

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)
) NO. 08-042
Da Vi Nails) DIA NO. 09DPHCE011
License No. 102708)
) FINDINGS OF FACT,
Twin Van Nguyen) CONCLUSIONS OF LAW,
) DECISION AND ORDER
RESPONDENT)

On August 6, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Da Vi Nails, a licensed salon in the state of Iowa, and its owner, Twin Van Nguyen. Respondent was charged with the following four counts:

Count I: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to post the salon license in the reception area at eye level, in violation of 645 IAC 61.5(2).

Count II: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to properly clean and disinfect whirlpool foot spas and by failing to document the cleanings, in violation of 645 IAC 63.25(2)-(5).

Count III: Engaging in unsanitary practices, in violation of Iowa Code section 157.6 and 645 IAC 63.10(6), 63.12, 63.17(3) and (4), and 65.2(13).

Count IV: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by possessing razor edged device or tool, in violation of 645 IAC 63.18(2).

The hearing was held on October 5, 2009 at 10:05 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent was served with the Notice of Hearing and Statement of Charges by restricted certified mail but failed to appear for the hearing. (State Exhibit 2). The state was represented by Assistant Attorney General Jordan Esbrook. The following Board members were present for the

hearing: Jack Morlan, Chairperson; Becky J. Brockmann; Kimberly Setzer; Richard Mosley; Dana Atkins; Jerry Talbott; and Karen Thomsen. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009), 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)(2009), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of the witness and State Exhibits 1-5 (See Exhibit Index for description).

FINDINGS OF FACT

1. On January 21, 2009, the Board issued Iowa salon license number 102708 to Da Vi Nails, located at 1940 Venture Drive in Ottumwa, Iowa. As of the date of the hearing, salon license no. 102708 was current and set to expire on December 31, 2010. Twin Van Nguyen is the owner of Da Vi Nails. (State Exhibits 3, 4)
2. On January 15, 2009, Department of Inspections and Appeals (DIA) Investigator Kimberly Groves made an unannounced investigative visit to Respondent salon. The salon had five manicure stations and four pedicure chairs and one employee, Phuong Nguyen, was working at the salon at the time of the inspection. The investigator examined the employee's driver's license and his wallet card. Phuong Nguyen reported that his wall license was posted at the salon across the street where he also worked. (Testimony of Kimberly Groves; State Exhibit 3)
3. At the time of the January 15, 2009 inspection, Investigator Groves documented the following violations of Board statutes and rules:
 - The salon's license was not posted. Phuong Nguyen reported that salon owner Twin Van Nguyen had taken the license to Des Moines to get it transferred into his name;

- There was no biohazard container on the premises. There was a biohazard bag folded at the bottom of a garbage can;
- There was no whirlpool spa cleaning schedule;
- Debris was caught in the screens of two whirlpool spas, and one spa had debris around the jets. Phuong Nguyen could not verbalize or demonstrate how to clean the spas using detergent or soap;
- There were used emery boards (non sanitizable), nail buffers, electric bits, and sanding bands at the nail stations. Mr. Nguyen stated that he thought he could use a different side of the buffer for different customers;
- Supplies, such as nippers and clippers, sanding bands, and electric clips were located in drawers with nail clippings, pens, paper, keys, paper clips, and money;
- A wax pot that was warm to the touch was located in a dresser type drawer at the back of the salon; and
- One heel shaver and a box of corn blades were located in a drawer in the back room of the salon.

The sanitation rules and last inspection were properly posted. Two samples of nail liquid were obtained and tested but did not contain prohibited substances. The investigator left a copy of a whirlpool cleaning schedule and explained how to properly clean and disinfect the whirlpool spas. (Testimony of Kimberly Groves; State Exhibit 3)

CONCLUSIONS OF LAW

645 IAC 65.2(13) provides authority for the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

Count I: *Failure to Post the Salon License In The Reception Area At Eye Level*

645 IAC 61.5(2) provides that a copy of the salon license (and current renewal card) shall be posted and visible in the salon reception area at eye level. The preponderance of the evidence established that the salon license was not posted in the salon reception area on January 15, 2009, in violation of 645 IAC 65.2(13 and 61.5(2). The employee who was present reported that the salon owner, Twin Van Nguyen, took the salon license to Des Moines to have it transferred into his name. A salon license is not transferable. It

was the new owner's responsibility to obtain a new license and post it in the reception area before the salon opened for business. 645 IAC 61.2(6).

Count II: Failure To Properly Clean and Disinfect the Whirlpool Spas and Failing to Document the Cleaning and Disinfecting of a Whirlpool Foot Spa

645 IAC 63.25 provides the procedures for proper cleaning and disinfecting whirlpool foot spas after each use, at the end of each day, and biweekly. In addition, the rule requires salons to maintain a record of cleaning and disinfecting. 645 IAC 63.25 provides, in relevant part:

645-63.25(157) Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths.

63.25(1) As used in this rule, "whirlpool foot spa," "foot spa," "whirlpool," or "spa" is defined as any basin using circulating or still water.

63.25(2) After use for each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

- a. All water shall be drained and all debris shall be removed from the spa basin.
- b. The spa basin must be cleaned with soap or detergent and water.
- c. The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.
- d. The spa basin and hydrotherapy bath must be wiped dry with a clean towel.

