

STATE OF IOWA  
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

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IN THE MATTER OF:	)	
	)	NO. 08-044 & 09-067
Spa Nails,	)	DIA NO. 10DPHCE005
License No. 102501, and	)	
	)	FINDINGS OF FACT,
Huy Ngoc Hoang, Owner	)	CONCLUSIONS OF LAW,
License No. 066041	)	DECISION AND ORDER
	)	
RESPONDENTS	)	

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On March 4, 2010, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Spa Nails, a licensed salon in the state of Iowa and its owner, Huy Ngoc Hoang, a licensed nail technician in the state of Iowa. (Respondents). Respondents were charged with the following three counts:

Count I: Violating 645 IAC 65.2(13), by failing to properly clean and disinfect its whirlpool foot spas and by failing to document the cleanings, in violation of 645 IAC 63.25(2)-(5).

Count II: Violating 645 IAC 65.2(13) by engaging in unsanitary practices, in violation of Iowa Code section 157.6 and 645 IAC 63.12(1), 63.14, 63.17(3), and 63.18(3).

Count III: Violating 645 IAC 65.2(21) by failing to comply with the terms of a Board order.

The hearing was held on April 5, 2010 at 11:00 a.m. in the Lucas State Office Building, third floor conference room, Des Moines, Iowa. Respondent Huy Ngoc Hoang appeared for hearing and was self-represented. The state was represented by Assistant Attorney General Scott Galenbeck. The following Board members were present for the hearing: Jack Morlan, Chairperson; Becky J. Brockmann; Kimberly Setzer; Richard Mosley; Dana Atkins, Karen Thomsen, and Jerry Talbott. Administrative Law Judge Margaret LaMarche assisted the

Board in conducting the hearing. The hearing was closed to the public<sup>1</sup> and was recorded by a certified court reporter. The Board convened in closed session following the hearing to deliberate its decision.<sup>2</sup> The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

## THE RECORD

The record includes the testimony of the witnesses and State Exhibits 1-4 (See Exhibit Index for description).

## FINDINGS OF FACT

1. Huy Ngoc Hoang is the owner of Spa Nails, which is located at 111 Sale Barn Road, Suite 6, in Storm Lake, Iowa. Mr. Hoang was issued Iowa salon license no. 102501 on September 8, 2008. The salon license is current and will next expire on December 31, 2010. Mr. Hoang was issued nail technology license 066041 on July 25, 2008. The nail technology license is current. (State Exhibits 2, 4; Testimony of Huy Ngoc Hoang)

2. On April 6, 2009, Respondents and the Board entered into a Combined Notice of Hearing, Settlement Agreement, and Final Order. Respondents were charged with four violations, including:

- Failure to properly clean and disinfect whirlpool foot spas and maintain a cleaning record [Count I];
- Failure to properly post a copy of the most current sanitation rules in the reception area at eye level [Count II];
- Engaging in unsanitary practices [Count III]; and
- Possessing a razor-edged device [Count IV].

Respondents voluntarily waived the right to hearing on those charges and agreed to:

- Pay a civil monetary penalty of \$650.00 within 60 days; and
- Complete four (4) hours of board approved continuing education applicable to cosmetology salon sanitation within six (months).

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<sup>1</sup> Iowa Code section 272C.6(1)(2009) allows the licensee to request a closed hearing.

<sup>2</sup> Closed session is authorized by Iowa Code section 21.5(1)(f)(2009).

