

**BEFORE THE BOARD OF Cosmetology Arts and Sciences  
OF THE STATE OF IOWA**

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<b>IN THE MATTER OF</b>	)	
	)	<b>NO. 08-008</b>
<b>Den Ngo</b>	)	
<b>License No. 00705</b>	)	<b>NOTICE OF HEARING</b>
	)	<b>AND STATEMENT OF CHARGES</b>
<b>RESPONDENT</b>	)	
	)	

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**COMES NOW** the Iowa Board of Cosmetology Arts and Sciences (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued a nail technology license 00705 on July 24, 1998, and that license will next expire on March 31, 2010. Respondent was issued Iowa salon license A00582 on October 27, 1998. The salon was located at 2716 Douglas Avenue, Des Moines, IA 50310. The salon closed and is under new management, effective April 24, 2008.

**A. TIME, PLACE AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on July 14, 2008, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 10:00 a.m. and shall be located in the Lucas State Office Building, Fifth Floor Board 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, 5<sup>th</sup> 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, 2<sup>nd</sup> 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 Iowa Administrative Code 65.2(13) by failing to properly maintain a record of whirlpool foot spa cleaning and disinfecting in violation of 645 Iowa Administrative Code 63.25(5).

### **Count II**

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to post a copy of the most recent sanitation rules in violation of 645 Iowa Administrative Code 63.2 and for failing to display the salon

license in the reception area at eye level in violation of 645 Iowa Administrative Code 61.5(2).

### **Count III**

Respondent is charged with violating 645 Iowa Administrative Code 65.2(29) by permitting a licensed person under the owner's control to practice outside the scope of the employee's license.

### **Count IV**

Respondent is charged with violating 645 Iowa Administrative Code 65.2(13) by selling his salon while disciplinary action is pending in violation of 645 Iowa Administrative Code 61.2(6)(b).

## **D. FACTUAL CIRCUMSTANCES**

1. During an investigation of the salon previously owned by respondent on January 18, 2008, it was discovered that no record of whirlpool foot spa cleaning and disinfecting was being maintained.

2. During the investigation, it was discovered that Respondent did not have the salon license or a copy of the most recent sanitation rules posted in the salon.

3. During an investigation, eyebrow wax was present in the salon. Further, a customer came in requesting eyebrow waxing. No employees of the salon were licensed to perform waxing services. The owner is responsible for allowing licensed employees to exceed their scope of practice pursuant to 645 Iowa Administrative Code 63.4(1).

4. On March 27, 2008 the board sent Respondent a proposed Combined Notice

of Hearing, Settlement Agreement and Final Order. On or about April 24, 2008, while discipline was pending, Respondent sold the salon.

#### **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 this 14th day of April, 2008, the Iowa Board of Cosmetology Arts and 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 May 9, 2008.**