

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

<b>IN THE MATTER OF:</b>	)	
	)	<b>CASE NO. 09-074</b>
<b>Nails Expo</b>	)	
<b>License No. 008850</b>	)	<b>NOTICE OF HEARING</b>
<b>and</b>	)	<b>AND STATEMENT OF CHARGES</b>
<b>Theresa Yen Dang Nguyen, Owner</b>	)	
<b>License No. 01122</b>	)	
	)	
<b>RESPONDENTS</b>	)	

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The Iowa Board of Cosmetology Arts and Sciences 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 Nails Expo was issued Iowa salon license no. 008850 on July 16, 2001, and operates a salon located at 3839 Merle Hay Rd, Suite 100, Des Moines, Iowa 50310. Respondent's salon license is current and will next expire on December 31, 2010. Respondent Nguyen holds a current nail technology license no. 01122 which will next expire on March 31, 2010.

**A. TIME, PLACE AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on April 5, 2010 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, including a copy of your Answer, should be provided to counsel for the State at the following address: Scott Galenbeck, 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. CHARGES**

### **COUNT I**

Respondent is charged under 645 IAC 65.2(13) with failing to document the cleaning and disinfecting of whirlpool foot spas in violation of 645 IAC 63.25(5).

### **COUNT II**

Respondent is charged under 645 IAC 65.2(13) with failing to post a copy of the salon license and professional licenses at eye level in the reception area of the salon in violation of 645 IAC 61.5 and 63.4(1) and with failing to post the most recent sanitation rules at eye level in the reception area in violation of 645 IAC 63.2.

### **COUNT III**

Respondent is charged under 645 IAC 65.2(13) with having razor-edged tools on the premises in violation of 645 IAC 63.18(2).

#### **COUNT IV**

Respondent is charged under 645 IAC 65.2(13) with failing to discard single use items in violation of 645 IAC 63.17(4) and 63.18(3) and with failing to properly store implements in violation of 645 IAC 63.12(1).

#### **COUNT V**

Respondent is charged under 645 IAC 65.2(13) with having a product containing liquid methyl methacrylate (MMA) on its premises in violation of 645 IAC 63.18(1).

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

1. During an investigation on November 13, 2009, the investigator observed that sanitation rules from 2006 were posted, but no recent rules were posted.
2. During the investigation, it was observed that the last entry in the whirlpool foot spa log was dated October 31, 2009.
3. Nine heel shavers were observed under the front counter.
4. Two samples of nail liquid were taken from the salon and one sample tested positive for MMA. According to an employee, the first sample may contain MMA, but she no longer used the product.
5. Disposable nail files were found in a storage bin with clean, unused buffers and files and used wax strips had not been discarded.
6. Clean nail instruments were found in drawers containing pens and paper.
7. In 2005, Respondent entered into a Settlement Agreement with the Board. The Respondent's license was placed on probation for one year and Respondent was fined \$500 for using products containing MMA and for allowing unlicensed individuals to provide nail technology services.

#### **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 Scott Galenbeck, Assistant Attorney General, at 515-281-6658.

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

On the 11th day of January, 2010, 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 March 4, 2010.**