

STATE OF IOWA  
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

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IN THE MATTER OF:	)	
	)	NO. 09-013
Wonder Nails,	)	DIA NO. 09DPHCE026
License No. 009910, and	)	
	)	FINDINGS OF FACT,
Ly Tran, Owner	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER
Respondents	)	

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On November 23, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Wonder Nails, a licensed salon in the state of Iowa and its owner, Ly Tran (Respondents). Respondents were charged with the following four counts:

Count I: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to maintain a cleaning record, in violation of 645 IAC 63.25(5).

Count II: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to post a copy of the most recent sanitation rules at eye level in the salon pursuant to 645 IAC 63.2.

Count III: Violating Iowa Code section 157.13(1) and 645 IAC 65.2(28) and 65.2(36) by employing unlicensed individuals to practice cosmetology arts and sciences.

Count IV: Violating Iowa Code section 157.6 and 645 IAC 63.16(1), 63.19, and 63.12(1) by engaging in unsanitary practices.

The hearing was held on January 11, 2010 at 2:00 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent Ly Tran appeared for hearing and was self-represented. His employee, Simon Duong, assisted Mr. Tran by translating some of the proceeding. The state was represented by Assistant Attorney General Scott Galenbeck. The following Board members were present for the hearing: Jack Morlan, Chairperson; Becky J.

Brockmann; Kimberly Setzer; Richard Mosley; and Dana Atkins. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public<sup>1</sup> and was recorded by a certified court reporter. The Board convened in closed session following the hearing to deliberate its decision.<sup>2</sup> The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

## THE RECORD

The record includes the testimony of the witnesses and State Exhibits 1-4 (See Exhibit Index for description).

## FINDINGS OF FACT

1. Ly Tran is the owner of Wonder Nails located at 217 S. 25<sup>th</sup> Street, #A13 in Fort Dodge, Iowa. Mr. Tran was issued Iowa salon license no. 009910 on July 29, 2003. The salon license is current and will next expire on December 31, 2010. Ly Tran also owns a restaurant in the same strip mall as the salon. (State Exhibit 1; Testimony of Ly Tran; Brian Church)

2. On March 5, 2009, Ly Tran filed a renewal application for salon license no. 009910 for Wonder Nails. Ly Tran listed only one employee, Simon Duong, on the renewal application and provided a Nebraska license number for Mr. Duong. (State Exhibit 3)

3. Department of Inspections and Appeals (DIA) Inspector Brian Church inspected Wonder Nails on July 9, 2009 at 10:00 a.m. There was only one employee present in the salon when Mr. Church arrived, and there were no customers present. After Mr. Church identified himself, the employee left to get Ly Tran. Ly Tran came to the salon to speak to Mr. Church, but the employee did not return with him. Brian Church went through the inspection report check list and noted the following:

- The current salon license was posted, but the sanitation rules and most recent inspection report were not posted. It was not clear if the salon had a previous inspection.

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<sup>1</sup> Iowa Code section 272C.6(1)(2009) allows the licensee to request a closed hearing.

<sup>2</sup> Closed session is authorized by Iowa Code section 21.5(1)(f)(2009).

- Only one employee licensee was posted on the wall. The license belonged to Thuong Mai Hai Tran, who was later identified as Ly Tran's daughter. Thuong Tran came to the salon before Mr. Church completed his inspection and presented her photo identification. There was no license posted for Simon Duong, and he was not present at the salon at the time of the inspection.
- The salon had liquids, creams, and powders that were not labeled.
- There was a drawer containing used nail buffers that had not been thrown away.
- The salon did not have any whirlpool spa cleaning records.

(Testimony of Brian Church; State Exhibit 4)

4. Simon Duong admits that he was employed to provide nail services at Wonder Salon before he obtained an Iowa license. Mr. Duong was licensed in Iowa on August 8, 2009. At the hearing, Simon Duong presented a copy of his current Iowa license and his photo identification. (Testimony of Simon Duong)

5. Ly Tran admitted that he did not have a whirlpool cleaning record at the time of the July 9, 2009 inspection. He further admitted that he had purchased his nail liquids in bulk and had not labeled the individual containers containing the nail liquids at the work stations. Ly Tran also admitted that the sanitation rules were not posted at the time of the inspection. He further admitted that there were used nail buffers in a drawer but denied that used nail buffers were used on customers. At the present time the nail buffers and files are placed directly in the trash after use unless they are metal and can be sanitized. (Testimony of Ly Tran; Simon Duong)

#### CONCLUSIONS OF LAW

645 IAC 65.2(13) provides authority for the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

Count I: *Failing to Maintain a Cleaning Record for the Whirlpool Foot Spa*

645 IAC 63.25 provides the procedures for proper cleaning and disinfecting whirlpool foot spas after each use, at the end of each day, and biweekly. In

addition, the rule requires salons to maintain a record of cleaning and disinfecting. 645 IAC 63.25(5) provides, in relevant part:

**645-63.25(157) Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths.**

**63.25(1)** As used in this rule, “whirlpool foot spa,” “foot spa,” “whirlpool,” or “spa” is defined as any basin using circulating or still water.

