

BEFORE THE IOWA BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)
) **CASE NO. 11-013**
Duyen Thi Vu)
License No. 60473) **NOTICE OF HEARING AND**
) **STATEMENT OF CHARGES**
)
RESPONDENT)

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing pursuant to Iowa Code §§ 17A.12(2), 17A.18(3) (2011), and 645 Iowa Administrative Code (IAC) § 11.6. Respondent Duyen Thi Vu, was issued cosmetology license no. 60473 on June 16, 2001, which next expires March 31, 2015. Respondent was also issued a nail technology license on February 14, 1996, and an esthetic license on May 13, 1996. Both licenses are on inactive status. Respondent was issued Iowa salon license no. 011229 on March 27, 2006, to operate Secret Nails located at 1644 Sycamore Street, Iowa City, Iowa, 52240. Respondent sold the salon on or about December 19, 2012.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **April 7, 2014**, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at **1:00 p.m.** 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 of Iowa) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: David Van Compernelle, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319, or at David.VanCompernelle@iowa.gov.

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 (2011).

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 (2011) 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) (2011) and 645 IAC § 11.21.

C. CHARGES

COUNT I – UNSANITARY PRACTICES

Respondent is charged under Iowa Code §§ 147.55 and 157.9, and 645 IAC § 65.2(13), with engaging in unsanitary practices, in violation of Iowa Code § 157.6 (2011) and 645 IAC §§ 63.6, 63.13, 63.15, 63.18 and 63.25.

COUNT II – PRACTICE BEYOND SCOPE OF LICENSE

Respondent is charged under Iowa Code §§ 147.55 and 157.13(1) (2011), and 645 IAC § 65.2(13), with permitting licensed individuals to practice outside

the scope of their license in violation of 645 IAC § 60.3(6) (facial waxing shall only be done by a cosmetologist or esthetician).

COUNT III – FAILURE TO POST RULES AND INSPECTION REPORT

Respondent is charged under Iowa Code §§ 147.55 and 157.9 (2011), 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 IV – FAILURE TO PROPERLY DISPLAY LICENSES

Respondent is charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC 65.2(13), with failing to properly display license renewal cards in the front entrance area of salon at eye level in violation of 645 IAC § 63.3(3).

COUNT V – MMA ON PREMISES

Respondent is charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with having a product containing liquid methyl methacrylate (MMA) on its premises in violation of 645 IAC § 63.18(1).

COUNT VI – FAILURE TO CLEAN & DISINFECT PEDICURE SPAS

Respondent is charged under Iowa Code § 147.55 (2011), and 645 IAC §§ 63.4(3), 63.25(3) and 65.2(13), with failing to clean and fully document cleanings of pedicure spas in violation of 645 IAC §§ 63.25(1-3).

COUNT VII – PROFESSIONAL INCOMPETENCY

Respondent is charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC §§ 65.2(13), with failing to conform to the minimal standard of acceptable and prevailing practice in this state, in violation of 645 IAC §65.2(2)(d).

COUNT VIII – SUBVERTING AN INVESTIGATION

Respondent is charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC §§ 65.2(13), with engaging in conduct intended to subvert a Board investigation, in violation of 645 IAC §65.2(18).

COUNT IX – FAILURE TO COMPLY

Respondent is charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC §§ 65.2(13), with failing to comply with the terms of a settlement agreement, in violation of 645 IAC §65.2(21).

COUNT X – EMPLOYMENT OF UNLICENSED INDIVIDUALS

Respondent is charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with knowingly assisting and employing an unlicensed individual to provide services, in violation of 645 IAC § 65.2(23) & (28).

D. FACTUAL CIRCUMSTANCES

On August 4, 2011, investigators inspected Respondent's salon and observed no reception area for customers and an incomplete first aid kit; closed drawers contained nail supplies intermingled with papers, money, pens, etc. Manicure stations had used sandpaper bands on the drills. Instruments were located on top of each other in the sterilizer machine.

Prior to their investigation, investigators contacted the salon about waxing services and was informed anyone at the salon could do waxing. Sanitation rules and 2009 inspection report were not posted in the reception area. Professional licenses and salon license was posted on the back wall of the salon to the ceiling.

Investigators found chamois buffers on the premises. A female employee was observed pouring a container of liquid into the garbage. Investigators were able to retrieve a small sample of the remaining liquid. Testing revealed the presence of methyl methacrylate monomer (MMA) in one sample of the nail liquid, a substance banned by the Food and Drug Administration.

Investigators observed an unlicensed employee cleaning the pedicure spas. The respondent admitted the employee did not know how to clean the spas properly. The same unlicensed individual was also observed by the investigators performing a pedicure on a customer upon entering the salon.

At the time of the investigation, the respondent was on probation under a Settlement Agreement and Final Order (Order) issued on July 13, 2009. Because of repeated violations, the Board suspended the respondent's cosmetology and salon license for seven (7) days as part of the Order.

The respondent has shown a repetitive pattern of total disregard to the minimal standard of acceptable and prevailing practice for her discipline.

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 David VanCompernelle, Assistant Attorney General, at 515-281-7262, or at David.VanCompernelle@iowa.gov.

F. PROBABLE CAUSE FINDING

On December 3, 2012, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.



_____, Chairperson
IOWA BOARD OF COSMETOLOGY
ARTS & SCIENCES

Copies to:

Duyen Thi Vu
1644 Sycamore Street
Iowa City, IA 52240

David VanCompernelle
Assistant Attorney General
Iowa Attorney General's Office

2nd Floor Hoover Bldg.
Des Moines, IA 50319