

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	NO. 10-037
Nails Envy)	DIA NO. 11IBC015
License No. 103146)	
)	FINDINGS OF FACT,
Thanh Le)	CONCLUSIONS OF LAW,
Owner)	DECISION AND ORDER
)	

RESPONDENTS

On July 12, 2010, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Nails Envy, a licensed salon in the state of Iowa, and its owner, Thanh Le. Respondents were charged with the following six counts:

Count I: Failing to properly clean and disinfect whirlpool foot spas and failing to document the cleanings, in violation of Iowa Code section 147.55(2009) and 645 IAC 65.2(13) and 63.25(1)-(3).

Count II: Engaging in unsanitary practices, in violation of Iowa Code sections 147.55 and 157.6(2009) and 645 IAC 65.2(13), 63.11, 63.13, 63.14, 63.15, and 63.18(1).

Count III: Employing unlicensed individuals to practice cosmetology arts and sciences, in violation of Iowa Code sections 147.55 and 157.13(1)(2009) and 645 IAC 65.2(13) and 65.2(28).

Count IV: Failing to post a copy of the most recent sanitation rules and inspection report at eye level in the salon, in violation of Iowa Code section 147.55(2009) and 645 IAC 65.2(13) and 63.2.

Count V: Failing to provide for biohazard disposal, in violation of Iowa Code section 147.55(2009) and 645 IAC 65.2(13) and 63.11(3).

Count VI: Having on the premises a prohibited product containing liquid methyl methacrylate monomer, in violation of 645 IAC 65.2(13) and 63.18(1).

The hearing was held on April 6, 2011 at 12:15 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The state was represented by Assistant Attorney General Kristen Ensign. Respondents were represented by attorney Bryan Webber. The following Board members were present for the hearing: Becky J. Brockmann, Chairperson; Kimberly Setzer; Richard Mosley; Dana Atkins; Richard Sheriff; Jerry Talbott; and Karen Thomsen. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondents' request, pursuant to Iowa Code section 272C.6(1)(2011), and was recorded by a certified court reporter.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of Tamara Adams and State Exhibits A-G (See Exhibit Index for description).

FINDINGS OF FACT

1. On February 1, 2010, the Board issued Iowa salon license number 103146 to Nails Envy, located at 894 Middle Road in Bettendorf, Iowa. Respondent Than Le is the owner of record for Nails Envy. (State Exhibit A, p. 16)

2. Nails Envy was previously owned by Aaron Le, who is the brother of Than Le. (State Exhibit A, pp. 1-2, 17). On November 2, 2009, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order that revoked both the previous salon license issued to Nails Envy and the nail technician license issued to Aaron Le for numerous repeated violations of Board rules. The violations included, but were not limited to, failing to properly clean and document cleaning of whirlpool foot spas, failing to post the most recent sanitation rules at eye level, failing to have required hazardous waste containers, having a prohibited product containing methyl methacrylate monomer

(MMA) on the premises, and failing to comply with a Settlement Agreement. (State Exhibits D-F) On November 16, 2009, the Board denied an Application for Rehearing filed by Nails Envy and Aaron Le. (State Exhibit G)

3. On June 3, 2010, Department of Inspections and Appeals (DIA) Investigator Tamara Adams made an unannounced investigative visit to Nails Envy. The owner, Than Le, was not present at the salon at the time of Ms. Adams's visit. Ms. Adams identified two male employees, Aaron Le and Ly Johnson, and one female employee, Thanh Nga Nguyen, who were working at the salon. There were three licenses on a high shelf above the front counter. The licenses were not at eye level so Ms. Adams asked Aaron Le to take the licenses down for inspection. The three licenses were nail technician licenses for employees Jessica Bush, Ly Johnson, and Aaron Le. Aaron Le also gave Ms. Adams the salon's license, which was not posted or on the shelf with the other licenses. (Testimony of Tamara Adams; State Exhibit A, pp. 3-4)

When Tamara Adams started to examine the licenses, she noticed that Aaron Le was collecting files and buffers from the spa area. Ms. Adams told Mr. Le to leave the supplies where they were, and he left the spa area and went into the back room. Ms. Adams followed Aaron Le to the back room where she observed him moving two large bottles of nail liquid. Ms. Adams took a sample from one of the large bottles of nail liquid that Mr. Le had been moving. That sample was submitted to the University Hygienic Laboratory for testing and tested positive for Methyl methacrylate (MMA). Ms. Adams also collected a second sample from a bottle of nail liquid that was located at a nail station. This second sample tested negative for Methyl methacrylate (MMA). (Testimony of Tamara Adams; State Exhibit A, pp. 4, 12-13)

