.**

Pursuant to Iowa Code section 17A.19(2007) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board.