(State Exhibit 4)

3. Respondents paid the \$650 civil penalty. However as of April 5, 2010, Respondent Huy Ngoc Hoang had not completed the required four hours of continuing education applicable to cosmetology salon sanitation. At hearing, Mr. Hoang told the Board that the school located in Storm Lake did not offer the type of courses he was required to take, and he needed assistance in locating a school that offered the courses. (Testimony of Huy Ngoc Hoang)

4. On October 2, 2009, Department of Inspections and Appeals (DIA) Investigator Kimberly Groves made an unannounced visit to Spa Nails in response to a customer complaint. Respondent Huy Ngoc Hoang and three employees were present in the salon when Ms. Groves arrived. Ms. Groves observed the posted licensees for Mr. Hoang and the three employees. Ms. Groves observed 6 manicure stations and 7 pedicure spas in the salon. Mr. Hoang speaks English, but one of his female employees provided translation assistance when Ms. Groves explained the results of her inspection. Kimberly Groves documented the following violations at the salon:

- Four of the whirlpool spa jets and screens contained debris and a gritty material.
- The whirlpool spa log did not indicate bi-weekly cleanings. Huy Ngoc Hoang was unsure what was required for bi-weekly cleanings.
- Supplies such as clippers and nippers were located in drawers with money.
- Unsanitizable used nail buffers and nail files were located with clean supplies.
- There was a chamois buffer in the salon.
- The salon did not have a biohazard bag.

(Testimony of Kimberly Groves; State Exhibit 1)

5. At hearing, Huy Ngoc Hoang told the Board that two of the seven foot spas were not in use at the time of the inspection, and that he had called a plumber for repairs. Kimberly Groves does not recall Mr. Hoang reporting this information to her at the time of her inspection, and her notes and investigation report do not state that two spas were out of order. Even if two of the dirty spas

were actually out of order, there were still two additional working whirlpool foot spas that had not been properly cleaned at the time of the inspection.

Mr. Hoang told the Board that he had not found a supplier that carries biohazard bags. He also told the Board that the used chamois buffer found by the inspector belonged to a customer. Finally, Mr. Hoang told the Board that he was collecting the nippers and clippers in the drawer and would be sending them out for sharpening. (Testimony of Huy Ngoc Hoang; Kimberly Groves; State Exhibit 1)

### CONCLUSIONS OF LAW

645 IAC 65.2(13) provides authority for the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

Count I: *Failing to Maintain a Cleaning Record for the Whirlpool Foot Spa*

645 IAC 63.25 provides the procedures for proper cleaning and disinfecting of whirlpool foot spas after each use, at the end of each day, and biweekly. In addition, the rule requires salons to maintain a record of cleaning and disinfecting. 645 IAC 63.25<sup>3</sup> provides, in relevant part:

**645-63.25(157) Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths.**

**63.25(1)** As used in this rule, "whirlpool foot spa," "foot spa," "whirlpool," or "spa" is defined as any basin using circulating or still water.

**63.25(2)** After use for each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

- a.* All water shall be drained and all debris shall be removed from the spa basin.
- b.* The spa basin must be cleaned with soap or detergent and water.
- c.* The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and

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<sup>3</sup> These rules were in effect at the time of the inspection. The rules were recently revised and no longer require biweekly cleaning.

virucidal activity which must be used according to the manufacturer's instructions.

*d.* The spa basin and hydrotherapy bath must be wiped dry with a clean towel.

**63.25(3)** At the end of each day, the whirlpool foot spa must be cleaned and disinfected in the following manner:

*a.* The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and inlet shall be washed with soap or detergent and water.

*b.* Before the screen is replaced, it shall be completely immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

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**63.25(4)** Every other week (biweekly), after being cleaned and disinfected as provided in subrule 63.25(3), each whirlpool foot spa and hydrotherapy bath shall be cleaned and disinfected in the following manner;

*a.* The spa basin...shall be filled completely with water and one teaspoon of 5.25 percent bleach or recommended whirlpool disinfectant for each one gallon of water, or a solution of sodium hypochlorite (bleach) of approximately 50 ppm used according to the manufacturer's instructions.

*b.* The spa...shall be flushed with the bleach or recommended whirlpool disinfectant and water solution...for five to ten minutes and allowed to sit for six to ten hours.

*c.* The spa...shall be drained and flushed with water before use for a patron.