63.25(3) At the end of each day, the whirlpool foot spa must be cleaned and disinfected in the following manner:

- a. The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and inlet shall be washed with soap or detergent and water.
- b. Before the screen is replaced, it shall be completely immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

...

63.25(4) Every other week (biweekly), after being cleaned and disinfected as provided in subrule 63.25(3), each whirlpool foot spa and hydrotherapy bath shall be cleaned and disinfected in the following manner;

a. The spa basin...shall be filled completely with water and one teaspoon of 5.25 percent bleach or recommended whirlpool disinfectant for each one gallon of water, or a solution of sodium hypochlorite (bleach) of approximately 50 ppm used according to the manufacturer's instructions.

b. The spa...shall be flushed with the bleach or recommended whirlpool disinfectant and water solution...for five to ten minutes and allowed to sit for six to ten hours.

c. The spa...shall be drained and flushed with water before use for a patron.

63.25(5) For each foot spa and hydrotherapy bath, a record shall be made of the date and time of each cleaning and disinfecting as required by subrules 63.25(3) and 63.25(4), and shall indicate whether the cleaning was a daily or biweekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting must be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event.

The preponderance of the evidence established that Respondent Da Vi Nails violated 645 IAC 65.2(13) by failing to properly clean and disinfect the whirlpool foot spas and by failing to maintain and make available a record of the whirlpool foot spa cleanings, as required by 645 IAC 63.25(2)-(5). Respondent did not properly clean the whirlpool screens or jets, as shown by the presence of debris. Respondent did not have any cleaning record available at the time of the inspection and the only employee who was working could not verbalize or demonstrate how to properly clean the whirlpool spas.

Count III: Engaging In Unsanitary Practices

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences and to make necessary inspections for enforcement purposes.¹ 645 IAC 63.12 requires licensees to disinfect all nonelectrical

¹ Iowa Code section 157.6(2009).

instruments and equipment by an EPA-registered, hospital-grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity; to store all disinfected instruments in a clean, covered place; and to place all instruments that have been used on a client or soiled in any manner in a proper receptacle. 645 IAC 63.13(2) specifies cleaning procedures for electric file bits after each use and also provides that sanding bands are single use items that must be discarded immediately after use. 645 IAC 63.14 provides that all instruments and supplies that come into direct contact with a patron and cannot be disinfected, including emery boards, must be disposed of in a waste receptacle immediately after use. 645 IAC 63.17(3) provides that salons must have hazardous waste containers and bags available for use at all times when services are being performed. The absence of containers is prima facie evidence of noncompliance. 645 IAC 63.17(4) provides that emery boards, cosmetic sponges, cosmetic applicators, toe separators and orangewood sticks must be discarded after use or given to the client. 645 IAC 63.18(3)"a" provides, in relevant part, that a nail buffer that can be sanitized may be used more than once, but it must be sanitized before use on the next client. If a nail buffer cannot be sanitized, the nail buffer shall not be used for more than one client.

Respondent violated 645 IAC 65.2(13) by failing to comply with these sanitation rules. The preponderance of the evidence established that Respondent salon did not have a biohazard container on the premises, that single use instruments were not properly discarded, and that instruments and tools were not properly stored following disinfection.

Count IV: Possession of A Razor-Edged Device or Tool

645 IAC 63.18(2) provides, in relevant part, that no salon shall have on the premises any razor-edged device or tool which is designed to remove skin, with the exception of cuticle nippers used for manicure or pedicure services. If such equipment is on site, it shall be prima facie evidence of its use.

The preponderance of the evidence established that Respondent violated 645 IAC 65.2(13) by possessing and using razor-edged devices, i.e. heel shaver and corn blades, in violation of 645 IAC 63.18(2). Investigator Groves observed the heel shaver and corn blades in a drawer in the salon's back room. The presence of these razor-edged devices is prima facie evidence of their use.

Sanction

The nature and seriousness of these violations, coupled with Respondent's failure to appear for hearing, justify the maximum civil penalty. In addition, Respondent's salon license would have been placed on probation, subject to the terms and conditions. However, on October 20, 2009 Respondent returned salon license number 102708 to the Board office. The salon has presumably been closed. However, if Respondent Twin Van Nguyen should apply for and be granted a license in the future, any new license shall be placed on a one year term of probation, as provided below.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Da Vi Nails shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that prior to submitting any future application for a salon license, Twin Van Nguyen shall complete four (4) hours of continuing education on Iowa nail technology law, rules, and sanitation. The continuing education must be approved by the Board.

IT IS FURTHER ORDERED that should Respondent Twin Van Nguyen obtain licensure to operate another nail technology salon in Iowa in the future, the license shall be placed on probation for a period of one (1) year subject to the following terms and conditions:

- A. Respondent owner must file quarterly written reports with the Board during the period of probation. The written reports shall include:
 - the name, license number, and license expiration date for each employee; and
 - a copy of the whirlpool cleaning record.

- B. Respondent salon will be subject to random inspections at the discretion of the Board.

FINALLY, if Respondent fails to comply with any of the terms of this Decision and Order, the Board may hold a hearing, pursuant to Iowa Code section 272C.3(2)"a"(2009), and impose further sanctions, up to and including license revocation of any new license issued by the Board to Respondent.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$37.36 for the court reporter fees. The total fees of \$112.36 shall be paid within thirty (30) days of receipt of this decision.

This findings of fact, conclusions of law, decision and order is approved by the board on November 16, 2009.

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 of 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(2009) 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.