BEFORE THE BOARD OF COSMETOLOGY ARTS AND SCIENCES OF THE STATE OF IOWA

IN THE MATTER OF)	
)	NO. 08-044 & 09-067
Spa Nails)	
License No. 102501)	
and)	NOTICE OF HEARING
Huy Ngoc Hoang, Owner)	AND STATEMENT OF CHARGES
License No. 066041)	
)	
RESPONDENTS)	

The Iowa Board of Cosmetology Arts and Sciences (Board) files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3) (2009), and 645 Iowa Administrative Code (IAC) § 11.6. Respondent Spa Nails was issued Iowa license number 102501 to operate a cosmetology salon in the State of Iowa on September 8, 2008. Respondent salon is located at 111 Sale Barn Road, Suite 6, Storm Lake, IA 50588. Its license is current and will next expire on December 31, 2010. Respondent Hoang was issued nail technology license number 066041 on July 25, 2008, which license will expire on March 31, 2010.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on April 5, 2010, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 11:00 a.m. and shall be located in the Lucas State Office Building, Fifth Floor Board 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.

<u>Presiding Officer</u>. 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.

<u>Pre-hearing Conference</u>. 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.

<u>Prosecution</u>. 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: Scott Galenbeck, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

<u>Communications</u>. 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

<u>Jurisdiction</u>. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 157, and 272C.

<u>Legal Authority</u>. 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.

<u>Default</u>. 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) and 645 IAC § 11.21.

C. CHARGES

COUNT I

Respondent is charged under 645 IAC § 65.2(13) with failing to properly clean and disinfect its whirlpool foot spas and by failing to document the cleanings in violation of 645 IAC §§ 63.25(2) - (5).

COUNT II

Respondent is charged under 645 IAC § 65.2(13) with engaging in unsanitary practices in violation of Iowa Code § 157.6 and 645 IAC §§ 63.12(1), 63.14, 63.17(3) and 63.18(3).

COUNT III

Respondent is charged under 654 IAC § 65.2(21) with failure to comply with the terms of a board order.

D. FACTUAL CIRCUMSTANCES

1. At the time an investigation was conducted on October 2, 2009, used nail buffers

and nail files that could not be sanitized were observed in drawers with clean supplies. Supplies, such as clippers and nippers were stored in drawers with money.

- 2. The salon did not have a hazardous waste container and bag.
- 3. The spa log did not indicate biweekly cleanings and the owner was unsure of the bi-weekly cleaning procedures. Spa jets and screens contained debris and gritty material.
- 4. On April 6, 2009, the Board of Cosmetology entered into a Settlement Agreement with the Respondent for failure to properly clean and record foot spa cleaning and disinfecting, failure to post sanitation rules; and failure to comply with Iowa sanitation requirements.

 Respondent was required to pay a civil monetary penalty of \$650, obtain four hours of board approved continuing education applicable to cosmetology salon sanitation or laws and rules within six months, and comply with all laws and rules regarding cosmetology salons.
- 5. Respondent is in violation of the Settlement Agreement by failing to obtain four hours of continuing education and by continuing to be in violation of Iowa laws and rules covering sanitation and whirlpool foot spa cleaning and disinfecting.

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 Scott Galenbeck, Assistant Attorney General, at 515-281-6658.

F. PROBABLE CAUSE FINDING

On this 11th day of January, 2010, the Iowa Board of Cosmetology Arts and 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 March 4, 2010.