

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

<b>IN THE MATTER OF:</b>	)	
	)	<b>CASE NO. 10-082</b>
<b>Glory Nails</b>	)	
<b>License No. 101981</b>	)	<b>NOTICE OF HEARING AND</b>
<b>and</b>	)	<b>STATEMENT OF CHARGES</b>
<b>Phong Duc Nguyen, owner,</b>	)	
<b>License No. 01641</b>	)	
	)	
<b>RESPONDENTS</b>	)	

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing pursuant to Iowa Code §§ 17A.12(2), 17A.18(3) (2011), and 645 Iowa Administrative Code (IAC) § 11.6. Glory Nails was issued Iowa salon license no. 101981 on August 2, 2007 and operates a salon located at 200 High Avenue West #13, Oskaloosa, Iowa 52577. Respondent-Glory Nail's license is current and will next expire on December 31, 2012. Respondent-Phong Duc Nguyen, the owner of Glory Nails, holds nail technology license no. 01641 which next expires March 31, 2012.

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

Hearing. A disciplinary contested case hearing shall be held on **December 5, 2011**, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at **10:30 a.m.** 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 of Iowa) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: David VanCompernelle , 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 (2011).

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 (2011) 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 § 17A.12(3) (2011) and 645 IAC § 11.21.

## **C. CHARGES**

### **COUNT I - UNSANITARY PRACTICES**

Respondents are charged under Iowa Code §§ 147.55 and 157.9, and 645 IAC § 65.2(13), with engaging in unsanitary practices, in violation of Iowa Code § 157.6 (2011) and 645 IAC §§ 63.11, 63.13, 63.14, 63.15 and 63.25.

### **COUNT II - FAILURE TO POST RULES AND REPORT**

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC 65.2(13), with failing to properly post a copy of the most recent inspection report and sanitation rules in the reception area at eye level in violation of 645 IAC § 63.2.

### **COUNT III - FAILURE TO POST LICENSES**

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC §§ 63.4(3) and 65.2(13), with failing to post professional licenses in the reception area at eye level in violation of 645 IAC §§ 61.5(3) and 61.5(4).

### **COUNT IV - MMA ON PREMISES**

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 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).

### **COUNT V - PRACTICE OUTSIDE SCOPE OF PROFESSION**

Respondents are charged under Iowa Code §§ 147.55 and 157.9 (2011), and 645 IAC § 65.2(13), with practicing outside the scope of the profession in violation of 645 IAC § 65.2(5).

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

On September 10, 2010, an investigator inspected Respondents' salon and observed that professional licenses, the most recent inspection report and sanitation rules were not posted. No spa cleaning log was maintained in the salon.

Additionally, used nail buffers and other used nail supplies were found throughout the salon. Dirty nail bits were found at manicure stations. Grey, stringy debris was found beneath spa screens. A container had an insufficient amount of Barbicide inside to cover the implements being sanitized. Testing revealed the presence of MMA in two samples of nail liquid obtained by the investigators.

Respondent acknowledged to investigators the salon provided eyebrow waxing 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 David VanCompernelle, Assistant Attorney General, at 515-281-7262.

## **F. PROBABLE CAUSE FINDING**

On October 4, 2010, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.