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

IN THE MATTER OF:)
Sonny Nails License No. 010418 and) CASE NOs. 06-087 and 07-015)
Tiffany Thao Tran License No. 00495)) NOTICE OF HEARING) AND STATEMENT OF CHARGES
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 license number 00495 to practice nail technology. The above named Respondent is the owner of Respondent salon, Sonny Nails, and holds license no. 010418 to operate a salon. The salon is located at 200 Army Post Rd., Ste. 6, Des Moines, Iowa 50315. All licenses are now current.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on November 6, 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 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.

<u>Presiding Officer</u>. 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.

<u>Pre-hearing Conference</u>. 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.

<u>Prosecution</u>. 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: Emily Kimes-Schwiesow, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

<u>Communications</u>. 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

<u>Jurisdiction</u>. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 157, and 272C.

<u>Legal Authority</u>. 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.

<u>Default</u>. 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 Board rules prohibiting salons from having any razor-edged device or tool on its premises which is designed to remove skin unless used by licensed nail technicians to remove cuticles pursuant to 645 IAC 65.2(13) and 63.18(2).

COUNT II

Respondent is charged with violation of Iowa Code section 147.55(3), 157.6 and 645 IAC rule 65.2(13) for engaging in unsanitary practices in violation of 645 IAC 63.17(3) and 63.25(2)-(5).

COUNT III

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 "a", and 65.2(28).

COUNT IV

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"b", and 65.2(29).

D. FACTUAL CIRCUMSTANCES

- 1. Unlicensed persons were engaged in activities requiring a license at Respondent salon. The owner is responsible for allowing unlicensed persons to practice pursuant to 645 IAC 63.4(1).
- 2. A sanitary inspection of the Respondent salon on May 8, 2006, and an investigation of the salon completed on April 13, 2007, revealed that hazardous waste container bags were not available. The investigation in 2007 showed unsatisfactory evidence of whirlpool foot spas meeting biweekly cleaning and disinfecting requirements; and records of the date and time of cleaning of the foot spas were not available.
- 3. Client A received a pedicure at Respondent Salon in February 2007. A heel shaver was used on her feet. A heel shaver was also found in Respondent Salon at the April 13, 2007 investigation.
- 4. The 2006 inspection showed evidence of waxing services being provided in the Respondent salon. Client A received an eyebrow wax at Respondent Salon in

February 2007. In April of 2007 the Salon owner admitted to the investigator that she performed eyebrow waxing for customers.

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 Emily Kimes-Schwiesow, Assistant Attorney General, at 515-281-5637.

F. PROBABLE CAUSE FINDING

On this 1st day of August, 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 August 1, 2007.