

STATE OF IOWA  
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

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IN THE MATTER OF:	)	
	)	NO. CO-01-004
L.A. Nails	)	DIA NO. 02DPHCE003
License No. 002-A00733	)	
	)	FINDINGS OF FACT,
RESPONDENT	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER

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On April 16, 2002, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Statement of Charges charging L.A. Nails (Respondent), a salon licensed in the state of Iowa, with permitting unlicensed persons to perform activities requiring a license. A Notice of Hearing was issued on April 16, 2001. The Statement of Charges and Notice of Hearing were personally served at the Respondent's business address on October 23, 2002.

The Statement of Charges alleged that the Respondent salon permitted an unlicensed employee or person under the licensee's control to perform activities requiring a license, in violation of Iowa Code sections 157.2, 157.3, 157.13 (2001) and 645 IAC 65.1(9)(a).

A hearing was held on November 13, 2002 at 1:00 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent did not appear and was not represented by counsel. The state was represented by Melissa Biederman, Assistant Attorney General. The following Board members were present for the hearing: Teresa Mertens, Vice-Chairperson; Sheila O'Hern; Mary Beth Myers; Lois Leytem; Jack Morlan; and Michael Salvner. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board with the conduct of the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2001), 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)(2001) to deliberate its decision. During deliberations and more than 40 minutes after the time scheduled for the hearing to start, a note was brought into the closed session indicating that someone had appeared for the hearing at the Hoover State Office Building. The Board moved out of closed

executive session to determine whether the salon's owner of record, Vincent Pham, had appeared. However, the person who appeared was Tuong Nguyen, who identified himself as a friend and roommate of the salon's new owner, Dung Thi Nguyen. Tuong Nguyen stated that the owner was out of town. Tuong Nguyen had not been authorized to represent Dung Thi Nguyen at the hearing and did not have any information about the case. The Board returned to closed session to complete their deliberations. The administrative law judge was instructed to prepare the Board's decision, in accordance with its deliberations.

#### THE RECORD

The record includes the Notice of Hearing, the testimony of the witness, and the following exhibits:

- State Exhibit 1: Statement of Charges
- State Exhibit 2: Licensee Status Sheet
- State Exhibit 3: Inspection Report
- State Exhibit 4: Select Statutes and Administrative Rules
- State Exhibit 5: Proof of Service

#### FINDINGS OF FACT

1. On February 26, 1999, the Board issued cosmetology salon license number 002-A00733 to L.A. Nails (Respondent) for a salon located at 2337 Euclid Avenue, Des Moines, Iowa. Respondent's cosmetology license is current through December 31, 2002. According to the records maintained by the Board, the owner of the Respondent salon is Vincent U. Pham. (Testimony of Audrey Mitchell; State Exhibits 1-2)

2. On January 11, 2002, inspector Emily Meyer went to L.A. Nails at 2337 Euclid to perform an inspection. According to Ms. Meyer's Inspection Report, no license was posted at the premises. Dung Thi Nguyen identified herself to the inspector as the new owner of the salon and signed the inspection report as the owner. Tuan Thanh Nguyen was identified as an employee. Both Dung Thi Nguyen and Tuan Thanh Nguyen were observed performing nail technology services. Dung Thi Nguyen and Tuan Thanh Nguyen reported that they are licensed in Illinois, but not in Iowa. Upon receipt of the inspection report, board staff checked the licensure records and determined that neither Dung

Thi Nguyen nor Tuan Thanh Nguyen are currently licensed nail technicians in Iowa. (Testimony of Audrey Mitchell; State Exhibits 1, 3)

3. The Statement of Charges and Notice of Hearing were personally served on an employee at L.A. Nails, 2337 Euclid, Des Moines, Iowa on October 23, 2002 at 10:30 a.m. No one appeared at the hearing on behalf of the Respondent salon. (State Exhibit 5)

#### CONCLUSIONS OF LAW

##### I. Failure to Appear

645 IAC 11.6(1)"b" provides that the statement of charges and notice of hearing may be served by personal service, as provided in the Iowa Rules of Civil Procedure. The Respondent L.A. Nails was properly served with the statement of charges and notice of hearing by personal service, but failed to appear for the hearing.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. 645 IAC 11.21(1). The Board was authorized to proceed with the hearing in the absence of the Respondent.

##### II. Allowing An Unlicensed Person To Practice Cosmetology

The Iowa Board of Cosmetology Arts & Sciences Examiners was created by the legislature, pursuant to Iowa Code chapters 147 and 157, and was directed to adopt rules to implement the provisions of Iowa Code chapter 157. Iowa Code section 157.14 (2001). Any license issued by the department can be suspended, revoked, or renewal denied for violation of any provision of Iowa Code chapter 157 or the rules promulgated by the Board. Iowa Code section 157.9 (2001).

