

BEFORE THE IOWA BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	CASE NO. 10-037
NAILS ENVY)	
License No. 103146)	NOTICE OF HEARING
)	AND STATEMENT OF CHARGES
THANH LE, Owner)	
)	
)	
RESPONDENTS)	

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing and Statement of Charges pursuant to Iowa Code §§ 17A.12(2), 17A.18(3) (2009) and 645 Iowa Administrative Code (IAC) § 11.6. Nails Envy was issued Iowa salon license no.103146 on February 1, 2010. Nails Envy's license will expire on December 31, 2010. Thanh Le is the owner of Nails Envy, which is located at 894 Middle Road, Bettendorf, IA 52722. Thanh Le is not licensed. Nails Envy and Thanh Le are jointly referred to herein as "Respondents."

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on April 6, 2011, before the Iowa 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, 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. 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, 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: Kristin Ensign, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact individual 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 (2009).

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 (2009), 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)(2009) and 645 IAC §11.21.

C. CHARGES

COUNT I

Respondents are charged under Iowa Code § 147.55 (2009), and 645 IAC § 65.2(13), with failing to clean and fully document cleanings of pedicure spas in violation of 645 IAC §§ 63.25(1-3).

COUNT II

Respondents are charged under Iowa Code § 147.55 (2009), and 645 IAC § 65.2(13) (2009), with engaging in unsanitary practices in violation of Iowa Code § 157.6 and 645 IAC §§ 63.11, 63.13, 63.14, 63.15 and 63.18(1).

COUNT III

Respondents are charged under Iowa Code §§ 147.55 and 157.13(1) (2009), and 645 IAC §§ 65.2(13) and 65.2(28), with employing unlicensed individuals to practice cosmetology arts and sciences.

COUNT IV

Respondents are charged under Iowa Code § 147.55 (2009) 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

Respondents are charged under Iowa Code § 147.55 (2009) and 645 IAC § 65.2(13) with failing to provide for biohazard disposal in violation of 645 IAC § 63.11(3).

COUNT VI

Respondents are 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

An investigator's visit on June 3, 2010, revealed the following:

1. Neither sanitation rules nor an inspection report were posted. The salon license was not posted and licenses for nail technicians were not posted at eye level.
2. No biohazard bags or containers were on site.
3. No first aid kit was present in the salon. Respondents kept only a box of bandages on hand.
4. No whirlpool cleaning log was being maintained. Whirlpool jets contained grimy, stringy debris. Spas are allegedly cleaned once per week.

5. Used non-sanitizable emery boards, nail buffers, sandpaper bands, etc. were being reused.
6. Clean supplies such as nippers and clippers were placed in drawers along with money, papers and pens.
7. Nail brushes were not completely submerged in Barbicide.
8. Two samples of nail liquid were taken from the salon; both tested positive for MMA.
9. The license of Aaron Le was posted in the salon. Le's license has been revoked.

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 Kristin Ensign, Assistant Attorney General, at 515-281-6547.

F. PROBABLE CAUSE FINDING

On the 12th day of July, 2010, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.