

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

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| IN THE MATTER OF: |) | |
| |) | NO: 02-036 |
| TOMMY'S NAILS |) | |
| License No. 002-010107, |) | CONSENT ORDER AND |
| |) | AGREEMENT |
| RESPONDENT |) | |

The Iowa Board of Cosmetology Arts and Sciences Examiners (Board) and Tommy's Nails (Respondent), through its owner Thing Quag Nguyen, enter into this Consent Order and Agreement (Agreement) pursuant to Iowa Code sections 17A.10(1) (2003) and 272C.3(4) (2003).

1. Respondent currently possesses license number 002-010107 to operate a nail technology salon in the state of Iowa.
2. The Board has jurisdiction over the licensee disciplinary action pending against the Respondent.
3. After an inspection of Respondent salon revealed that: (a) the salon failed to post a copy of the most recent sanitation rules in a conspicuous area of the salon; (b) employees of Respondent salon were performing nail technology services without proper Iowa licensure; and (c) the salon was engaging in practices that are harmful and detrimental to the public, the Board instituted formal disciplinary proceedings by the filing of a Statement of Charges on May 5, 2004.
4. Respondent salon has not filed an answer to the Amended Statement of Charges.
5. Respondent has a right to hearing on the charges but waives its right to hearing and all attendant rights by freely and voluntarily entering into this Agreement. The Agreement is the final agency order in the contested case.
6. Respondent agrees that the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.
7. This Agreement shall be part of the permanent record of Respondent salon 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.
8. Any failure by Respondent salon to comply with the terms and conditions of this Agreement shall subject Respondent salon 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.

9. This Agreement is subject to approval by the Board:
 - a. If the Board fails to 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.

10. This Agreement is a public record pursuant to Iowa Code sections 272C.3(4) and 272C.6(4) (2003).

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

IT IS THEREFORE ORDERED:

A. Probation

Respondent's salon license shall be placed on probation for a period of twelve (12) months from the execution date of this Agreement, the execution date being the date which accompanies the Board Chairperson's signature. Upon notification of the Board's approval of this Agreement, the Respondent shall immediately remit its salon license certificate to the Board so that a probationary license may be issued. During the probationary period, Respondent salon shall comply with the following terms:

- (1) Respondent shall comply with all relevant statutes and administrative rules in the course of its operations as a nail technology salon;
- (2) Respondent shall only permit nail technology services to be performed by persons who are properly licensed by the State of Iowa;
- (3) Respondent shall ensure that the original license certificate, duplicate certificate, reissued certificate or temporary permit certifying that each practitioner or trainee is certified by the Board is displayed for each licensee or trainee performing nail technology services in compliance with 645 Iowa Administrative Code rule 63.3;
- (4) Respondent shall monitor and ensure its employees' compliance with all applicable health and sanitation standards;

- (5) Respondent shall ensure that all manicure implements are sanitized in accordance with 645 Iowa Administrative Code rule 63.10;
- (6) Respondent shall not have on its premises any cosmetic products containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products, including, but not limited to, any product containing methyl methacrylate monomer and methylene chloride. The presence of any such product in Respondent salon shall be prima facie evidence of its use in Respondent salon;
- (7) Respondent shall ensure that the salon and all workstations are maintained in a clean and sanitary manner;
- (8) Respondent shall ensure that all licensees engaged in serving the public are neat and clean in person and attire and maintain personal cleanliness;
- (9) Respondent shall display the probationary license within ten (10) feet of the main entrance to the salon in a manner making it readily visible to persons upon entering the salon. Respondent shall make a copy of this Agreement available to any person upon request;
- (10) Respondent shall file quarterly reports with the Board listing the salon's employees. The quarterly employee reports shall be typewritten and shall attest to the following information for each and every person who performed nail technology services within the Respondent salon during the three month period 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, if applicable;
 - iii) each employee's date of hire;
 - iv) each employee's date of termination, if applicable.

The failure of Respondent salon to provide complete and truthful information in the quarterly employee 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 salon; and

- (11) Upon request of the Board, the owner of Respondent 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 section 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.

B. Civil Monetary Penalty

Respondent agrees to pay to the Board a civil monetary penalty of \$700. Respondent shall remit full payment of the civil monetary penalty to the Board within 30 days of the execution date of this Agreement.

B. Future Operations

Thing Quag Nguyen, owner of Respondent salon, shall request Board approval prior to owning and/or operating any salon other than Respondent salon in the state of Iowa; however, no such request may be made for a period of at least two (2) years from the execution date of this Agreement. This Agreement and compliance with it may be considered by the Board in determining whether to issue a salon license and the conditions, if any, required to be satisfied prior to or subsequent to the issuance of a salon license.

C. Future Compliance

Respondent shall in the future adhere to all relevant statutes and administrative rules in the course of operating a nail technology salon.

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

This Consent Order and Agreement is approved by the Board on August 4, 2004.