

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

IN THE MATTER OF:)	
)	CASE NO. 05-012
Helen's Nails, West Des Moines)	05-018
License No. 002-010354)	
)	
and)	
)	COMBINED AMENDED
Binh Lam,)	STATEMENT OF CHARGES,
Owner)	SETTLEMENT AGREEMENT
)	AND CONSENT ORDER
RESPONDENTS.)	

COMES NOW the Iowa Board of Cosmetology Arts and Sciences Examiners (Board) and states:

1. There is presently on file a Statement of Charges against this salon and its owner of record, Hang Baccam Ho. A proposed settlement agreement in this case, bearing the purported signature of Mrs. Ho, was not accepted by the Board due to uncertainty concerning the present ownership of the salon and the genuineness of the signature.

2. Respondent Helen's Nails presently possesses license number 002-010354 to operate a nail technology salon in the state of Iowa at 7450 Bridgewood Blvd., Suite 220, West Des Moines, Iowa 50266. The license is current and will next expire on December 31, 2006. Board records indicate the salon license was issued June 22, 2004, to Hang Baccam Ho. However, the Board has evidence indicating a "Purchase Agreement" showing a sale of this business effective August 2, 2004 from Hang Baccam Ho to Bihn Lam.

3. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 157, and 272C (2005). Licenses issued by the Board are subject to the laws of the State of Iowa and the administrative rules promulgated by the Board.

4. The penalties authorized under Iowa law which the Board may impose for engaging in prohibited conduct include but are not limited to imposition of a civil monetary penalty up to \$1,000 and/or revocation of the licensee's cosmetology salon license for each violation. See Iowa Code sections 157.9, 272C.3 (2005) and 645 Iowa Administrative Code (IAC) rules 13.1 and 65.3.

STATEMENT OF CHARGES

COUNT I

5. Respondent salon is charged under 147.55, 157.6, 157.9, 157.13, 272C.3(2) and 645 IAC rules 65.2(3) and 65.2(13) by engaging in practices that are harmful or detrimental to the public and operating its nail technology salon in violation of 645 IAC rule 63.18 and 63.16(1).

CIRCUMSTANCES

6. During an inspection of Respondent salon on April 12, 2005, cosmetic products were found containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products, including products containing methyl methacrylate.

7. Dispensers containing cosmetic products were not properly labeled.

COUNT II

8. Respondent salon is charged under 147.55(3),(8), 157.6, 157.9, 157.13, 272C.3(2) and 645 IAC rules 65.2(3) and 65.2(11) by engaging in practices that

are harmful or detrimental to the public and operating its nail technology salon in violation of 645 IAC rule 63.10(6), 63.12(1), 63.16(3) and 63.17(4).

CIRCUMSTANCES

9. During an inspection of Respondent salon on April 12, 2005, it was found that pedicure bowls used by employees for salon implements were not properly cleaned. A nail buffer that cannot be sanitized was reused. Emery boards were reused rather than being given to the client or discarded. The inspection resulted from complaints by customers that they had likely contracted nail fungus diseases as the result of improper sanitation at the salon.

10. Material Safety Data Sheets (MSDS) were not on file in the salon as required by OSHA.

COUNT III

11. Respondent salon is charged with failing to post employees' licenses and posting its salon's license in violation of Iowa Code section 147.7 and 157.13 and 645 IAC rules 61.5 and 63.3.

CIRCUMSTANCES

12. An investigation of the salon on April 12, 2005 revealed three employees present providing nail technology services. One was unlicensed and another had a lapsed license. No practitioner licenses were posted.

13. The salon license itself was not posted where it was visible to the public on April 12, 2005. Licenses of employees and the salon were still not visibly posted as of June 30, 2005.

COUNT IV

14. Respondent Binh Lam is charged with failing to ensure that the salon's employees held a current and valid Iowa license in violation of Iowa Code section 157.13 and 645 IAC rules 63.4(1) and 65.2(28).

CIRCUMSTANCES

15. An investigation of the salon on April 12, 2005 revealed three employees present and performing services. One of the employees serving clients at the time of the inspection was unlicensed and a second had a lapsed license.

COUNT V

16 Respondent Binh Lam is charged with operating this salon without a license in violation of Iowa Code section 157.11 and 645 IAC 61.2.

CIRCUMSTANCES

17. Binh Lam purchased this business on August 2, 2004. He has not sought or obtained a license for the salon.

SETTLEMENT AGREEMENT

18. The pending Statement of Charges against this salon and its owner of record, Hang Bacom Ho, shall be dismissed.

19. Respondents, without admission of wrongdoing or guilt, agree not to contest the above stated charge before the Board.

20. Respondents have a right to receive notice of the charge and to request a hearing before the Board on the merits of the charge, but waives its right to notice and a hearing and all attendant rights, including the right to appeal or seek judicial review of

the Board's actions, by freely and voluntarily entering into this Agreement. This Agreement shall constitute the final order of the Board in this case.

21. Respondents agree that the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

22. This Agreement shall be part of the permanent record of Respondents 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.

23. Any failure by Respondents 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.

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

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

25. This Agreement is a public record pursuant to Iowa Code sections 272C.3(4) and 272C.6(4)(2005).

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

CONSENT ORDER

IT IS THEREFORE ORDERED:

27. Respondents Binh Lam shall apply for a salon license for this location and return it with this Agreement. If the Board accepts this agreement it shall issue him a salon license which will be probationary for a period of one (1) year.

28. 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 Binh Lam and Helen's Nails shall comply with the following terms.

- (a) They shall comply with all relevant statutes and administrative rules in the course of its operations as a nail technology salon.
- (b) They shall specifically comply with all sanitary, labeling and licensing rules.
- (c) They shall file quarterly reports with the Board listing the salon's employees, whether licensed by the State of Iowa to provide nail technology services or not, and the approximate number and type of nail technology services performed by each employee. The 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 months immediately preceding the report.
 - i) the name of the employee who performed nail technology services;
 - ii) the license number and expiration date for each employee's Iowa cosmetology and/or nail technology license;
 - iii) the type of services performed by each employee;
 - iv) each employee's date of hire;
 - v) each employee's date of termination, if applicable.

The failure of Respondents to provide complete and truthful information in the quarterly 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's salon.

- (d) Upon request of the Board, the owner of the 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.

29. Respondent salon agrees to pay to the Board a civil monetary penalty of \$1000 for the safety and sanitation violations in Counts I and II and personnel licensing violations in Counts III and IV and \$500 for the failure to license the salon in Count V. The \$1000 paid by Helen's Nails with the unaccepted settlement shall be retained by the State of Iowa and be credited against the total \$1500 civil penalty. Respondent shall remit the remaining \$500 payment of the civil monetary penalties to the Board within 30 days of the date this Agreement is executed by the Board.

30. Upon full compliance with the above terms and conditions, 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.

31. The Statement of Charges against Helen's Nails of West Des Moines and Hang Baccam Ho and dismissed.

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

This combined amended statement of charges, settlement agreement and consent order is approved by the Board on February 1, 2006.