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

IN THE MATTER OF: 

Helen’s Nails 
License No. 011141 
and 

Binh Lam, Owner 
and 

Minh Kim McWithey, Owner 
License No. 01650 

RESPONDENT 

CASE NO. 07-089

SETTLEMENT AGREEMENT AND FINAL ORDER

COMES NOW the Board of Cosmetology Arts and Sciences of the State of Iowa ("Board") and Binh Lam and Minh Kim McWithey ("Respondent"), and pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into the following Settlement Agreement and Final Order of the contested case currently on file against the Respondent:

1. Respondents are the owners of salon, Helen’s Nails, located at 7450 Bridgewood Blvd, Suite 220, West Des Moines, Iowa 50266. Respondent Binh Lam was issued Iowa salon license no. 011141 on January 20, 2006. Respondents’ salon license is current and will next expire on December 31, 2008.

2. A Notice of Hearing and Statement of Charges was filed against the Respondent on May 9, 2008. A contested case hearing in this matter is scheduled for July 14, 2008.

3. The Board has jurisdiction over the parties and subject matter of the Notice of Hearing and Statement of Charges.

4. Execution of this Settlement Agreement and Final Order constitutes the resolution of this contested case. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights, including the right to seek judicial review, by freely and
voluntarily agreeing to this Settlement Agreement and Final Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following contested case hearing.

5. Respondent is freely and voluntarily entering into this Settlement Agreement and Final Order and agrees that the State's counsel may present this agreement to the Board.

6. This agreement is subject to approval of the Board. If the Board approves this agreement, it becomes the final disposition of this matter. If the Board fails to approve this agreement, it shall be of no force or effect to either party.

7. 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 any future violations.

8. This Settlement Agreement and Final Order is a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapter 22 and 272C. The Notice of Hearing is also a public record which became available for inspection and copying the date it was filed in accordance with the requirements of Chapters 17A, 22, and 272C.

IT IS THEREFORE ORDERED:

9. Respondents admit to the allegations contained within Counts I through IV of the Statement of Charges.

10. Respondents agree to pay the Board a civil monetary penalty of $1000.00 total. The funds shall be payable to the Board of Cosmetology Arts and Sciences. Respondent shall remit full payment of the civil monetary penalty to the Board within 30 days of the date this Agreement is executed by the Board.
11. Each Respondent owner will complete four (4) hours of continuing education applicable to nail technology sanitation and Iowa laws and rules that include Iowa Code Chapter 157 and Iowa Administrative Code Chapters 59 through 65 within ninety (90) days from issuance of this order, and continuing education obtained may not be used for future license renewal. Respondent owner must obtain Board approval before enrolling in any course taken for the purpose of satisfying this obligation.

12. Respondent Minh Kim McWithey’s individual license and Respondents’ salon license are placed on probation for a period of two (2) years. During the probationary period, Respondent shall comply with the following terms:

a) Respondents shall file a typewritten corrective action report, detailing specific actions taken to remedy each and every violation contained in the Statement of Charges within thirty (30) days from the issuance of this order.

b) Respondent Kim McWithey shall file a typewritten report detailing all salons in which she has any ownership interest within thirty (30) days from the issuance of this order. The failure of the Respondent to provide complete and truthful information in the report shall constitute a violation of this agreement.

c) Respondents shall file typewritten quarterly reports with the Board listing each salon employee, whether the employee is licensed by the State of Iowa to provide nail technology services, and the number and type of nail technology services performed by each employee. Respondent shall submit with each quarterly report a copy of the whirlpool cleaning schedule documenting each cleaning as required by 645 Iowa Administrative Code 63.25 (2)-(5) for each whirlpool foot spa during the quarter. The
failure of the Respondent to provide complete and truthful information in the quarterly report shall constitute a violation of this agreement.

d) Respondents agree to refrain from obtaining ownership interest in any other salon and from applying for licensure of any other salon until their probationary period is successfully completed.

13. The Board or its designee may verify Respondents’ compliance with the provisions of this Order through an examination of Board records, by interviewing persons listed as salon employees, or by conducting unannounced inspections and investigations of the Respondent salon.

14. Respondents agree to comply with all laws and rules regarding nail salons and nail technology and recognize that any future violation of applicable rules or statutes may subject the Respondents to further disciplinary action by the Board, including suspension or revocation of Respondents' licenses.

15. Any failure by Respondents to comply with the terms and conditions of this Order may subject the Respondent to further disciplinary action by the Board, including suspension or revocation of Respondent's licenses.

16. The Board's approval of this agreement shall constitute a FINAL ORDER of the Board.

This settlement agreement and final order is approved by the board on August 27, 2008.