

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	CASE NO. 10-070
Best Nails)	DIA NO. 13IBC001
License No. 102306)	
)	FINDINGS OF FACT,
Hang Thi Cam Le, owner)	CONCLUSIONS OF LAW,
License No. 01653)	DECISION AND ORDER
)	

RESPONDENTS

On April 6, 2011, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Best Nails, a licensed salon in the state of Iowa, and its owner, Hang Thi Cam Le, who is a licensed nail technologist. Both Respondents were charged with the following six counts:

Count I: Engaging in unsanitary practices, in violation of Iowa Code sections 157.6(2013)¹ and 645 IAC 63.11, 63.13, 63.15, 63.19 and 63.25.

Count II: Failing to post professional licenses, in violation of 645 IAC 61.5(3) and 61.5(4);

Count III: Failing to provide for biohazard disposal, in violation of 645 IAC 63.11(3).

Count IV: Failing to post a copy of the most recent sanitation rules at eye level, in violation of 645 IAC 63.2.

Count V: Employing unlicensed individuals to provide nail technology services, in violation of 645 IAC 65.2(28).

Count VI:² Having on the premises a prohibited product containing liquid methyl methacrylate monomer, in violation of 645 IAC 63.18(1).

¹ The citations in the legal counts should have been to the 2009 Iowa Code and not the 2013 Code because the violations were observed in October 2010. This is a moot point, however, because the cited Code provisions did not change between 2009 and 2013.

The hearing was held on July 8, 2013 at 1:25 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 Compernelle. Respondents were self-represented by Hang Thi Cam Le. The following Board members were present for the hearing: Kimberly Page, Chairperson; Dana Atkins; Richard Mosley; Richard Sheriff; Mary Clausen; and Nicole Schultz. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondents' request, pursuant to Iowa Code section 272C.6(1)(2013), and was recorded by a certified court reporter.

After hearing the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2013), 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 Tamara Adams, Hang Thi Cam Le, State Exhibit A and Respondents Exhibit 1.

FINDINGS OF FACT

1. On April 15, 2008, the Board issued Iowa salon license number 102306 to Best Nails, which is located at 2515 N.W. Arterial, Suite 6, in Dubuque, Iowa. Best Nails' license is current and next expires on December 31, 2014. Respondent Hang Thi Cam Le is the owner of record for Best Nails. Hang Thi Cam Le holds Iowa nail technologist license no. 01653, which next expires on March 31, 2014. (State Exhibit A; Notice of Hearing and Statement of Charges)
2. On October 20, 2010, the Board referred a customer complaint regarding Best Nails to the Iowa Department of Inspections and Appeals (DIA) for investigation. The complainant reported that Best Nails was dirty and was not cleaning after customers.

² This count was misnumbered as Count VII in the Statement of Charges. It will be referred to as Count VI in this Decision and Order. The Statement of Charges only included six counts.

DIA Investigator Tamara Adams made several unsuccessful attempts to contact the complainant to schedule an interview. (Adams testimony; State Exhibit A)

3. On October 21, 2010, Investigator Adams made an unannounced visit to Best Nails. Owner Hang Thi Cam Le and two employees were providing nail technology services to customers when Adams entered the salon. Ms. Le provided Ms. Adams with her own nail technology license and with the salon's license. These licenses were not posted in the salon. (Adams testimony; State Exhibit A)

The two employees were identified as Cong T. Nguyen and Julie Phuong Le. Cong T. Nguyen told Adams that he was licensed in Wisconsin but not in Iowa. Hang Thi Cam Le told Adams that Julie Phuong Le is her mother. She also told Adams that her mother had an active nail technology license in California and that her Iowa license was pending. Ms. Adams reviewed the Iowa Department of Public Health's data base and confirmed that Cong T. Nguyen did not have an Iowa license and that Julie Phuong Le had a pending Iowa license. (Adams testimony; State Exhibit A)

4. Investigator Adams documented the following deficiencies during her visit to Best Nails on October 21, 2010:

- Licenses were not posted in the salon;
- Sanitation rules were not posted in the salon;
- The salon did not have a biohazard bag or a biohazard container, and Ms. Le admitted that the salon did not have them;
- The salon did not have a whirlpool spa log, and Ms. Le admitted that she did not keep a spa log;
- Used sand sleeves were located at the manicure station and had not been discarded after use;
- Dirty metal bits were found on the electrical instruments at unoccupied manicure stations;
- Used buffers and files were found throughout the salon, including the manicure station and pedicure station drawers, and had not been discarded after use;
- All manicure stations had dirty, dusty work surfaces;
- Four of the five whirlpool spa chairs were inspected (one was in use). The screens contained a large amount of stringy black and brown debris. The inlets for the jets had a slimy, orange substance on them. Ms. Le admitted that the

screens were only cleaned weekly and not daily. She cleaned the spas after each customer with Barbicide and nightly with bleach.

