BEFORE THE IOWA BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:	)	
	)	**CASE NO. 10-049**
Topline Nails & Spa	)	
License No. 103140	)	**NOTICE OF HEARING AND**
and	)	**STATEMENT OF CHARGES**
Canh Minh Le, owner,	)	
License No. 067640	)	
	)	
RESPONDENTS	)	

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing pursuant to Iowa Code §§ 17A.12(2), 17A.18(3) (2011), and 645 Iowa Administrative Code (IAC) § 11.6. Topline Nails & Spa was issued Iowa salon license no. 103140 on December 23, 2009 and operates a salon located at 1453 Ansborough Avenue, Waterloo, Iowa 50701. Respondent-Topline Nails & Spa's license is current and will next expire on December 31, 2012. Respondent-Canh Minh Le, the owner of Topline Nails & Spa, holds nail technician license no. 067640 which next expires March 31, 2012.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **January 10, 2012**, 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: David VanCompernolle, 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 (2011).

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 (2011) 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) (2011) and 645 IAC § 11.21.

C. CHARGES

COUNT I – UNSANITARY PRACTICES

Respondents are charged under Iowa Code §§ 147.55 and 157.9, and 645 IAC § 65.2(13), with engaging in unsanitary practices, in violation of Iowa Code § 157.6 (2011) and 645 IAC §§ 63.11, 63.13, 63.14, 63.15, 63.19 and 63.25.

COUNT II – FAILURE TO POST LICENSES

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC §§ 63.4(3) and 65.2(13), with failing to post professional licenses in the

reception area at eye level in violation of 645 IAC §§ 61.5(3) and 61.5(4).

COUNT III – FAILURE TO PROVIDE BIOHAZARD DISPOSAL

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with failing to provide for biohazard disposal in violation of 645 IAC §§ 63.11.

COUNT IV – FAILURE TO POST RULES AND REPORT

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC 65.2(13), with failing to properly post a copy of the most recent sanitation rules and inspection report in the reception area at eye level in violation of 645 IAC § 63.2.

COUNT V – EMPLOYMENT OF UNLICENSED INDIVIDUALS

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with employing an unlicensed individual to provide nail technician services, in violation of 645 IAC § 65.2(28).

COUNT VI – SUBVERTING AN INVESTIGATION

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC §§ 65.2(13), with engaging in conduct intended to subvert a Board investigation, in violation of 645 IAC §65.2(18).

COUNT VII – MMA ON PREMISES

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 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).

COUNT VIII – PRACTICE BEYOND SCOPE OF LICENSE

Respondents are charged under Iowa Code §§ 147.55 and 157.13(1) (2009), and 645 IAC § 65.2(13), with permitting licensed individuals to practice outside the scope of their license in violation of 645 IAC §§ 60.5(3) (use of razor edged instruments), 60.3(6) (facial waxing) and 65.2(29).

COUNT VII – RAZOR EDGED DEVICES

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with having a razor edged device on its premises in violation of 645 IAC § 63.18(2).

D. FACTUAL CIRCUMSTANCES

On July 23, 2010, investigators inspected Respondents' salon and observed that individual licenses were not posted at the front of the salon. Nor were sanitation rules posted or a log of whirlpool cleaning maintained. No biohazard bag was located in the salon and the first aid kit was incomplete.

Additionally, used nail buffers and other used nail supplies were placed in drawers for re-use. Supplies such as nippers and clippers were stored with clean supplies. While the investigators were inspecting Respondents' salon, an employee attempted to hide a heel shaver in the garbage. Unlicensed individuals provided nail technician services and waxing services. Testing revealed the presence of MMA in two samples of nail liquid obtained by the investigators.

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 David VanCompernolle, Assistant Attorney General, at 515-281-7262.

F. PROBABLE CAUSE FINDING

On October 4, 2010, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.