After taking the samples, Tamara Adams returned to the front counter to continue her examination of the licenses and observed that Aaron Le's license was not with the other two licenses. Ms. Adams asked Aaron Le to produce his license, and he retrieved it from another location. Aaron Le denied moving his license. (Testimony of Tamara Adams; State Exhibit A, p. 4)

The nail technician licenses for employees Jessica Bush and Ly Johnson expired on March 31, 2012 and were current. The nail technician license for employee Thanh Nga Nguyen was not with the others, but she was able to provide her current renewal card to Ms. Adams. Aaron Le's nail technician license had a renewal card with it that had

expired on March 31, 2010 and Ms. Adams confirmed that his license had been revoked. (Testimony of Tamara Adams; State Exhibit A)

Aaron Le told Ms. Adams that he was the previous owner of Nails Envy but that his brother, Thanh Le, now owned the salon. Aaron Le told Ms. Adams that he was the salon's manager but did not work on customers because his license had been revoked. During her visit, Ms. Adams observed Aaron Le cleaning the spas and the salon but did not see him work on any customers. (Testimony of Tamara Adams; State Exhibit A, pp. 1-2)

4. At the time of the June 3, 2010 inspection, Investigator Adams documented the following violations of Board statutes and rules:

- No sanitation rules were posted in the reception area. The investigator gave new sanitation rules to Aaron Le;
- The last inspection report was not posted;
- Licenses were not posted at eye level in the reception area;
- The salon license was not posted;
- There was no whirlpool spa cleaning schedule, and Aaron Le told the investigator that they did not have one;
- Paper and hair was found in one whirlpool spa basin. One whirlpool spa screen contained black stringy debris. Screen inlets for all spas were grimy and two had black stringy debris.
- Nail brushes were partially submerged and in a container of Barbicide that did not fully cover the brushes;
- Nail tools were being sanitized on top of each other in the sanitizer;
- There were used nail files and buffers throughout the salon that had not been discarded. Aaron Le admitted that the files and buffers were used more than once because of cost;
- Clean supplies, such as nippers and clippers, were located in unclean drawers with pens, paper, and money;
- Used sandpaper sleeves and bits were observed on the machines and in the drawers;
- Instruments were placed on top of each other in the sterilizer.

(Testimony of Tamara Adams; State Exhibit A)

CONCLUSIONS OF LAW

Iowa Code section 147.55(9) and 645 IAC 65.2(13) authorize the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession. The Statement of Charges alleges six separate counts of violation of Board rules by Respondents Nails Envy and Than Le. At hearing, Respondents stipulated to all of the violations. In addition, the preponderance of the evidence in the record supports findings of violation on all six counts.

Sanction

The health and sanitation violations affect the public health, safety, and welfare and more than justify the maximum civil penalty of \$1,000. If the salon is to continue to operate, it must be subject to ongoing oversight by the Board through a two year period of probation.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondents Nails Envy and Than Le shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that license number 103146, issued to Respondent Nails Envy shall immediately be placed on PROBATION for a period of two (2) years, subject to the following terms and conditions:

- A. Respondents 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, the employee's work schedule and duties, and the salon's hours of operation; and
 - a copy of the whirlpool cleaning record.

B. Respondent salon will have a follow up inspection approximately six weeks after issuance of this Decision and Order. In addition, Respondent salon will be subject to random inspections at the discretion of the Board.

IT IS FURTHER ORDERED that Respondents Nails Envy and Than Le are hereby prohibited from employing Aaron Le or any other unlicensed individual as manager of the salon. Iowa Code section 157.12(2011) requires a person who directly supervises the work of practitioners of cosmetology arts and sciences to be licensed in the practice supervised.

IT IS FURTHER ORDERED that Respondent Than Le, owner of Respondent Nails Envy, shall complete four (4) hours of continuing education on law and sanitation within six (6) months of the issuance of this decision. Respondent Than Le must obtain Board approval before enrolling in any course taken for the purpose of satisfying this obligation. These four (4) hours of continuing education may not be used for license application or renewal.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents shall pay \$75.00 for fees associated with the disciplinary hearing and \$30.00 for the court reporter fees. The total fees of \$105.00 shall be paid within thirty (30) days of receipt of this decision.

Dated this 28th day of April, 2011.