

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

<b>IN THE MATTER OF:</b>	)	
	)	<b>CASE NO. 09-005</b>
<b>IA Nails</b>	)	
<b>License No. 101956</b>	)	
<b>and</b>	)	<b>NOTICE OF HEARING</b>
<b>Duc Thanh Phan, Owner</b>	)	<b>AND STATEMENT OF CHARGES</b>
<b>License No. 01483</b>	)	
	)	
<b>RESPONDENTS</b>	)	
	)	

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The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2), 17A.18(3) (2009), and 645 Iowa Administrative Code (IAC) 11.6. Respondent IA Nails was issued Iowa salon license no. 101956 on July 12, 2007 and operates a salon located at 4116 University Ave. #5, Cedar Falls, IA 50613. Respondent's salon license is current and will next expire on December 31, 2010. Respondent Phan was issued nail technology license no. 01483 on October 1, 2004 and the license will next expire on March 31, 2011.

**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 AM 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, 5<sup>th</sup> 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: Scott Galenbeck, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> 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. CHARGES**

### **COUNT I**

Respondent is charged under 645 IAC § 65.2(13) with 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 II**

Respondent is charged with employing individuals to practice cosmetology arts and sciences without a license, in violation of Iowa code section 157.13(1) and 645 IAC rules §§

65.2(28) and 65.2(36).

### **COUNT III**

Respondent is charged under 645 IAC § 65.2(13) with failing to post a copy of the most recent sanitation rules and the most recent inspection report at eye level in the reception area of the salon as required by 645 IAC § 63.2.

### **COUNT IV**

Respondent is charged with engaging in unsanitary practices in violation of Iowa Code § 157.6 and 645 IAC §§ 63.12(1), 63.13(2), 63.14, 63.18(3) and 65.2(13).

### **COUNT V**

Respondent is charged under 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).

## **D. FACTUAL CIRCUMSTANCES**

1. During an investigation on October 23, 2009, Respondent IA Nail's foot spa log was not up-to-date and was incomplete. Respondent Phan stated that she completes the spa log monthly and does not indicate any dates within the month. Bi-weekly cleaning and disinfecting were not noted on the foot spa log.

2. At least two individuals left the salon upon the entry of the investigator. Respondent owner told the investigator that the individuals were not licensed in Iowa, but were only removing customers' nail polish.

3. During the investigation, it was observed that four whirlpool spa screens and jets contained black debris and gritty material.

4. Two samples of nail liquid were taken and tested positive for methyl methacrylate acid.

5. Respondents used non-sanitizable emery boards; and used nail buffers, sanding bands, and electric bits were found in drawers and on machines. Supplies were found in drawers with money, paper, etc. Some disinfectant solution contained debris. According to Respondent Phab, the Barbicide was changed twice a month, not once a week as required by 63.12(1)“c.” No biohazard bag was found in the salon.

6. Respondent was inspected on April 19, 2009, and the salon was informed Iowa rules require a current copy of the rules and a copy of the recent inspection report be posted in a conspicuous place. Employees must have current renewal posted or have a current wallet card in the licensee's possession. These deficiencies had not been corrected by the date of the inspection on October 23, 2009.

#### **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 the 11th day of January, 2010, 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 March 4, 2010.**