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

| IN THE MATTER OF:  | )                           |
|--------------------|-----------------------------|
|                    | NO. 08-031                  |
| Nevaeh Day Spa     | ) DIA NO. 09DPHCE002        |
| License No. 011603 | )                           |
| ·                  | ) RULINGS ON APPLICATIONS   |
| Destini Hoth       | ) FOR REHEARING, STAY,      |
| License No. 065736 | ) AND LICENSE REINSTATEMENT |
|                    | )                           |
| RESPONDENTS        | )                           |

On April 13, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued its Findings of Fact, Conclusions of Decision and Order (Order) in the above-captioned contested case following an evidentiary hearing. Respondent Destini Hoth appeared for the hearing and self-represented herself and her salon, Nevaeh Day Spa. Respondent chose not to present any evidence at hearing. The Board's Order indefinitely suspended both the salon license and Destini Hoth's esthetic and nail technology licenses. The Order also required Respondents to pay a civil penalty of \$1,000 and hearing fees of \$130. the Order provided that prior to reinstatement, Respondent must establish full compliance with the terms of the Board's Order and must satisfy the requirements of 645 IAC 11.31 (i.e., that the reasons for the indefinite suspensions no longer exist and that it is in the pubic interest for her license to be reinstated).

On April 21, 2009, Respondents filed an Application for Stay, Rehearing, Permission To Submit Additional Evidence and License Reinstatement. The state filed a Resistance on April 23, 2009. Respondent filed a Report to the Board on April 24, 2009. On April 27, 2009, a quorum of the Board met by telephone conference call to consider the pending motions. The Board separately considered the motions with respect to the Respondent Nevaeh Day Spa's salon license and Respondent Destini Hoth's combined cosmetology licenses.

## Esthetic and Nail Technology Licenses No. 065736

The Board agreed to deny the Application for Stay, Rehearing, Permission to Submit Additional Evidence, and License Reinstatement filed by Respondent Destini Hoth. The uncontroverted evidence at hearing established that Respondent's

esthetician and nail technology licenses have been inactive since May 1, 2008 but that she continued to provide cosmetology services. In addition, Respondent Destini Hoth is the owner of Nevaeh Day Spa and was responsible for the numerous serious ongoing violations of the Board's sanitation rules at the salon. There is no basis to believe that Respondent Destini Hoth would prevail on judicial review in this matter when the evidence was The public interest is clearly sufficient to uncontroverted. justify the Board's actions. 645 IAC 11.26(2); Iowa Code section 17A.19(5)(c). Respondent Destini Hoth must fully comply with the requirements of the Board's April 13, 2009 Order, including appearing before the Board at a regularly scheduled meeting on an Application for Reinstatement, before the Board will consider reinstating her license.

## Salon License No. 011603

Respondent Nevaeh Day Spa failed to present sufficient grounds to grant a stay of the April 13, 2009 Order. The uncontroverted evidence at hearing established that the salon license is inactive and that the salon was operating in violation of many of the Board's sanitation rules. There is no basis to believe that Respondent Nevaeh Day Spa would prevail on judicial review in this matter, and the public interest is clearly sufficient to justify the Board's actions. 645 IAC 11.26(2); Iowa Code section 17A.19(5)(c).

The Board agreed to grant the Application for Rehearing with respect to salon license no. 011603, but only in part. The Board reviewed and considered the information in Respondent's April 24, 2009 Report to the Board and reconsidered its requirement that the salon license would only be reinstated following a formal reinstatement hearing. The Board determined that salon license no. 011603 may be administratively reinstated by Board staff provided that Respondent Nevaeh Day Spa has paid the \$1000 civil penalty and the \$130 hearing fee in full, has passed a salon investigation, and has submitted a completed reactivation application with the \$144.00 fee. Upon completion of all of these requirements, the salon license will be reinstated, subject to a one-year probation as outlined below.

## DECISION AND ORDER

IT IS THEREFORE ORDERED that the Application for Stay, Rehearing, Permission to Present Additional Evidence, and License Reinstatement filed by Respondent Destini Hoth, License No. 065736 is hereby DENIED.

IT IS FURTHER ORDERED that the Application for Stay filed by Respondent Nevaeh Day Spa, License No. 011603 is hereby DENIED.

IT IS FURTHER ORDERED that the Application for Rehearing, Permission to Present Additional Evidence, and License Reinstatement filed by Respondent Nevaeh Day Spa is GRANTED in part. The Board has determined that Board staff may administratively reinstate Salon License No. 011603 when all of the following conditions are satisfied:

- Respondent has paid the \$1000 civil penalty and \$130 hearing fee in full;
- DIA has conducted a follow-up investigation and has submitted a favorable report concerning the sanitary conditions at Nevaeh Day Spa and its current readiness to comply with the Board's sanitation rules;
- Respondent has submitted a complete reactivation application with the \$144.00 fee.

IT IS FURTHER ORDERED that upon reinstatement, Salon License No. 011603 shall immediately be placed on probation for one year, subject to the following terms and conditions:

- A. Respondent Nevaeh Spa must file quarterly written reports with the Board during the period of probation. The written reports shall include:
  - the name, license number, and license expiration date for each employee;
  - a copy of the whirlpool cleaning record;
  - a written description of the disinfection methods used within the salon; and
  - an affirmative statement that the salon is complying with all Board rules, including all sanitation rules.

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B. Respondent Nevaeh Spa will be subject to random, unannounced inspections and investigations at the discretion of the Board.

This rulings on applications for rehearing, stay, and license reinstatement is approved by the board on April 28, 2009

Pursuant to Iowa Code section 17A.19(2009) 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. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.