**63.25(5)** For each foot spa and hydrotherapy bath, a record shall be made of the date and time of each cleaning and disinfecting as required by subrules 63.25(3) and 63.25(4), and shall indicate whether the cleaning was a daily or biweekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting must be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event.

The preponderance of the evidence established that Respondents Spa Nails and Huy Ngoc Hoang violated 645 IAC 65.2(13) by failing to properly clean the whirlpool foot spas and failing to maintain the cleaning record, as required by 645 IAC 63.25(2)-(5). At the time of the October 2, 2009 inspection, at least two of the working whirlpool foot spas had debris and gritty material visible in the jets and screens. This indicated that the spas had not been properly cleaned between customers. Respondents had a cleaning record at the time of the inspection, but the record did not document bi-weekly cleanings of the spas.

Count II: Engaging In Unsanitary Practices

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences and to make necessary inspections for enforcement purposes.<sup>4</sup>

645 IAC 63.17(3) provides that hazardous waste containers *and* bags shall be available for use at all times when services are being performed and their absence is prima facie evidence of noncompliance. Respondents violated this rule because there were no biohazard bags in the salon at the time of the inspection.

645 IAC 63.12(1) requires all nonelectrical instruments to be disinfected by an EPA-registered, hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions. 645 IAC 63.14 provides that all instruments and supplies that come into direct contact with a client and cannot be disinfected shall be disposed of in a waste receptacle immediately after use. 645 IAC 63.18(3)"b" and "c" provide that if a nail buffer cannot be sanitized it may not be used on more than one customer and that the presence of chamois buffers in the work place is prima facie evidence of their use.

The preponderance of the evidence established that Respondents violated 645 IAC 63.12(1), 63.14, and 63.18(3)"b" and "c" when nail chamois nail buffers were located on the premises, when nippers and clippers were improperly stored in drawers with money, and when used nail buffers and nail files were located with clean supplies.

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<sup>4</sup> Iowa Code section 157.6(2009).

*Count III: Failure To Comply With Board Order*

645 IAC 65.2(21) provides that the Board may impose any of the disciplinary sanctions provided in rule 645 IAC 65.3 when the Board determines that a licensee has failed to comply with the terms of a board order. The preponderance of the evidence established that Respondents violated 645 IAC 65.2(21) when they failed to comply with the Board order requiring them to complete four hours of board-approved continuing education on cosmetology salon sanitation.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondents Spa Nails (license number 102501) and Huy Ngoc Hoang (license number 066041) shall pay a monetary civil penalty of \$800 to the Board within sixty (60) days of the issuance of this Decision and Order. The \$800 civil penalty includes:

- An assessment of \$300 for failure to properly clean the whirlpool foot spas and failure to document bi-weekly cleanings in the log [Count I];
- An assessment of \$300 for the other sanitation violations [Count II]; and
- An assessment of \$200 for the failure to comply with the Board Order requiring completion of continuing education [Count III].

IT IS FURTHER ORDERED that Respondent Huy Ngoc Hoang shall complete the four (4) hours of board-approved continuing education applicable to cosmetology salon sanitation (or to the laws and rules that include Iowa Code chapter 157 and Iowa Administrative Code chapters 59 through 65) as required in the Combined Notice of Hearing, Settlement Agreement, and Final Order. Respondent may call the Board office for assistance in identifying courses that will meet this requirement. Respondent Huy Ngoc Hoang shall complete the four hours of continuing education within sixty (60) days of the issuance of this Decision and Order. The four hours of continuing education may not be used for license renewal.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents Spa Nails and Huy Ngoc Hoang shall pay \$75.00 for fees associated with the disciplinary hearing and \$75.63 for the court reporter fees. The total fees of \$150.63 shall be paid within thirty (30) days of receipt of this decision.

This Findings of Fact, Conclusions of Law, Decision and Order is accepted by the Iowa Board of Cosmetology Arts and Sciences on the 28th day of April, 2010.

Pursuant to Iowa Code section 17A.19(2009) 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.