

STATE OF IOWA  
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

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IN THE MATTER OF:	)	
	)	NO. 10-048
Modern Nails	)	DIA NO. 11IBC001
License No. 011262	)	
	)	FINDINGS OF FACT,
William Nguyen,	)	CONCLUSIONS OF LAW,
License No. 01691	)	DECISION AND ORDER
	)	

RESPONDENTS

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On July 12, 2010, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Modern Nails, a licensed salon in the state of Iowa, and its owner, William Nguyen, a licensed nail technician in the state of Iowa. Respondents were charged with the following six<sup>1</sup> counts:

Count I: Engaging in unsanitary practices in violation of Iowa Code sections 147.55, 157.6, and 157.9(2009) and 645 IAC 65.2(13), 63.11, 63.13, 63.14, 63.15, 63.18(1).

Count II: Employing an unlicensed individual to practice cosmetology arts and sciences, in violation of Iowa Code sections 147.55, 157.9, and 157.13(1) (2009) and 645 IAC 65.2(13) and 65.2(28).

Count III: Failing to post a copy of the most recent sanitation rules at eye level in the reception area, in violation of Iowa Code sections 147.55, 157.9(2009) and 645 IAC 65.2(13) and 63.2.

Count IV: Failing to provide for biohazard disposal, in violation of Iowa Code sections 147.55, 157.9(2009) and 645 IAC 65.2(13) and 63.11(3).

Count V: Permitting a licensed individual to perform activities outside the scope of her license, in violation of Iowa Code sections 147.55, 157.9, 157.13(1)(2009) and 645 IAC 65.2(5), 65.2(13), and 65.2(29).

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<sup>1</sup> The counts were incorrectly numbered in the Statement of Charges.

Count VI: Engaging in conduct that subverts an investigation, in violation of Iowa Code sections 147.55, 157.9(2009) and 645 IAC 65.2(13) and 65.2(18).

The hearing was held on April 6, 2011 at 11:40 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The state was represented by Assistant Attorney General Kristen Ensign. Respondents were self-represented by William Nguyen. The following Board members were present for the hearing: Becky J. Brockmann, Chairperson; Kimberly Setzer; Richard Mosley; Dana Atkins; Richard Sheriff; Jerry Talbott; and Karen Thomsen. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondents' request, pursuant to Iowa Code section 272C.6(1)(2011), and was recorded by a certified court reporter.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate its decision. 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 DIA Investigator Tamara Adams and William Nguyen and State Exhibits A-C (See Exhibit Index for description).

#### FINDINGS OF FACT

1. On April 20, 2006, the Board issued Iowa salon license number 011262 to Modern Nails, located at 1055 College Square Mall in Cedar Falls, Iowa. Salon license No. 011262 will expire on December 31, 2012. Respondent William Nguyen is the owner of Nails Expo, and he was issued nail technology license no. 01691 on February 13, 2006. License no. 01691 will expire on March 31, 2012. (State Exhibit A, pp. 15-16)

2. On April 29, 2010, Modern Nails was inspected and found to be out of compliance with the sanitation and licensure requirements. On June 17, 2010, Department of Inspections and Appeals (DIA) Investigator Tamara Adams made an unannounced follow-up visit to Modern Nails. Owner William Nguyen was present at the salon at the time of the inspection but was unable to provide any photo

identification. The following three employees were observed providing nail technology services to customers when Ms. Adams arrived: William Nguyen, Mai Maria Ngoc Tat, and Nu Tat. William Nguyen admitted that Mai Maria Ngoc Tat was not a licensed nail technician and was in training. Licenses were posted for the salon, for William Nguyen, for Nu Tat, and for Trang M. Tran. However, Mr. Tran's license had expired on March 31, 2006. William Nguyen told Tamara Adams that Trang M. Tran no longer worked at the salon. (Testimony of Tamara Adams; William Nguyen; State Exhibit A, pp. 2-3, 16)

3. Ms. Adams found warmed wax and small strips in a back room near a bench. At first, William Nguyen denied that the salon provided any waxing services. Mr. Nguyen later admitted that Nu Tat, a licensed nail technician, provided eyebrow waxing services at the salon. On June 29, 2010, Ms. Adams called Modern Nails to ask the price of eyebrow waxing. The person answering the phone quoted Ms. Adams a price of \$12.00. (Testimony of Tamara Adams; State Exhibit A, p. 4)

4. At the time of the June 17, 2010 inspection, Tamara Adams documented the following additional sanitation violations of Board statutes and rules:

- Clean nail tools were found in drawers containing money, pens and paper;
- Nail instruments were piled on each other in the sanitizer;
- Debris was found in the bottom of disinfectant jars at the manicure stations;
- A large chamois buffer was located at a manicure station;
- Used disposable buffers and files had not been discarded and were found throughout the salon;
- The salon did not have a first aid kit;
- The salon did not have a biohazard container or biohazard bags.

