

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

IN THE MATTER OF:)	
)	CASE NO. 09-007
Regal Nails)	
License No. 008563)	
and)	NOTICE OF HEARING
Hong Cam Phung)	AND STATEMENT OF CHARGES
License No. 00491)	
)	
RESPONDENTS)	
)	

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 Regal Nails was issued Iowa salon license no. 008563 on November 4, 2000 and operates a salon located at 1001 73rd St., Windsor Heights, Iowa 50311. Respondent's salon license is current and will next expire on December 31, 2010. Respondent Phung was issued a nail technology license no. 00491 on November 6, 1996 and the license will next 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 9:30 AM and shall be located in the Lucas State Office Building, 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) 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.

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 sanitize or discard nail buffers after use on a client in violation of 645 IAC 63.18(3) and with failing to disinfect and store nonelectrical instruments and equipment in accordance with 645 IAC 63.12.

COUNT II

Respondent is charged under 645 IAC 65.2(13) with failing to properly record cleaning and disinfecting of each whirlpool foot spa in violation of 645 IAC 63.25(5).

COUNT III

Respondent is charged under 645 IAC 65.2(13) with having a product containing liquid methyl methacrylate monomer or methylene chloride on its premises in violation of 645 IAC 63.18(1).

COUNT IV

Respondent is charged with engaging in conduct that subverts or attempts to subvert a board investigation in violation of 645 IAC 65.2(18).

D. FACTUAL CIRCUMSTANCES.

1. During investigations on March 13 and November 13, 2009, the investigator observed used electric bits, nail buffers, non-sanitizable emery files, and sandpaper bands in the salon. Clippers and nippers were stored in unclean drawers with papers and pens. Barbicide was cloudy and contained debris

2. During the investigations, the spa cleaning log was present, but it did not show bi-weekly cleanings.

3. During the investigation on November 13, the investigator observed an employee throw a container away. The investigator retrieved the container from the garbage, but Respondent Phung seized the container while the investigator's back was turned and again attempted to throw the container away. The investigator retrieved the container a second time. When questioned about throwing the liquid and container away, Respondent owner said it was dirty. Two samples of liquid were obtained and tested for the presence of methyl methacrylate (MMA) at the University of Iowa Hygienic Laboratory. Test results revealed the sample of liquid taken from garbage contained MMA.

4. A letter sent by the Board on July 20, 2009 identifying concerns found during the investigation on March 13, 2009 had not been corrected.

5. Respondent owner was sanctioned by the Board in 2008 for harmful practices, failure to properly record the cleaning and disinfecting of whirlpool foot spas, having used nail buffers in the salon, and using products containing MMA.

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.