

BEFORE THE IOWA BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)
) **CASE NO. 09-90**
THIA'S NAILS,)
 License No. 11590,)
 and) **NOTICE OF HEARING**
BOUATHONG BERARDI,) **AND STATEMENT OF CHARGES**
 License No. 01330,)
)
RESPONDENTS.)

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing pursuant to Iowa Code §§ 17A.12(2), 17A.18(3) (2009), and 645 Iowa Administrative Code (IAC) § 11.6. Thia's Nails was issued Iowa salon license no. 011590 on December 21, 2006 and operates a salon located at 4521 Fleur Drive, Suite A-2, Des Moines, Iowa 50321. The salon license is current and will next expire on December 31, 2010. Bouathong Berardi was issued nail technology license no. 01130, which license will next expire on March 31, 2012. Thia's Nails and Bouathong Berardi are hereinafter referred to jointly as "Respondents."

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 5, 2011, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 9:30 AM and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 517/518, 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: Kristin W. Ensign, 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 (2009).

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 (2009), 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 § 17A.12(3) (2009) and 645 IAC § 11.21.

C. CHARGES

COUNT I – FAILURE TO DOCUMENT SPA CLEANING

Respondents are charged under Iowa Code § 147.55 (2009), and 645 IAC §§ 63.25(3) and 65.2(13), with failing to fully document timely cleanings of pedicure spas in violation of 645 IAC §§ 63.25(1-3).

COUNT II – FAILURE TO PROVIDE BIOHAZARD DISPOSAL

Respondents are charged under Iowa Code §147.55 (2009), and 645 IAC § 65.2(13), with failing to provide for biohazard disposal in violation of 645 IAC §§ 63.11.

COUNT III – UNSANITARY PRACTICES

Respondents are charged under Iowa Code §147.55 (2009), and 645 IAC §

65.2(13), with engaging in unsanitary practices in violation of Iowa Code § 157.6 and 645 IAC §§ 63.12(1)(c), 63.14, and 63.18(1).

COUNT IV – FAILURE TO POST RULES AND REPORT

Respondents are charged under Iowa Code §147.55 (2009) and 645 IAC 65.2(13) with failing to properly post a copy of the most recent sanitation rules and inspection report in the reception area at eye level in violation of 645 IAC § 63.2.

COUNT V – PRACTICE BEYOND SCOPE OF LICENSE

Respondents are charged under Iowa Code §§ 147.55 and 157.13(1) (2009), and 645 IAC §§ 60.5(3),65.2(13) and 65.2(29), with permitting licensed individuals to practice beyond the scope of their license; specifically, by use of razor edged instruments.

D. FACTUAL CIRCUMSTANCES

1. During an investigation on April 1, 2010, the investigator observed that sanitation rules and professional licenses were posted in the back of the salon.
2. Non-sanitizable nail files and used buffers were located at manicure stations and in drawers. Sanitizable nail bits were coated with a waxy substance. Clean supplies were located in drawers with money, pens and paper. No biohazard container was found in the salon.
3. The spa cleaning log documented weekly cleanings, with no indication of which spa was cleaned or who did the cleaning.
4. Heel shavers were displayed at the reception desk. Heel shavers and corn blades were also located in a restroom cabinet. Used corn blades were found in a biohazard bag.

5. Debris was floating in Barbicide containers.

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 Kristin Ensign, Assistant Attorney General, at 515-281-6547.

F. PROBABLE CAUSE FINDING

On the 12th day of July, 2010, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.

The Board approved this Notice of Hearing and Statement of Charges on December 3, 2010.