

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

IN THE MATTER OF:)	
)	CASE NO. 09-031
Nail Lovers and Spa)	
License No. 010790)	AMENDED
and)	NOTICE OF HEARING
Victor Phan)	AND STATEMENT OF CHARGES
License No. 00650)	
)	
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 was issued Iowa salon license no. 010790 on April 15, 2005. Above named Respondent is the owner of Respondent salon, Nail Lovers and Spa, located at 4444 1st Ave., NE, Ste. 240, Cedar Rapids, Iowa 52402. Respondent's salon license is current and will next expire on December 31, 2010. Respondent owner was issued nail technology license no. 00650 on February 17, 1998 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 October 5, 2009 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 10:30 AM and shall be located in the Lucas State Office Building, Fifth Floor 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: Jordan Esbrook, 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 violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to properly clean and disinfect its whirlpool footspas and by failing to document the cleanings in violation of 645 IAC 63.25(2) - (5).

COUNT II

Respondent is charged with violating a regulation, rule, or law of this state

pursuant to 645 IAC 65.2(13) by failing to use an EPA registered disinfectant solution and failing to store instruments as required in 645 IAC 63.12(1).

COUNT III

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for failing to post a copy of the most recent sanitation rules at eye level in the reception area of the salon pursuant to 645 IAC 63.2.

COUNT IV

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) for having on the premises razor-edged tools in violation of 645 IAC 63.18(3).

COUNT V

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by having chamois buffers on the premises, in violation of 645 IAC 63.18(3).

COUNT VI

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to use hospital grade disinfectant to clean chairs, in violation of 645 IAC 63.12(1).

COUNT VII

Respondent is charged with employing individuals to practice cosmetology arts and sciences without a license in violation of Iowa Code section 157.13(1) and 645 IAC rules 65.2(28).

COUNT VIII

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

D. FACTUAL CIRCUMSTANCES

1. During an investigation of Respondent salon on May 29, 2009, it was discovered that the sanitation rules were not current and not posted in the reception area.
2. During the investigation the last inspection report was not posted in the reception area.
3. During the investigation it was observed that the whirlpool spa log was not complete and was not signed by a licensee or did not contain a licensee's number as cleaning the spas.
4. During the investigation, corn blades were found in the biohazard container.
5. The investigator observed used nail buffers and files, unclean metal bits still located on instruments, and supplies that were located in drawers with cell phones.
6. Respondent represented that Lysol wipes are used to clean the whirlpool spas after each customer, and the whirlpool screens contained debris.
7. During the investigation, it was observed that a product called Totally Awesome was used to disinfect the chairs. Mr. Victor Phan was told he may use Barbicide, bleach, or other hospital grade disinfectant to clean these spas.

8. Chamois buffers placed on the electrical machines were observed. These buffers were coated with a waxy substance.

9. An individual who did not hold a current license issued by the board was providing services during the investigation. Another individual left the salon when the investigator arrived which is prima facie evidence that an unlicensed person is providing services for which a license is required pursuant to 645—65.2(36). The Respondent was previously cited in 2007 for allowing unlicensed individuals to perform services that require a current license.

10. Three samples of nail liquid were obtained from the Respondent salon and sent to the University of Iowa Hygeinic Laboratory to test for methyl methacrylate monomer (MMA). One bottle, from which a sample was taken, was observed being thrown into the garbage by an employee.

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 Jordan Esbrook, Assistant Attorney General, at 515-281-7262.

F. PROBABLE CAUSE FINDING

On the 13th day of July, 2009, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.

This amended notice of hearing and statement of charges is approved by the board on September 15, 2009.