In addition, Ms. Adams found unheated wax in the back of the salon. Ms. Le told Adams that the wax was for personal use. Adams later called the salon to inquire about eyebrow waxing and was told that the salon did not provide that service. (Adams testimony; State Exhibit A)

Investigator Adams took two samples of nail liquid from Best Nails. The samples were submitted to the University Hygienic Laboratory in Ankeny for testing and both samples tested positive for Methyl Methacrylate (MMA). One of the samples had an MMA concentration of 550,000 mg/L. The other sample had an MMA concentration of 560,000 mg/L. The quantitation limit for MMA is 20,000 mg/L. (Adams testimony; State Exhibit A, p. 3)

5. At hearing, Hang Thi Cam Le did not dispute the allegations but presented current photographs of her salon to show how the unsanitary conditions had been corrected. All of her employees are now properly licensed, and all licenses are posted in the salon at eye level. The current sanitation rules are also posted in the salon. Ms. Le told the Board that she had been unaware that any of her products contained MMA, but she has now removed those products from the salon. Ms. Le is properly cleaning the salon's spa chairs and maintains a cleaning log. She is using mini disposable buffers and files and does not keep any dirty items on the pedicure cart. (Le testimony; Respondent Exhibit 1)

CONCLUSIONS OF LAW

Iowa Code section 147.55(9), 157.9 (2009) and 645 IAC 65.2(13) authorize the Board to impose disciplinary sanctions, including license revocation or suspension, for violations of Iowa Code chapters 157 or rules promulgated by the Board. The Statement of Charges alleges six separate counts of violation of Board rules by Best Nails and Hang Thi Cam Le (Respondents).

Count I: *Unsanitary Practices*

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences, including 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 section 157.6 (2009). The Board has promulgated rules on Sanitation for Salons and for 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 specifies that all 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). Electric file bits shall be cleaned and disinfected after each use. 645 IAC 63.13(6)"a." Sanding bands are single use items and shall be discarded immediately after use. 645 IAC 63.13(6)"d."

Instruments and supplies that come into direct contact with a person and that cannot be disinfected, for example cotton pads, sponges, applicators, emery boards, nail buffers, arbor or sanding bands, sleeves, toe separators and neck strips, must be disposed of in a waste receptacle immediately after use. 645 IAC 63.14.

The preponderance of the evidence established a number of violations of the Board's sanitation rules at Best Nails at the time of the October 21, 2010 investigative visit. Dirty metal bits were found on the electrical instruments at unoccupied manicure stations, in violation of 645 IAC 63.13(6)(a). The drawers in the manicure stations were unclean. Used disposable buffers, files, and sand sleeves were present throughout the salon and had not been properly discarded, in violation of 645 IAC 63.13(6)"d" and 63.14.

645 IAC 63.25 provides the procedures for proper cleaning and disinfecting circulating and noncirculating foot spas after each use and at the end of each day. In addition, the

rule requires salons to maintain a record of cleaning and disinfecting. 645 IAC 63.25 provides, in relevant part:

645-63.25(157) Cleaning and disinfecting circulating and noncirculating tubs, bowls and spas.

...

63.25(2) At the end of the day, remove all removable parts, such as filters, screens, drains, and jets, and clean and disinfect the removable parts as follows:

a. Scrub with a brush and soap or detergent until free from debris, and then rinse.

b. Completely immerse in an EPA-registered, bactericidal, virucidal, fungicidal, pseudomonacidal, and tuberculocidal disinfectant that is effective against HIV-1 and human Hepatitis B virus...

...

63.25(3) For each pedicure station, a record shall be made of the daily cleaning and disinfecting. 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. Foot spa records shall be maintained for two years from the date of each cleaning.

The record established several violations of 645 IAC 63.25. The screens on the four circulating spas that were not in use were covered with black and brown debris and the jet inlets contained a slimy, orange substance, in violation of 645 IAC 63.25(2). The spas jets and covers should have been thoroughly cleaned at the end of the day when they were last used. The poor conditions of the screens and jets established that Respondents were not properly cleaning the screens and jets on a daily basis. In addition, Respondents were not maintaining a spa cleaning record, in violation of 645 IAC 63.25(3).

