The Iowa Board of Cosmetology Arts and Sciences Examiners (Board) and California Nails, through its owner Minh Kim McWithey, (Respondent) enter into this Agreement and Consent Order (Agreement) pursuant to Iowa Code sections 17A.10(2), 272C.3(4) (2003), and chapter 645 Iowa Administrative Code (IAC) rule 12.1.

1. Respondent presently possesses license number 002-008434 to operate a nail technology salon in the State of Iowa. The license is current and will next expire December 31, 2004. Board records indicate that Respondent salon is owned by Minh Kim McWithey and is located at 3800 Merle Hay Road, Suite 1275, Des Moines, Iowa 50310.

2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 157, and 272C (2003). Licenses issued by the Board are subject to the laws of the State of Iowa and the administrative rules promulgated by the Board.

3. Respondent, without admission of wrongdoing or guilt, agrees not to contest the charges against it now before the Board.

4. Respondent has a right to hearing on the charges but waives its right to hearing and all attendant rights by freely and voluntarily entering into this Agreement. This Agreement shall constitute the final order of the Board in this case.

5. Respondent agrees that the State’s counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.
6. This Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of future violations.

7. Any failure by Respondent to comply with the terms and conditions of this Agreement shall subject Respondent to further licensee disciplinary action which could be initiated by the Board through the filing of a statement of charges with a hearing to be held on the merits.

8. This Agreement is subject to approval by the Board:

   (1) If the Board does not approve this Agreement, it shall be of no force or effect on either party and it shall not be admissible for any purpose in further proceedings in this matter.

   (2) If the Board approves this Agreement, it shall fully dispose of all issues in this case.

9. This Agreement is a public record pursuant to Iowa Code sections 272C.3(4) and 272C.6(4) (2003).

10. This Agreement shall not be binding as to any new complaints received by the Board.

    

    CONSENT ORDER

    IT IS THEREFORE ORDERED:

    A. Probation

    Respondent’s license to operate a nail technology salon shall be placed on probation for a period of one (1) year. This Agreement shall not restrict or otherwise limit Respondent’s operation of a nail technology salon in the state of Iowa except as expressly stated by the terms
of this Agreement. During the probationary period, Respondent shall comply with the following terms:

1. Respondent shall comply with all relevant statutes and administrative rules in the course of its operations as a nail technology salon;

2. Respondent shall monitor and ensure its employees’ compliance with all applicable health and sanitation standards including but not limited to ensuring that all instruments and/or equipment are sanitized in compliance with 645 Iowa Administrative Code rule 63.12(1);

3. Respondent shall ensure that the original license certificate, duplicate certificate, reissued certificate or temporary permit certifying that each practitioner or trainee is certified by the Board is displayed for each licensee or trainee performing nail technology services in compliance with 645 Iowa Administrative Code rule 63.3;

4. Respondent shall file quarterly reports with the Board listing each employee who performs nail technology services, whether licensed by the State of Iowa to provide such services or not, the number and type of services performed, and all product(s) used in performing the services. Upon the Board’s request, Respondent shall provide the name of each person on whom nail technology services were provided for the requested time period. The required quarterly employee reports shall be typewritten and shall attest to the following information, at a minimum, 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 employee who performed nail technology services;
   b) the license number and expiration date for each employee’s Iowa cosmetology and/or nail technology license, if applicable;
   c) each employee’s date of hire;
   d) each employee’s date of termination, if applicable;
   e) the type of services performed by each employee;
   f) the number of each type of service performed by each employee; and
   g) the products used in performing each type of service.

The failure of Respondent salon to provide complete and truthful information in the quarterly employee reports shall constitute a violation of this Agreement. The Board or its designee may verify the information provided in the quarterly reports through an examination of Board records.
by interviewing persons listed as salon employees, or by conducting unannounced inspections of the Respondent salon;

(5) Respondent shall display the probationary license within ten (10) feet of the main entrance to the salon in a manner making it readily visible to persons upon entering the salon. Respondent shall make a copy of this Agreement and Consent Order available to any person upon request;

(6) Upon request of the Board, the owner of Respondent salon shall appear before the Board to report on the status of Respondent’s operations as a nail technology salon and to answer any questions or concerns the Board may have regarding Respondent’s compliance with this Agreement. The Board shall provide Respondent with reasonable notice of the date, time, and place of any requested appearance. Respondent agrees that any such appearance would be governed by 645 Iowa Administrative Code rule 9.7 and that it waives any and all objections to the members of the Board both participating in the appearance and later participating as decision makers in a contested case proceeding.

Upon full compliance with the terms of conditions of probation, Respondent’s license to operate a nail technology salon in the state of Iowa shall be restored to its full privileges free and clear of all probationary restrictions.

B. Civil Monetary Penalty

Respondent agrees to pay to the Board a civil monetary penalty of $700. Respondent shall remit full payment of the civil monetary penalty to the Board within 45 days of the date this Agreement is executed by the Board.

C. Future Operations

Minh Kim McWithey, owner of Respondent salon, shall request Board approval prior to owning and/or operating any salon other than Respondent salon in the state of Iowa; however, no such request may be made for a period of at least two (2) years from the execution date of this Agreement. This Agreement and compliance with it may be considered by the Board in determining whether to issue a salon license and the conditions, if any, required to be satisfied prior to or subsequent to the issuance of a salon license.

WHEREFORE, the terms of this Agreement and Consent Order are agreed to and
accepted by the Iowa Board of Cosmetology Arts and Sciences and Respondent.

This Agreement and Consent Order is approved by the Board on February 2, 2005.