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

IN THE MATTER OF:	)	
	)	NO. 10-082
Glory Nails	)	DIA NO. 11IBC027
License No. 101981	)	,
	)	FINDINGS OF FACT,
Phong Duc Nguyen, owner,	)	CONCLUSIONS OF LAW,
License No. 01641	)	DECISION AND ORDER
	)	
RESPONDENTS		

On October 4, 2011, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Glory Nails, a licensed salon in the state of Iowa, and its owner, Phong Duc Nguyen, a licensed nail technician in the state of Iowa. Respondents were charged with the following six counts:

Count I: Engaging in unsanitary practices in violation of Iowa Code sections 147.55, 157.6, and 157.9(2009) and 645 IAC 65.2(13), 63.11, 63.13, 63.14, 63.15, 63.25.

Count II: Failing to post a copy of the most recent sanitation rules and the most recent inspection report at eye level in the reception area, in violation of Iowa Code sections 147.55, 157.9(2009) and 645 IAC 65.2(13) and 63.2.

Count III: Failing to post a copy of the professional licenses at eye level in the reception area of the salon, in violation of 645 IAC 65.2(13), 61.5 and 63.4(1).

Count IV: Having on the premises a prohibited product containing liquid methyl methacrylate monomer, in violation of 645 IAC 65.2(13) and 63.18(1).

Count V: Permitting a licensed individual to perform activities outside the scope of her license, in violation of Iowa Code sections 147.55, 157.9, 157.13(1)(2009) and 645 IAC 65.2(5), 65.2(13), and 65.2(29).

The hearing was held on December 5, 2011 at 2:00 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The state was represented by Assistant Attorney General David Van Compernolle. Respondents were self-

represented by Phong Duc Nguyen. The following Board members were present for the hearing: Kimberly Setzer, Chairperson; Richard Mosley; Dana Atkins; Richard Sheriff; Jerry Talbott; and Mary Clausen. Administrative Law Judge John M. Priester assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009), 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)(2009), to deliberate its decision. 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 DIA Investigator Tamara Adams and Phong Duc Nguyen and the Investigative Report dated September 28, 2010.

#### FINDINGS OF FACT

- 1. On August 2, 2007, the Board issued Iowa salon license number 101981 to Glory Nails, located at 200 High Avenue West #13 in Oskaloosa, Iowa. Salon license No. 101981 expires on December 31, 2012. Respondent Phong Duc Nguyen is the owner of Glory Nails, and he was issued nail technology license no. 01641. License no. 01641 will expire on March 31, 2012. (Investigative Report, page 1)
- 2. On August 27, 2010 a complaint was filed against Glory Nails by a patron who had a pedicure performed on her. The customer reported that after her pedicure her foot became infected. (Testimony of Investigator Adams, Investigative Report, page 1)
- 3. On September 10, 2010, Department of Inspections and Appeals (DIA) Investigator Tamara Adams made an unannounced visit to Glory Nails. Owner Phong Duc Nguyen was present at the salon at the time of the inspection. The following employees' licenses were obtained after requesting: Giang TQ Dinh, nail technician license number 01824 expiring on March 31, 2011; and Khanh Hau Truong nail technician license number 068066 expiring on March 31, 2012. A license was not posted for salon number 101945. (Testimony of Investigator Adams, Investigative Report, page 2)

- 4. The investigator made the following discoveries:
  - \*The salon license was not posted.
  - \*No personal licenses or renewal cards were posted in the salon.
  - \*Sanitation rules were not posted.
  - \*The inspection report was not posted.
  - \*Dirty metal bits were found in the manicure stations.
  - \*Used files and buffers that had not been discarded were found throughout the salon.
  - \*A small chamois buffer used on electrical instruments was found in a manicure station. The buffer was coated with a pink waxy substance.
  - \*The salon did not have a whirlpool spa log.
  - \*Three of the four pedicure spas were inspected and grey, stringy debris was found behind the screens. The fourth was used by a customer and inaccessible.
  - \*Disinfectant was not located at all manicure stations.
  - \*One jar of Barbicide was found at a manicure station. The nail instruments were not fully submerged.
  - \* Giang Thi Quynu Dinh performed eyebrow waxing at the salon while only holding a nail technician license.
- \*Investigator Adams gathered two samples of liquid from Glory Nails on September 10, 2010 to test for Methyl Methacrylate Acid (MMA). These samples were transported to the University of Iowa Hygienic Laboratory for analysis. Sample #1 retrieved from the container located in the garbage contained 600,000 mg/L of MMA and sample #2 retried from the container at the manicure work station contained 590,000 mg/L of MMA. (Testimony of Adams; Investigative Report, page 4)
- 5. The Respondent testified on his own behalf. He explained that after the customer complained he gave her the money back for her pedicure and the other three people with her. Concerning the whirlpool spas, the Respondent testified that they are cleaned out every night by cleaning the screens. He said they disinfect the spas after each customer. (Testimony of Nguyen)

#### CONCLUSIONS OF LAW

The Board is authorized to impose disciplinary sanctions on licensees for violations of Iowa Code chapters 147, 157, or the rules promulgated by the Board. Iowa Code sections 147.55(9); 157.9; and 645 IAC 65.2(13).

## Count I: Unsanitary Practices

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences, which shall include sanitary conditions necessary for the practice of cosmetology arts and sciences and for the prevention of infectious and contagious diseases. The Board is also authorized to make necessary inspections for enforcement purposes. Iowa Code §157.6 (2009). The Board has promulgated rules on Sanitation for Salons and Schools of Cosmetology Arts and Sciences at 645 IAC chapter 63.