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**63.25(5)** For each foot spa and hydrotherapy bath, a record shall be made of the date and time of each cleaning and disinfecting as required by subrules 63.25(3) and 63.25(4), and shall indicate whether the cleaning was a daily or biweekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting must be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee’s license number beside each recorded cleaning event.

The preponderance of the evidence established that Respondents Wonder Nails and Ly Tran violated 645 IAC 65.2(13) by failing to maintain and make available whirlpool foot spa cleaning record, as required by 645 IAC 63.25(5). Respondents did not have any cleaning record available at the time of the inspection.

Count II: Failure to Post the Most Current Sanitation Rules

645 IAC 63.2 provides that a copy of the most current sanitation rules shall be posted in the reception area at eye level in the salon for the information and guidance of the general public. The preponderance of the evidence established that Respondents Wonder Nails and Ly Tran violated 645 IAC 65.2(13) by failing to post the current sanitation rules in the reception area, in violation of 645 IAC 63.2.

Count III: Employing Individuals Without A Current License To Practice Nail Technology

Iowa Code section 157.13(1)(2009) provides that it is unlawful to employ an individual to practice cosmetology arts and sciences unless that individual is

licensed or has obtained a temporary permit under this chapter. 645 IAC 63.4(1)"a" provides that it is a salon owner's responsibility to ensure that individuals employed for cosmetology arts and sciences services hold a current and active license issued by the Board. 645 IAC 65.2(28) provides that the Board may impose any of the disciplinary sanctions provided in rule 645-65.3 when the Board determines that a licensed salon has permitted an unlicensed employee or person under the salon's control to perform activities requiring a license.

The preponderance of the evidence established that Respondents Wonder Nails and Ly Tran violated Iowa Code section 157.13(1) and 645 IAC 65.2(28) by employing an unlicensed individual to provide nail technology services to customers. That individual, Simon Duong, was not licensed in Iowa at the time of the inspection but now holds a current cosmetology license in Iowa.

Count IV: Engaging In Unsanitary Practices

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences and to make necessary inspections for enforcement purposes.<sup>3</sup> 645 IAC 63.16(1) provides, in relevant part:

**63.16(1)** Liquids, creams, powders, and cosmetics used for patrons must be kept in closed, labeled containers...

The preponderance of the evidence established that Respondents Wonder Nails and Ly Tran violated 645 IAC 63.16(1) when liquids, creams, and powders were kept in unlabelled containers.

645 IAC 63.19 pertains to use of neckbands and is not pertinent to the facts of this case.

645 IAC 63.12(1) requires all nonelectrical instruments to be disinfected by an EPA-registered, hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions. In addition, 645 IAC 63.18(3)"a" specifically provides, in relevant part, that a nail buffer that can be sanitized may be used more than once, but it must be sanitized before use on the next client. If a nail buffer cannot be sanitized, the nail buffer shall not be used for more than one client. The preponderance of the evidence

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<sup>3</sup> Iowa Code section 157.6(2009).

established that Respondents Wonder Nails and Ly Tran violated 645 IAC 63.12(1) when nail buffers were not sanitized between uses.

### DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 009910 issued to Respondents Wonder Nails and Ly Tran is hereby placed on probation for one year, effective immediately upon service of this Order, subject to the following terms and conditions:

A. Respondents Ly Tran and Wonder Nails must file quarterly written reports with the Board during the period of probation. The written reports shall include:

- the name, license number, and license expiration date for each employee of Wonder Nails; and
- a copy of the whirlpool cleaning record.

B. Respondent Wonder Nails will be subject to random inspections at the discretion of the Board.

C. Respondent Ly Tran **and** all of the Wonder Nails employees shall complete two (2) hours of continuing education on law and sanitation within sixty (60) days of the issuance of this decision. Respondent Ly Tran must obtain Board approval before enrolling himself and his employees in any course taken for the purpose of satisfying this obligation. Respondent Ly Tran shall promptly provide the Board with written verification that he and his employees have completed the required continuing education.

IT IS FURTHER ORDERED that Ly Tran shall promptly notify his employees of this Decision and Order of the Board and within thirty (30) days shall provide the Board with a written statement signed by each employee verifying that they have read the Board's Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents Wonder Nails and Ly Tran shall pay \$75.00 for fees associated with the disciplinary hearing and \$55.00 for the court reporter fees. The total fees of \$ shall be paid within thirty (30) days of receipt of this decision.

**This findings of fact, conclusions of law, decision and order is approved by the board on February 22, 2010.**

Pursuant to Iowa Code section 17A.19(2009) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.