

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	NO. CO-00-028
SECRET NAILS)	DIA NO. 01DPHCE006
License No. 002-A00243)	
)	FINDINGS OF FACT,
RESPONDENT)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On August 24, 2001, the Acting Board Administrator for the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Statement of Charges against Secret Nails (Respondent), a salon licensed in the state of Iowa. A Notice of Hearing was issued on August 17, 2001. A hearing was scheduled for February 5, 2002. The Respondent did not appear for the hearing. When it was discovered that service had been made by certified, rather than restricted certified mail, the Board elected to continue the hearing. On February 6, 2002, a second Notice of Hearing was issued, which was served on the Respondent by restricted certified mail.

The Statement of Charges alleged that the Respondent salon permitted an unlicensed employee or person under the licensee's control to perform activities requiring a license, in violation of Iowa Code sections 157.2, 157.3, 157.13 (2001) and 645 IAC 65.12(9) (a) [now 645 IAC 65.1(9) (a)]

A hearing was held on May 7, 2001 at 9:00 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent did not appear and was not represented by counsel. The state was represented by John Lundquist, Assistant Attorney General. The following Board members were present for the hearing: Curtis Stamp, Chairperson; Sheila O'Hern; Mary Beth Myers; Teresa Mertens; Lois Leytem; Jack Morlan; and Michael Salvner. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board with the conduct of the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2001), 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)(2001) to deliberate its decision. The administrative

law judge was instructed to prepare the Board's decision, in accordance with its deliberations.

THE RECORD

The record includes the Statement of Charges, Notices of Hearing, the testimony of the witness, and the state's exhibits 1-6.

FINDINGS OF FACT

1. The Board issued cosmetology salon license number 002-A00243 to the Respondent on January 9, 1998. Respondent's cosmetology license is active and current through December 31, 2002. Board records show that Loan Thi Tran is the owner of Secret Nails. Its last known address is 4444 First Avenue N.E., Cedar Rapids, Iowa. (Testimony of Teri Mahoney; State Exhibit 2)

2. The Board filed a previous Statement of Charges against Respondent Secret Nails, which alleged that the salon used products containing methyl methacrylate (MMA) and other sanitation violations. This Statement of Charges was eventually resolved by Settlement Agreement and Consent Order, which was approved by the Board on June 5, 2001. Pursuant to the terms of the Settlement Agreement and Consent Order, the salon license for Secret Nails was placed on probation for a period of two years, subject to certain terms and conditions. The terms and conditions of probation included but were not limited to filing quarterly reports identifying all employees and their licensure status and ensuring that nail technology services were only performed by persons properly licensed in the state of Iowa. (Testimony of Teri Mahoney; State Exhibit 4)

3. On January 23, 2001, Rudy Vasquez, an investigator from the Iowa Department of Inspections and Appeals, went to Secret Nails Salon to investigate a written complaint that had been filed with the Board. Upon his arrival, Mr. Vasquez noticed two people working on two customers. One of the two persons working on a customer was identified as Loan Thi Tran, the salon owner. The other person was identified as Kim Trinh. Kim Trinh did not speak English very well. With the help of the owner, it was determined that Kim Trinh did not have a driver's license or an Iowa Nail Technician license. Kim Trinh furnished the

investigator with a Resident Alien Identification card and a state of Nebraska Nail Technician license. (Testimony of Teri Mahoney; State Exhibit 3)

4. The current Statement of Charges was filed on August 24, 2001. The Statement of Charges and Notice of Hearing were served on Loan Thi Tran by restricted certified mail on February 9, 2002. She did not appear for the hearing. (Testimony of Teri Mahoney; State Exhibits 1, 6; Second Notice of Hearing)

CONCLUSIONS OF LAW

I. Failure to Appear

645 IAC 11.6(1)"b" provides that the statement of charges and notice of hearing may be served by restricted certified mail, return receipt requested. The owner of the Respondent Secret Nails was properly served with the statement of charges and notice of hearing. The Respondent failed to appear for the hearing.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. 645 IAC 11.21(1). The Board was authorized to proceed with the hearing in the absence of the Respondent.

II. Allowing An Unlicensed Person To Practice Cosmetology

The Iowa Board of Cosmetology Arts & Sciences Examiners was created by the legislature, pursuant to Iowa Code chapters 147 and 157, and was directed to adopt rules to implement the provisions of Iowa Code chapter 157. Iowa Code section 157.14 (2001). Any license issued by the department can be suspended, revoked, or renewal denied for violation of any provision of Iowa Code chapter 157 or the rules promulgated by the Board. Iowa Code section 157.9 (2001).

Iowa Code section 157.2(1)(2001) provides that it is unlawful for a person to practice cosmetology arts and sciences with or without compensation unless the person possesses a license issued under section 157.3. Iowa Code section 157.13 provides that it is unlawful for a person to employ an individual to

practice cosmetology arts and sciences unless the individual is licensed or has obtained a temporary permit. "Cosmetology" means...manicuring the nails of any person...nail technology. Iowa Code section 157.1(3)(c) and (f). The "Cosmetology arts and sciences" include nail technology. Iowa Code section 157.1(4)(d) (2001).