645 IAC 63.11 addresses universal precautions, which are to be consistently practiced by all licensees and students. The rule requires all instruments and implements to be disinfected in accordance with subrule 63.12. 645 IAC 63.11(6). Instruments and supplies that have been used on a client or soiled in any manner shall be placed in a proper receptacle. 645 IAC 63.11(7).

645 IAC 63.13 provides the proper procedures for disinfecting instruments and equipment. The rule requires all tools and implements to be disinfected by complete immersion in an EPA-registered disinfectant mixed and used according to the manufacturer's directions. 645 IAC 63.13(1). Disinfected implements shall be stored in a disinfected, dry, covered container and shall be isolated from contaminants. 645 IAC 63.13(2). Disinfectant solutions shall be changed at least once per week or whenever visibly dirty. 645 IAC 63.13(3). Instruments and supplies that cannot be disinfected, for example cotton pads, sponges, applicators, emery boards, nail buffers, arbor or sanding bands, sleeves, toe separators and neck strips, shall be disposed of in a waste receptacle immediately after use. 645 IAC 63.14.

The preponderance of the evidence established that there were numerous violations of the Board's sanitation rules at Glory Nails at the time of the September 10, 2010 investigation. The spa failed to properly sanitize and document the cleaning of the whirlpool spas; used nail buffers and other used nail supplies were found throughout the salon; dirty nail bits were found at manicure stations; grey, stringy debris was found beneath spa screens; and the barbicide did not completely cover the instruments all in violation of 645 IAC 63.11, .13, .14. .15 and .25.

## Count II: Failure to Post Rules

645 IAC 63.2(13) provides that a copy of the most recent inspection report and current sanitation rules shall be posted in the reception area at eye level in the salon for the information and guidance of the general public.

The preponderance of the evidence established that Respondents Glory Nails and Phong Duc Nguyen violated 645 IAC 63.2 by failing to post the most recent inspection report and current sanitation rules at eye level in the reception area, in violation of 645 IAC 63.2.

## Count III: Failure to Properly Post Professional License in Reception Area at Eye Level

645 IAC 61.5 requires salons to pose the salon license and current renewal card and the original license certificate, duplicate certificate, or reissued certificate for each licensee employed by the salon in the reception area at eye level.

The preponderance of the evidence established that Respondents violated 645 IAC 65.2(13) and 61.5 by failing to post the salon license and licenses of employees at eye level in the salon. The licenses were not posted.

<u>Count IV: Having A Product Containing Liquid Methyl Methacrylate Monomer On The Premises</u>

645 IAC 63.18(1) provides, in relevant part:

# 645-63.18(157) Prohibited hazardous substances and use of products and equipment.

**63.18(1)** No salon or school shall have on the premises cosmetic products containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products. Prohibited products include, but are not limited to, any product containing liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is not approved by the FDA. The presence of the product in a salon or school is prima facie evidence of that product's use in the salon or school.

The preponderance of the evidence established that Respondents violated 645 IAC 65.2(13) by having a nail product containing liquid methyl methacrylate (MMA) at a nail station on September 10, 2010, in violation of subrule 63.18(1).

## Count V: Practice Beyond Scope of License

Iowa Code section 157.1(24)(c) defines the practice of nail technology. The practice of nail technology includes removing superfluous hair from hands, arms, feet, or legs of a person by the use of wax or a tweezer but does not include the face. Iowa Code section 157.1(5)(c)(2009). 645 IAC 65.2(5) authorizes the Board to discipline licensees for practicing outside the scope of the profession. 645 IAC 65.2(29) authorizes the Board to discipline licensees for permitting an unlicensed employee or a person under the licensee's or licensed salon's control to practice outside the scope of the person's license.

The preponderance of the evidence established that Respondents Glory Nails and Phong Duc Nguyen violated Iowa Code section 157.1(5) and 645 IAC 65.2(5) and 65.2(29). The Respondent admitted that Giang Thi Quynu Dinh performed eyebrow waxing at the salon while only holding a nail technician license.

### Sanction

The violations affect the public health, safety, and welfare and more than justify the maximum civil penalties of \$1,000 for both licensed Respondents. Moreover, if the salon is to continue to operate, it must be subject to ongoing oversight by the Board through a two year period of probation.

### **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Respondent Glory Nails shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that Respondent Phong Duc Nguyen shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that license number 101981, issued to Respondent Glory Nails and license no. 01641 issued to Respondent Phong Duc Nguyen, shall immediately be placed on PROBATION for a period of two (2) years, subject to the following terms and conditions:

- A. Respondents must file quarterly written reports with the Board during the period of probation. The written reports shall include:
  - the name, license number, and license expiration date for each employee;
  - steps taken by the salon to correct the licensing issues identified in this decision.
  - provide a copy of the current spa logs.
- B. Respondent salon will have a follow up inspection approximately six months after issuance of this Decision and Order. In addition, Respondent salon will be subject to random inspections at the discretion of the Board.

IT IS FURTHER ORDERED that Respondent Phong Duc Nguyen, owner of Respondent Glory Nails, shall complete four (4) hours of continuing education on Iowa law and sanitation within six (6) months of the issuance of this decision. Respondent must obtain Board approval before enrolling in any course taken for the purpose of satisfying this obligation. These four (4) hours of continuing education may not be used for license renewal.

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 and \$61.88 for the court reporter fees. The total fees of \$2,136.88 shall be paid within thirty (30) days of receipt of this decision.

FINALLY, IT IS ORDERED that if Respondent fails to comply with any of the terms of this Order, the Board may hold a hearing, pursuant to Iowa Code section 272C.3(2)"a"(2009), and impose further sanctions, up to and including license revocation.

DIA No. 11IBC027

Page 8

Dated this 10th day of January, 2012.

Kimberly Setzer) Chairperson

Iowa Board of Cosmetology Arts & Sciences

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.

cc: David Van Compernolle, Assistant Attorney General