

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

---

---

IN THE MATTER OF:	)	
	)	NO. 02-044, 03-067
HOT NAILS	)	DIA NO. 04DPHCE005
License No. 002-009206	)	
	)	FINDINGS OF FACT,
RESPONDENT	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER

---

---

On May 5, 2004, the Iowa Board of Cosmetology Arts & Sciences (Board) filed a Statement of Charges against Hot Nails, Cosmetology Salon License No. 002-009206 (Respondent) alleging two counts:

Count I: Employing individuals to practice cosmetology arts and sciences without a license, in violation of Iowa Code section 157.13.

Count II: Failing to display required licensing documentation for a licensee, in violation of 645 IAC 63.3(2).

The Statement of Charges and a Notice of Hearing setting a hearing for August 4, 2004 were served on the Respondent's owner of record, Huyen Hoang, by restricted certified mail. The hearing was later continued and rescheduled.

The hearing was held on February 2, 2005 at 1:00 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent did not appear and was not represented by counsel. John Baty, Assistant Attorney General, represented the state. The following Board members presided at the hearing: Jack Morlan, Chairperson; Mary Beth Myers; Jerry Talbott; Sheila O'Hern; Lois Leytem; and Becky Brockmann. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2003), and was tape recorded.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2003) to deliberate its decision. The administrative

law judge was instructed to prepare the Board's decision, in accordance with its deliberations.

#### THE RECORD

The record includes the testimony of the witness and state exhibits 1-20.

#### FINDINGS OF FACT

1. The Board issued cosmetology salon license number 002-009206 to Hot Nails salon on May 23, 2002. Huyen Hoang, 5508 Blairs Forest Way, Cedar Rapids, Iowa 52402 was listed as the salon's owner. The salon license was effective through December 31, 2004. (Testimony of Marilyn Ubaldo; State Exhibit 7)

2. On September 27, 2002, a member of the public filed a complaint alleging that the Respondent salon had been sold. The complaint further alleged that the new salon owner did not have an Iowa nail technician license and the new owner's employee only had a license in Chicago. (Testimony of Marilyn Ubaldo; State Exhibit 4)

3. On October 30, 2002, the Board notified the owner of Hot Nails, Huyen Hoang, of the pending complaint and asked for a list of all employees and their social security numbers by November 12, 2002. The Board advised Ms. Hoang that it is unlawful to practice cosmetology arts and sciences without a license and it is unlawful to employ an unlicensed person to practice cosmetology. Ms. Hoang was further advised that the Board expected her to immediately cease any practice that violates the law. (Testimony of Marilyn Ubaldo; State Exhibit 5)

4. Huyen Hoang responded to the Board's letter. She reported that she was still the owner of the Hot Nails salon. As of November 1, 2002, the salon's only employee was Diep Nguyen, whose Iowa license number was 00977. Huyen Hoang denied that she had any unlicensed employees. (State Exhibit 6)

5. On January 6, 2003, the Department of Inspections and Appeals (DIA) conducted an inspection of the Hot Nails salon. According to the inspection report, two persons were working at Hot Nails at the time of the inspection: Diep Van Nguyen and

Huyen Hoang. No Iowa licenses were posted at the salon. Diep Van Nguyen reported his Iowa license as #00997. However, this was incorrect, his actual license number was 00977, and he had been issued a duplicate license on March 28, 2002. Huyen Hoang only had an Illinois license. In addition, the inspection report noted that the salon had a new owner: Tyler Huynh. (Testimony of Marilyn Ubaldo; State Exhibits 8, 19)

6. On November 12, 2003, a second Complaint was filed with the Board alleging that the owner of the Hot Nails salon did not have a nail technician license and that she was renting the license of her brother-in-law, "Diep." The complaint further alleged that Huyen Hoang had also hired another unlicensed person to work at her salon. (State Exhibit 9)

7. On November 18, 2003, the Board sent another letter to the owner of the Hot Nails salon and asked about the change in ownership noted during the January inspection. The owner was also reminded of the laws prohibiting unlicensed practice and asked to submit, in writing: a list of all current employees, their license and social security numbers, and whether the licenses are posted in the salon. The letter was sent by certified mail and was signed for by Huyen Hoang. (State Exhibits 10, 11)

On November 24, 2003, Huyen Hoang responded to the Board's letter and stated that she was still the owner of Hot Nails. Huyen Hoang further stated that "we have no change at Hot Nails at all." (State Exhibit 12)

8. On December 17, 2003, DIA conducted a second inspection of the Hot Nails salon. Once again, the inspection reports notes that there were two employees working at the salon: Huyen Hoang and Diep Nguyen. Huyen Hoang still did not have an Iowa nail technician license, and there were still no Iowa licenses posted at the salon. (State Exhibit 13) Diep Nguyen obtained a second duplicate copy of his license on March 3, 2003. (State Exhibit 19)

9. On June 7, 2004, the Statement of Charges and original Notice of Hearing were served on Huyen Hoang, owner of record of Hot Nails, by restricted certified mail the address on file with the Professional Licensure Division, 5508 Blairs Forest Way, Cedar Rapids, Iowa 52402. Huyen Hoang personally signed

the return receipt for the certified mail. The hearing was scheduled for August 4, 2004. Huyen Hoang did not file an Answer to the Statement of Charges, as required by 645 IAC 11.12. (Testimony of Marilyn Ubaldo; State Exhibits 1, 2, 18)

