

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

<b>IN THE MATTER OF:</b>	)	
	)	<b>CASE NO. 08-006</b>
<b>Pro Nails</b>	)	
<b>License No. 008289</b>	)	
<b>and</b>	)	<b>NOTICE OF HEARING</b>
<b>Donna Phung, Owner</b>	)	<b>AND STATEMENT OF CHARGES</b>
<b>License No. 00423</b>	)	
	)	
<b>RESPONDENT</b>	)	

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**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. 008289 on March 14, 2000. The above named Respondent is the owner of Respondent salon, Pro Nails, located at 1751 Madison Ave., Suite 706, Council Bluffs, Iowa 51503. Respondent's salon license is current and will next expire on December 31, 2010. Respondent owner was issued a nail technology license no. 00423 on May 13, 1996 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 July 13, 2009 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 9:00 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, 5<sup>th</sup> 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, 2<sup>nd</sup> 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 record cleaning and disinfecting for each whirlpool foot spa in violation of 645 IAC 63.25(5).

## **COUNT II**

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

### **D. FACTUAL CIRCUMSTANCES.**

1. During the investigation on January 6, 2009, there was no record showing the date and time of cleaning and disinfecting each of the nine foot spas.

2. During the investigation, two samples of liquid were obtained. The samples were tested for the presence of methyl methacrylate (MMA) at the University of Iowa Hygienic Laboratory. Test results revealed both samples of liquid taken from Respondent salon contained MMA.

3. Respondent was previously disciplined for allowing unlicensed employees to perform cosmetology services and for harmful or detrimental practices.

### **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 515-281-7175.

### **F. PROBABLE CAUSE FINDING**

On the 6th day of April, 2009, the Iowa Board of Cosmetology Arts & 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  
May 12, 2009.**