BEFORE THE IOWA BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:	)	
	)	**CASE NO. 10-018**
Top Nails	)	
License No. 010604	)	**NOTICE OF HEARING AND**
and	)	**STATEMENT OF CHARGES**
Phuong Van Nguyen, owner,	)	
License No. 01553	)	
	)	
RESPONDENTS	)	

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. Top Nails was issued Iowa salon license no. 010604 on December 16, 2004, and operates a salon located at 1875 Venture Drive, Ottumwa, Iowa 52501. Respondent-Top Nails' license is current and will next expire on December 31, 2012. Respondent-Phuong Van Nguyen, the owner of Top Nails, holds nail technician license no. 01553 which next expires March 31, 2013.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **January 10, 2012,** 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 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 VanCompernolle, 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 (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

Respondents are 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 §§ 63.11, 63.13, 63.14, 63.15 and 63.25.

COUNT II – FAILURE TO POST LICENSES

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with failing to post professional licenses in the reception area at eye level in violation of 645 IAC §§ 61.5(3) and 61.5(4).

COUNT III – FAILURE TO PROVIDE BIOHAZARD DISPOSAL

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and

645 IAC § 65.2(13), with failing to provide for biohazard disposal in violation of 645 IAC §§ 63.11.

COUNT IV – FAILURE TO POST RULES AND REPORT

Respondents are 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 V – EMPLOYMENT OF UNLICENSED INDIVIDUALS

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with employing an unlicensed individual to provide nail technician services, in violation of 645 IAC § 65.2(28).

COUNT VI – PRACTICE BEYOND SCOPE OF LICENSE

Respondents are charged under Iowa Code §§ 147.55 and 157.13(1) (2009), and 645 IAC §§ 63.4(3) and 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) and 65.2(29).

D. FACTUAL CIRCUMSTANCES

On October 1, 2010, investigators inspected Respondents' salon and observed that individual licenses were not posted at the front of the salon. Nor were current sanitation rules or the most recent inspection posted. No biohazard bag was located in the salon and the first aid kit consisted only of bandages.

Additionally, used nail buffers and other used nail supplies were stored throughout the salon, ready for re-use. Closed drawers contained nail clippings,

dust, paper and money along with instruments. Unlicensed individuals provided nail technician services; a nail technician was providing eyebrow waxing services.

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 VanCompernolle, Assistant Attorney General, at 515-281-7262.

F. PROBABLE CAUSE FINDING

On January 5, 2011, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.