

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

IN THE MATTER OF:)	
)	
Nevaeh Day Spa)	CASE NO. CO 08-031
License No. 011603)	
and)	NOTICE OF HEARING
Destini Hoth)	AND STATEMENT OF CHARGES
License No. 065736)	
)	
Respondent)	
)	

COMES NOW the Iowa Board of Cosmetology Arts and Sciences and files this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued Iowa salon license no. 011603 on December 21, 2006 and Respondent's salon license lapsed on December 31, 2008. The above named Respondent is the owner of Respondent salon, Nevaeh Day Spa, located at 1731 Boyson Rd., Hiawatha, Iowa 52233. The salon owner was issued esthetic license no. 65736 on September 20, 2002, and a nail technology license on February 24, 2003. The licenses were not renewed by the expiration date of March 31, 2008, and are inactive.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on April 6, 2009, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 9:00 AM and shall be located in the Lucas State Office Building, Fifth Floor 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: Julie Bussanmas, 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 is charged with practicing esthetics and nail technology without current licenses in violation of Iowa Code section 645 Iowa Administrative Code (IAC) rules 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 failing to properly clean and disinfect its whirlpool footspas and by failing

to document the cleanings in violation of 645 IAC 63.25(2) - (5).

Count III

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to discard used instruments after use on a client in violation of 645 IAC 63.14, 63.17(4) and 63.18(3), and by failing to change disinfectant solution and failing to store instruments as required in 645 IAC 63.12(1).

Count IV

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for failing to post a copy of the most recent sanitation rules at eye level in the salon pursuant to 645 IAC 63.2.

D. FACTUAL CIRCUMSTANCES

1. During an investigation on November 14, 2008, the owner of the salon was providing services that require an active esthetic license. Respondent's esthetic and nail technology licenses were not renewed prior to April 30, 2008, and were administratively placed on inactive status on May 1, 2008. Respondent, both as owner of the salon and as a practitioner, is responsible for ensuring her licenses are active prior to providing services pursuant to 645 IAC 60.8(6) and 63.4(1).

2. Following the investigation of the salon on April 29, 2008, Respondent was requested to submit a corrective action report attesting that the violations of Iowa laws and rules observed during the investigation completed on April 29, 2008 had been corrected and that the salon was in compliance with Iowa laws and rules. On April 29, 2008, Respondent submitted documentation stating the violations noted during the investigation were corrected. A follow-up

investigation completed on November 14, 2008 showed corrective action had not been completed as stated by the Respondent.

3. During both investigations of Respondent salon, it was discovered that an accurate record of whirlpool foot spa cleaning and disinfecting was not being maintained for any of the salon's foot spas, screens were not being removed for cleaning, foot spas had debris behind the screens, and biweekly cleanings were not being performed.

4. During both investigations, the investigator observed used nail buffers and emery boards in the salon and disinfectant solution was cloudy and contained debris.

5. During the investigation on November 14, the used nail buffers were being stored with clean implements.

6. During the investigation on November 14, the sanitation rules found posted in a manicure/pedicure room.

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 Julie Bussanmas, Assistant Attorney General, at 515-281-7175.

F. PROBABLE CAUSE FINDING

On this 5th day of January, 2009, the Iowa Board of Cosmetology Arts & 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 February 11, 2009.