645 IAC 65.1(9)(a) [formerly 645 IAC 65.12(9)(a)] provides that the Board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2)"a" to "f", including the imposition of a civil penalty which shall not exceed \$1,000, for permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

The preponderance of the evidence established that Secret Nails violated Iowa Code sections 157.2, 157.13 and 645 IAC 65.1(9)(a) when it permitted an unlicensed person to perform activities (i.e., nail technology and/or manicuring nails) requiring a license. This violation was established through the investigator's report. There is no contrary evidence in the record.

III. Sanction

Allowing an unlicensed person to practice cosmetology without a license is a serious violation. In determining the appropriate sanction, the Board considered the terms of the salon's current probation. The Board notes that the current violation was discovered after the first Statement of Charges was filed against this salon but before the current probation was approved pursuant to a Settlement Agreement and Consent Order. The Board believes that the terms of the prior probation are relevant and appropriate to address this violation and should be continued.

However, since this salon has had prior violations, the Board also believes that additional sanctions are necessary in order to ensure future compliance. The Board has determined that a citation and warning, a civil penalty, and an additional period of probation are appropriate sanctions given the seriousness of this violation, the Respondent's history of prior violations, and the Respondent's failure to respond to Board's Notice of Hearing.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the Respondent Secret Nails, license no. 002-A00243, is hereby issued a CITATION AND WARNING, which is attached to this Decision and Order.

IT IS FURTHER ORDERED, that the Respondent Secret Nails, license no. 002-A00243, shall pay a civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED, that the probationary status of salon license no. 002-A00243, issued to Respondent Secret Nails, shall continue for a period of two (2) years from the date of issuance of this Decision and Order, subject to the following terms and conditions:

1. The Respondent shall comply with all relevant statutes and administrative rules in the course of its operation as a nail technology salon. Within its salon, the Respondent shall only permit nail technology services to be performed by persons who are properly licensed by the state of Iowa. The Respondent salon shall be maintained in a clean and sanitary manner as required by Board rules.

2. The Respondent shall file quarterly reports with the Board listing the salon's nail technicians. The quarterly employee reports shall be typewritten and shall attest to the following information for each and every person who performed nail technology services with the Respondent salon during the three month period immediately preceding the report:

- a. The name of the employee who performed nail technology services.
- b. The license number and expiration date for the employee's Iowa cosmetology and/or nail technology license.
- c. The employee's date of hire.
- d. If applicable, the employee's date of termination.

The failure of the Respondent salon to provide complete and truthful information in the quarterly employee reports shall constitute a violation of this order. The first report required by this Order shall be submitted to the

Board by September 1, 2002, and each report thereafter by the first day of every subsequent third month (December, March, June, September)

3. The Respondent shall provide all necessary supervision or oversight over its employees who provide nail technology services so as to prevent the use of any products or chemical that contain Methyl Methacrylate (MMA) on consumers receiving nail technology services at the Respondent salon. Respondent shall monitor and ensure its employees' compliance with all other applicable health and sanitation standards.

4. Upon request, the Respondent shall identify the brand name of the products or chemicals used in its salon while performing nail technology services and specify for what purpose each product is used. The Respondent shall make available for inspection by its consumers of nail technology services copies of the labels for the products or chemicals used in its salon while performing nail technology services and copies of the Material Safety Data Sheets (MSDS) for those products.

5. Upon the Board's request, the Respondent shall permit the Board or its designee to collect samples of all products or chemicals used in the Respondent Salon on consumers of nail technology services. The Board will have all collected product and chemical samples analyzed at the University of Iowa Hygienic Laboratory in Iowa City, Iowa to determine whether the samples contain Methyl Methacrylate. The cost of all chemical analysis will be assessed to the Respondent. The Respondent shall pay these costs in full to the Board within 60 days. The Respondent's maximum liability for chemical analysis shall not exceed \$500.

6. Upon request of the Board, the owner of the Respondent establishment shall appear before the Board to report on the status of the Respondent's operations as a nail technology salon and to answer any questions or concerns the Board may have regarding the Respondent's compliance with this Order. The Board shall provide the Respondent with reasonable notice of the date, time, and place for any requested appearance.

7. The Board or its designee shall have the right to verify the Respondent salon's compliance with all provisions of this order through established investigative protocols including, but not limited to, examination of Board records, interviews with persons identified as salon employees or clients, and by conducting unannounced inspections of the Respondent salon.

8. If at any time during this probation the Respondent violates any provision of this Order, the Board may hold a hearing pursuant to Iowa Code section 272C.3(2)"a"(2001), because of failure of the Respondent to comply with the terms of this Order. Any such violation would result in consideration by the Board of more serious sanctions, including revocation.

9. Successful completion of the probationary period shall constitute a final disposition of this matter.

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

Dated this 4th day of June, 2002.

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 or 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).

DIA No. 01DPHCE006

Page 8

Pursuant to Iowa Code section 17A.19(2001) 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.