Count II: Failure to Post Licenses

645 IAC 61.5 requires every salon to post the most current salon renewal card and the most current license renewal card for each licensee working in the salon at eye level in the front entrance. The preponderance of the evidence established that Respondents

violated 645 IAC 61.5 by their failure to post professional licenses and current renewal cards in the salon.

Count III: Failure to Provide Biohazard Disposal

645 IAC 63.11(2) requires all salons to have a sharps container for disposing of used needles, razor blades, and other sharp instruments, which are to be located as close to the use area as practical. 645 IAC 63.11(3) requires all licensees and students to consistently practice universal precautions by placing disposable material that will release blood or other potentially infectious materials in a liquid or semiliquid state if compressed in a red hazardous waste bag and to dispose of it in accordance with the regulations for removal of hazardous waste. The preponderance of the evidence established that Respondents violated 645 IAC 63.11(2) and (3) by failing to have a sharps container or a red hazardous waste bag in the salon at the time of the October 21, 2010 investigative visit.

Count IV: Failure to Post Rules

645 IAC 63.2 provides that a copy of the most current sanitation rules (Subchapter 63) and the most recent inspection report shall be posted in the reception area at eye level in the salon for the information and guidance of the general public. Best Nails had not been inspected as of the date of Investigator Adams' visit so they were not required to post an inspection report. The preponderance of the evidence established that Respondents violated 645 IAC 63.2 by failing to have sanitation rules posted at the time of the investigative visit.

Count V: Employment of Unlicensed Individual

645 IAC 65.2(28) provides that the Board may impose any of the disciplinary sanctions provided in rule 645-65.3 when the Board determines that a licensed salon has permitted an unlicensed employee or person under the salon's control to perform activities requiring a license. The preponderance of the evidence established that Best Nails and Hang Thi Cam Le violated 645 IAC 65.2(28) by permitting Julie Phuong Le and Cong T. Nguyen to provide nail technologist services when they did not have Iowa nail technologist licenses.

Count VI: Having A Product Containing Liquid Methyl Methacrylate (MMA) On The Premises

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 63.18(1) by having nail products containing liquid methyl methacrylate (MMA) in the salon on October 21, 2010. The presence of the product in the salon is prima facie evidence of its use.

Sanction

Respondents' violations directly affect the public health, safety, and welfare, and they more than justify a civil penalty of \$1,000. In addition, the number and nature of the violations warrant a one year period of probation for Hang Thi Cam Le as the owner of the salon and as a licensed nail technologist. The violations further warrant completion of additional continuing education on Iowa Law and Sanitation by Ms. Le and by all persons employed by the salon.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondents Best Nails and Hang Thi Cam Le 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 Hang Thi Cam Le and all employees of Best Nails shall complete four (4) hours of continuing education on Iowa Law and Sanitation within ninety (90) days of the issuance of this decision. This continuing education requirement shall apply to all employees of the salon during the owner's one year period of probation. Board approval must be obtained before enrolling in any course taken for the purpose of satisfying this obligation. These four (4) hours of additional continuing education may not be used for license issuance or renewal.

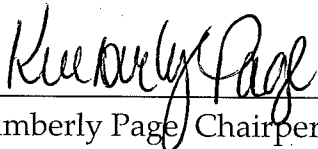
IT IS FURTHER ORDERED that license number 01653, issued to Respondent Hang Thi Cam Le, shall immediately be placed on PROBATION for a period of one (1) year. As a condition of probation, Respondent shall be responsible for:

- reporting to the Board the name, license number, and license expiration date for each person employed by Best Nails throughout the period of probation;
- providing the Board written verification of the timely completion of the required four (4) hours of continuing education on Iowa Law and Sanitation by herself and by all employees.

IT IS FURTHER ORDERED that Respondent Best Nails shall have a follow up investigative visit to ensure compliance with the all laws and regulations governing its operations. Best Nails will also be subject to random investigative visits and inspections at the discretion of the Board.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents shall pay \$75.00 for fees associated with the disciplinary hearing and \$96.25 for the court reporter fees. The total fees of \$171.25 shall be paid within thirty (30) days of receipt of this decision.

Dated this 15th day of August, 2013.



Kimberly Page Chairperson

Iowa Board of Cosmetology Arts & Sciences

DIA No. 13IBC001

Page 10

Pursuant to Iowa Code section 17A.19(2013) 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 Compernelle, Assistant Attorney General