

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

IN THE MATTER OF:)	
)	CASE NO. 07-089
Helen's Nails)	
License No. 011141)	
and)	NOTICE OF HEARING
Binh Lam, Owner)	AND STATEMENT OF CHARGES
and)	
Minh Kim McWithey, Owner)	
License No. 01050)	
)	
RESPONDENT)	
)	

COMES NOW the Iowa Board of Cosmetology Arts and Sciences and files this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent Binh Lam was issued Iowa salon license no. 011141 on January 20, 2006. The above named Respondent is the owner of Respondent salon, Helen's Nails, located at 7450 Bridgewood Blvd, Suite 220, West Des Moines, Iowa 50266. Respondent's salon license is current and will next expire on December 31, 2008. The Board's investigation revealed Minh Kim McWithey is also the owner of the salon.¹

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on July 14, 2008 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 1:00 PM and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of

¹ The salon application submitted to the Board by Binh Lam failed to disclose Minh Kim McWithey's status as co-owner of the salon.

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: Julie Bussanmas, 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. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

Respondent is charged with employing individuals who do not hold an Iowa license to practice cosmetology arts and sciences in violation of Iowa Code section 157.13(1) and 645 IAC rules 63.4(1) and 65.2(28).

COUNT II

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 Iowa Administrative Code 65.2(13) by failing to have required

hazardous waste containers and bags in violation of 645 Iowa Administrative Code 63.17(3) and for failing to sanitize or discard nail buffers after use on a client in violation of 645 IAC 63.18(3).

COUNT III

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 Iowa Administrative code 65.2(13) by failing to post a copy of the sanitation rules and the most recent inspection report in a conspicuous place in the salon in violation of 645 IAC 63.2 and by failing to properly record cleaning and disinfecting for each whirlpool foot spa in violation of 645 IAC 63.25(5) (2006).

COUNT IV

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by having a product containing liquid methyl methacrylate monomer or methylene chloride on its premises in violation of 645 IAC 63.18(1).

D. FACTUAL CIRCUMSTANCES.

1. During an investigation on December 13, 2007, an employee who did not hold an Iowa cosmetology or nail technology license was observed giving a customer a pedicure. The employee alleged he was only there to fix the computer although the investigator observed him providing nail technology services. When the investigator asked to see government-issued identification, the employee provided a driver's license that belonged to another individual.

2. The investigation revealed no record of whirlpool foot spa cleaning. A copy of the most recent inspection and current sanitation rules were not posted in a

conspicuous place. No hazardous waste container could be found during the investigation. Used nail buffers were present in the salon that had not been placed in a receptacle after use or disposed of in a waste receptacle as required. Additionally, during a salon inspection on May 23, 2007, the salon was cited for failure to have proper spa cleaning records, failure to have sanitation rules and inspection report posted and for used nail buffers.

3. During the investigation, two samples of liquid were obtained. The samples were tested for the presence of methyl methacrylate (MMA) at the University of Iowa Hygienic Laboratory. Test results revealed both samples of liquid taken from Respondent salon contained MMA.

4. During this investigation, employees informed the investigator that Kim McWithey was the owner of the salon. Ms. McWithey is not listed as an owner of the salon. Initially, Ms. McWithey denied ownership to the Board's investigator and said she was the manager when questioned regarding ownership. Ms. McWithey ultimately admitted that she was co-owner of the salon.

5. Respondent salon and owner Binh Lam were sanctioned by the Board in 2006 for harmful practices, using products containing MMA, employing unlicensed individuals to perform nail technology services, failure to properly sanitize whirlpool footspas, and having used nail buffers in the salon during the inspection of the salon on April 12, 2005. Respondent salon was placed on probation for one year.

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 Julie Bussanmas, Assistant Attorney General, at 515-281-4419.

F. PROBABLE CAUSE FINDING

On the 25th day of February, 2008, 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 May 9, 2008.