In May 2004, the state learned that Hot Nails had changed ownership and that Huyen Hoang had a new address: 3809 Pine Tree Drive, NE, Cedar Rapids, Iowa 52402. The Board continued the August 4<sup>th</sup> hearing and sent the continuance order to Huyen Hoang by restricted certified mail at the Pine Tree address. Huyen Hoang personally signed the return receipt for the continuance order. (Testimony of Marilyn Ubaldo; State Exhibits 3, 14)

On November 9, 2004, the Board issued an Order rescheduling the hearing for February 2, 2005 at 1:00 p.m. The Rescheduling Order was sent to Huyen Hoang at the Pine Tree Drive address by restricted certified mail and by ordinary first-class mail. The restricted certified mailing was returned to the Board by the post office marked "Unclaimed." The Rescheduling Order sent to the same address by ordinary first-class mail was not returned to the Board and is presumed delivered. Huyen Hoang did not appear for the hearing on February 2, 2005. (Testimony of Marilyn Ubaldo; State Exhibit 20)

#### CONCLUSIONS OF LAW

##### I. Failure to Appear

645 IAC 11.6(1)"b" provides that the statement of charges and notice of hearing may be served on a licensee by restricted certified mail, return receipt requested. Huyen Hoang, the owner of record of the Respondent salon, was properly served with the statement of charges and original notice of hearing by restricted certified mail, but failed to file an Answer as required by Board rule. Huyen Hoang was also served with the first Continuance Order by restricted certified mail but then failed to claim the Board's Rescheduling Order that was sent to the same mailing address by restricted certified mail. The Rescheduling Order that was sent by ordinary mail was not returned and is presumed delivered. The Respondent was properly served with the statement of charges and notice of hearing and had actual notice of the new hearing date.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. 645 IAC 11.21(1). The Board was authorized to proceed with the hearing in the absence of the Respondent.

II. Employing An Unlicensed Individual To Practice Cosmetology

The Iowa Board of Cosmetology Arts & Sciences Examiners was created by the legislature, pursuant to Iowa Code chapters 147 and 157, and was directed to adopt rules to implement the provisions of Iowa Code chapter 157. Iowa Code section 157.14 (2003). Any license issued by the department can be suspended, revoked, or renewal denied for violation of any provision of Iowa Code chapter 157 or the rules promulgated by the Board. Iowa Code section 157.9 (2003).

Iowa Code section 157.2(1)(2003) provides that it is unlawful for a person to practice cosmetology arts and sciences with or without compensation unless the person possesses a license issued under section 157.3. Iowa Code section 157.13(2003) provides that it is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless the individual is licensed or has obtained a temporary permit. "Cosmetology" means.....nail technology. Iowa Code section 157.1(3)(f). The "Cosmetology arts and sciences" include nail technology. Iowa Code section 157.1(4)(d)(2003).

645 IAC 65.2, provides, in relevant part:

**645-65.2(157,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645-65.3(157,272C) when the board determines that any of the following acts or offenses have occurred:

...

**65.2(13)** Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

...

**65.2(28)** Permitting an unlicensed employee or person under the licensee's or the licensed school's or

salon's control to perform activities requiring a license.

The preponderance of the evidence established that the Respondent salon violated Iowa Code sections 157.2, 157.13 and 645 IAC 65.2(13) and (28) when it permitted an unlicensed person, Huyen Hoang, to perform activities (i.e., nail technology) requiring a license. This violation was established through two inspection reports.

### III. Failure To Post Licenses

645 IAC 63.3(2) provides that the original license certificate, duplicate certificate, reissued certificate or temporary permit certifying that the practitioner is licensed or the trainee is certified shall be visibly displayed for each licensee or trainee. An agent of the board may request a photo I.D. for verification.

The preponderance of the evidence established that the Respondent salon failed to visibly display the certificate of licensure certifying that its employee, Diep Nguyen, is licensed to practice nail technology in the state of Iowa.

### IV. Sanction

Since Hot Nails has recently changed ownership, the sanction in this case must be directed to the owner of the salon at the time of the violations. Huyen Hoang was the owner of the Hot Nails Salon at all times relevant to this decision of the Board. Ms. Hoang was repeatedly warned that she must not employ unlicensed persons to perform nail technology and that all Iowa licenses must be visibly displayed in the salon. Since Huyen Hoang no longer owns the Respondent salon, the Board has determined that a civil penalty is the most effective sanction.

### DECISION AND ORDER

IT IS THEREFORE ORDERED that Huyen Hoang, owner of Hot Nails salon, License No. 002 009206, at all times relevant to this decision, shall pay a civil penalty of five hundred dollars (\$500), within thirty (30) days of receipt of this Order of the Board. The Professional Licensure Division is hereby directed

that it shall not process any future license applications filed by Huyen Hoang unless the \$500 civil penalty has been paid.

IT IS FURTHER ORDERED that the Board may, in its discretion, require Huyen Hoang to personally appear before the Board before any future cosmetology or salon license application filed by her will be processed.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that the Respondent shall pay \$75.00 for fees associated with the disciplinary hearing within thirty (30) days of receipt of this decision.

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2003) 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 final decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.

**This Findings of Fact, Conclusions of Law, Decision and Order is approved by the Board on March 3, 2005.**