Iowa Code section 157.2(1)(2001) provides that it is unlawful for a person to practice cosmetology arts and sciences with or without compensation unless the person possesses a license issued under section 157.3. Iowa Code section 157.13 provides that it is unlawful for a person to employ an individual to

practice cosmetology arts and sciences unless the individual is licensed or has obtained a temporary permit. "Cosmetology" means...manicuring the nails of any person...nail technology. Iowa Code section 157.1(3)(c) and (f). The "Cosmetology arts and sciences" include nail technology. Iowa Code section 157.1(4)(d) (2001).

645 IAC 65.1(9)(a) provides that the Board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2)"a" to "f", including the imposition of a civil penalty which shall not exceed \$1,000, for permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

The preponderance of the evidence established that L.A. Nails violated Iowa Code sections 157.2, 157.13 and 645 IAC 65.1(9)(a) when it permitted unlicensed persons to perform activities (i.e., nail technology and/or manicuring nails) requiring a license. This violation was established through the investigator's report and the testimony of the Board's staff member. There is no contrary evidence in the record.

The evidence in this record suggests that Vincent U. Pham may no longer be the owner of L.A. Nails and that Dung Thi Nguyen is now its owner. However, the Board has not been notified that there has been a change in ownership. A new owner is required to obtain a license from this Board, and cannot legally operate under a license issued to a prior owner. Iowa Code section 157.11. While this is of great concern to the Board, it is not being addressed in this decision since this licensure issue was not included in the Statement of Charges and the Respondent was not provided notice of the issue.

### III. Sanction

In determining the appropriate sanction, the Board considered the factors outlined at 645 IAC 13.2. Allowing an unlicensed person to practice cosmetology is a serious violation that undermines the Board's effort to regulate the cosmetology profession and directly impacts public health and safety. The Respondent did not respond to the Statement of Charges or appear for the hearing, so it is unknown whether the salon continues to employ unlicensed persons to perform cosmetology. For these reasons, the Board has determined that it is necessary to impose

both a civil penalty and a period of probation, during which the Respondent must report the names and licensure status of all employees.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the Respondent L.A. Nails, license no. 002-A00733, shall pay a civil penalty of five hundred dollars (\$500) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED, that salon license no. 002-A00733 issued to Respondent L.A. Nails, shall be placed on probation for a period of (1) year from the date of issuance of this Decision and Order, subject to the following terms and conditions:

1. The Respondent shall prominently post its probationary license on the salon premises where it is visible to all customers.
2. The Respondent shall comply with all relevant statutes and administrative rules in the course of its operation as a nail technology salon. Within its salon, the Respondent shall only permit nail technology services to be performed by persons who are properly licensed by the state of Iowa.
3. The Respondent shall file quarterly reports with the Board listing the salon's nail technicians. The quarterly employee reports shall be typewritten and shall attest to the following information for each and every person who performed nail technology services with the Respondent salon during the three month period immediately preceding the report:
  - a. The name of the employee who performed nail technology services.
  - b. The license number and expiration date for the employee's Iowa cosmetology and/or nail technology license.
  - c. The employee's date of hire.
  - d. If applicable, the employee's date of termination.

The failure of the Respondent salon to provide complete and truthful information in the quarterly employee reports shall constitute a violation of this order. The first report required by this Order shall be submitted to the Board within thirty (30) days of the service of this Order, and each report thereafter by the first day of every subsequent third month.

4. Upon request of the Board, the owner of the Respondent establishment shall appear before the Board to report on the status of the Respondent's operations as a nail technology salon and to answer any questions or concerns the Board may have regarding the Respondent's compliance with this Order. The Board shall provide the Respondent with reasonable notice of the date, time, and place for any requested appearance.

5. The Board or its designee shall have the right to verify the Respondent salon's compliance with all provisions of this order through established investigative protocols including, but not limited to, examination of Board records, interviews with persons identified as salon employees or clients, and by conducting unannounced inspections of the Respondent salon.

6. If at any time during this probation the Respondent violates any provision of this Order, the Board may hold a hearing pursuant to Iowa Code section 272C.3(2)"a"(2001), because of failure of the Respondent to comply with the terms of this Order. Any such violation would result in consideration by the Board of more serious sanctions, including revocation.

7. Successful completion of the probationary period shall constitute a final disposition of this matter.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that the Respondent shall pay \$75.00 for fees associated with the disciplinary hearing within thirty (30) days of receipt of this decision.

This Findings of Fact, Conclusions of Law, Decision and Order was approved by the board on DATE.

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2001) 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.