

**BEFORE THE BOARD OF Cosmetology Arts and Sciences
OF THE STATE OF IOWA**

IN THE MATTER OF)	
)	NO. 07-008
Golden Nails 2)	
License No. 010314)	NOTICE OF HEARING
and)	AND STATEMENT OF CHARGES
Tuan Thanh Thi Nguyen, Owner)	
License No. 01268)	
RESPONDENTS)	

COMES NOW the Iowa Board of Cosmetology Arts and Sciences (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued Iowa license 010314 on May 27, 2004. Respondent's salon license is current and will next expire on December 31, 2008. Respondent's address as reported to the Board is 4347 Merle Hay Road, No. B, Des Moines, IA 50310. Owner of Respondent salon was issued a nail technology license 01268 on May 13, 2003, and that license will next expire on March 31, 2009.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on February 26, 2008, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 1:00 p.m. and shall be located in the Lucas State Office Building, Fifth Floor Board Conference Room 526, 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: 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 to practice cosmetology arts and sciences without a license in violation of Iowa Code section 157.13(1) and 645 IAC rules 63.4(1)“a” and 65.2(28).

Count II

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by possessing razor-edged device or tool in violation of

645 IAC 63.18(2).

Count III

Respondent is charged with allowing individuals employed by the salon to provide services that exceed their scope of practice in violation of 645 IAC rules 63.4(1)(b) and 65.2(29).

Count IV

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to document the date and time of each cleaning and disinfecting of the whirlpool foot spas in violation 645 IAC 63.25(5).

Count V

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to have hazardous waste bags available for use in violation of IAC 63.17(3), for failing to post inspection reports, pursuant to 645 IAC 63.2, and for failing to post the license certificates for each employee in violation of 645 IAC 61.5(3) and 63.4(1)"c".

D. FACTUAL CIRCUMSTANCES

1. During an investigation on May 1, 2007, unlicensed persons were engaged in activities requiring a license at Respondent salon. One individual who was providing nail services left the salon during the investigation. Pursuant to 645 IAC 65.2(36), if a person who is providing cosmetology services leaves the salon during the inspection, such an act is prima facie evidence that an unlicensed person was providing services.

The owner is responsible for allowing unlicensed persons to practice pursuant to 645 IAC 63.4(1).

2. During the investigation, heel shavers were observed at pedicure stations. Pursuant to 645 IAC 63.18(2), the presence of such equipment is prima facie evidence of its use.

3. During an investigation of the salon on May 1, 2007, the salon advertised eyebrow waxing and a station was set up to provide waxing services. Facial waxing exceeds the scope of practice for nail technologists. The owner is responsible for allowing licensed employees to exceed their scope of practice pursuant to 645 Iowa Administrative Code 63.4(1).

4. The investigation revealed there was no record of whirlpool foot spa cleaning, a copy of the most recent inspection was not posted in a conspicuous place and there were no hazardous waste containers available for use in the Respondent Salon.

5. License certificates for each employee were not posted in the Respondent Salon as required in 645 IAC 61.5(3).

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 this 7th day of November, 2007, the Iowa Board of Cosmetology Arts and 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 November 7, 2007.