

**BEFORE THE BOARD OF COSMETOLOGY ARTS AND SCIENCES
OF THE STATE OF IOWA**

IN THE MATTER OF)	
)	NO. 08-106
Golden Nails 2)	
License No. 010314)	NOTICE OF HEARING
and)	AND STATEMENT OF CHARGES
Tyra Nguyen, Owner)	
License No. 01268)	
RESPONDENTS)	

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 Iowa license 010314 on May 27, 2004. Respondent's salon license is current and will next expire on December 31, 2010. Respondent's address as reported to the Board is 4347 Merle Hay Road, No. B, Des Moines, IA 50310. Owner of Respondent salon holds a current license to practice nail technology, license no. 01268, that will next expire on March 31, 2011.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 11, 2010, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 11:00 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, 5th 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: Scott Galenbeck, Assistant Attorney General, Iowa Attorney General's Office, 2nd 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 (formerly known as Tuan Thanh Thi Nguyen) is charged with employing individuals to practice cosmetology arts and sciences without a license in violation of Iowa Code section 157.13(1) and 645 IAC 63.4(1)(a) and 65.2(28).

Count II

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by possessing razor-edged device or tool in violation of 645 IAC 63.18(2).

Count III

Respondent is charged with engaging in unsanitary practices in violation of Iowa Code section 157.6 and 645 IAC rules 63.12(1), 63.13(2), 63.14, 63.16(1), 63.17(4), 63.18(3) and

65.2(13).

Count IV

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to clean and document the date and time of each cleaning and disinfecting of the whirlpool foot spas in violation 645 IAC 63.25(2) –(5).

Count V

Respondent is charged with failure to comply with the terms of a board order pursuant to 645 IAC 65.2(21).

D. FACTUAL CIRCUMSTANCES

1. During an investigation on February 27, 2009, it was observed that current sanitation rules were not posted.
2. Used electric bits, nail buffers, non-sanitizable emery files, and sandpaper bands were observed. Clippers and nippers were located in unclean drawers with money, pens, and paper. A chamois buffer was observed, and Barbicide was cloudy, and not deep enough to cover the instruments.
3. A pedicure chair had debris in the screens, and the spa log did not indicate biweekly cleanings from 12/17/2009 to 2/26/2009. On other chairs, the records were unclear.
4. Samples of nail liquid were taken during this inspection and were positive for Methyl Methacrylate Acid (MMA).
5. On September 11, 2009, another investigation of Respondent salon took place. A woman who was working on a customer was stated to be someone who cleans only. This person left the salon and did not present identification or a license.
6. At this second investigation, used electric bits, nail buffers, non-sanitizable emery

files, and sandpaper bands were observed. Clippers and nippers were located in unclean drawers with money, pens, and paper. Two chamois buffers were observed.

7. Barbicide was cloudy and contained debris.

8. There was no record of whirlpool foot spa cleaning after 4/16/2009.

9. The container of wax used on customers was dirty and had hair at the bottom.

10. Samples of nail liquid were taken during this inspection and were negative for Methyl Methacrylate Acid (MMA).

11. On March 17, 2008, the Board of Cosmetology issued its Findings of Fact, Conclusions of Law, and Decision and Order in case No. 07-008 against Respondent salon. For prior violations of Board rules, the licenses of Respondent and Respondent salon were suspended indefinitely, and Respondent was fined \$1000. Respondent was charged with Employing individuals to practice cosmetology arts and sciences without a license. An employee left the salon during the investigation May 1, 2007. Respondent claimed the female was his sister, Dung Thi Nguyen; however the individual had no identification and left the salon. When the investigator returned to the salon, a second female was providing services and she was not licensed. Respondent was previously noted for failure to properly clean and disinfect whirlpool foot spas after each use at the end of each day, and biweekly and also failure to maintain a record of cleaning and disinfecting.

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 Scott Galenbeck, Assistant Attorney General, at 515-281-6658.

F. PROBABLE CAUSE FINDING

On this 5th day of October, 2009, 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 November 23, 2009.