(Testimony of Tamara Adams; State Exhibit A)

5. During her visit, Tamara Adams observed Mai Maria Ngoc Tat and Nu Tat pulling numerous used buffers and nail files from boxes and discarding them while they were working on customers. Ms. Adams asked the customers if these were their personal boxes or supplies, and the customers responded no. (Testimony of Tamara Adams; State Exhibit A, p. 2)

6. Investigator Adams took two samples of nail liquid for testing. However neither sample tested positive for Methyl Methacrylate acid (MMA). (Testimony of Tamara Adams; State Exhibit A, pp. 4, 11-12)

7. The sanitation rules were not posted on the wall of the salon's reception area. William Nguyen had only posted the sanitation rules in Vietnamese on a back door where they were visible to his employees. Ms. Adams gave Mr. Nguyen a copy of the current sanitation rules. (Testimony of Tamara Adams; William Nguyen; State Exhibit A, pp. 3-4)

#### CONCLUSIONS OF LAW

The Board is authorized to impose disciplinary sanctions on licensees for violations of Iowa Code chapters 147, 157, or the rules promulgated by the Board. Iowa Code sections 147.55(9); 157.9; and 645 IAC 65.2(13).

*Count I: Unsanitary Practices*

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences, which shall include sanitary conditions necessary for the practice of cosmetology arts and sciences and for the prevention of infectious and contagious diseases. The Board is also authorized to make necessary inspections for enforcement purposes. Iowa Code §157.6(2009). The Board has promulgated rules on Sanitation for Salons and Schools of Cosmetology Arts and Sciences at 645 IAC chapter 63.

645 IAC 63.11 addresses universal precautions, which are to be consistently practiced by all licensees and students. The rule requires all instruments and implements to be disinfected in accordance with subrule 63.12. 645 IAC 63.11(6). Instruments and supplies that have been used on a client or soiled in any manner shall be placed in a proper receptacle. 645 IAC 63.11(7).

645 IAC 63.13 provides the proper procedures for disinfecting instruments and equipment. The rule requires all tools and implements to be disinfected by complete immersion in an EPA-registered disinfectant mixed and used according to the manufacturer's directions. 645 IAC 63.13(1). Disinfected implements shall be stored in a disinfected, dry, covered container and shall be isolated from contaminants. 645 IAC

63.13(2). Disinfectant solutions shall be changed at least once per week or whenever visibly dirty. 645 IAC 63.13(3). Instruments and supplies that cannot be disinfected, for example cotton pads, sponges, applicators, emery boards, nail buffers, arbor or sanding bands, sleeves, toe separators and neck strips, shall be disposed of in a waste receptacle immediately after use. 645 IAC 63.14.

No salon or school shall have chamois buffers. If chamois buffers are observed in the workplace, their presence shall be prima facie evidence of their use. 645 IAC 63.18(4). Salons and schools shall have and maintain a complete first-aid kit in a readily accessible location on the premises. At a minimum, the first-aid kit must include adhesive dressings, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves. 645 IAC 63.6.

The preponderance of the evidence established that there were numerous violations of the Board's sanitation rules at Modern Nails at the time of the June 17, 2010 investigation. Nail instruments were piled on top of each other in the sanitizer, and there was visible debris in the bottom of disinfectant jars at the manicure stations, in violation of 645 IAC 63.13(1), (3). Clean nail tools were found in drawers containing money, paper, and pens and used buffers were found with clean supplies in a drawer, in violation of 645 IAC 63.13(2). There was a large chamois buffer at a manicure station, in violation of 645 IAC 63.18(4). Used disposable buffers and files were present throughout the salon and had not been properly discarded, in violation of 645 IAC 63.14. The salon did not have a complete first-aid kit, in violation of 645 IAC 63.6.

Count II: *Employing Unlicensed Person*

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. 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 Modern Nails and William Nguyen violated Iowa Code section 157.13(1)(2009) and 645 IAC 65.2(28) by permitting Mai Maria Ngoc Tat to provide nail technician services when she did not have a nail technician license.

Count III: Failure to Post 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 Modern Nails and William Nguyen violated 645 IAC 63.2 by failing to post the current sanitation rules at eye level in the reception area, in violation of 645 IAC 63.2.

Count IV: No Biohazard Disposal

645 IAC 63.11(3) requires all licensees and students to consistently practice universal precautions by placing disposable material that will release blood or other potentially infectious materials in a liquid or semiliquid state if compressed in a red hazardous waste bag and to dispose of it in accordance with the regulations for removal of hazardous waste. The preponderance of the evidence established that Respondents Modern Nails and William Nguyen did not have or use red biohazard bags or containers, in violation of 645 IAC 63.11(3).

Count V: Practice Beyond Scope of License

Iowa Code section 157.1(5) defines the practice of cosmetology. The practice of cosmetology includes removing superfluous hair from the face or body of a person with the use of depilatories, wax, sugars or tweezing but does not include shaving. Iowa Code section 157.1(5)(c)(2009). 645 IAC 65.2(5) authorizes the Board to discipline licensees for practicing outside the scope of the profession. 645 IAC 65.2(29) authorizes the Board to discipline licensees for permitting an unlicensed employee or a person under the licensee's or licensed salon's control to practice outside the scope of the person's license. The preponderance of the evidence established that Respondents Modern Nails and William Nguyen violated Iowa Code section 157.1(5) and 645 IAC 65.2(5) and 65.2(29) when they permitted Nu Tat to perform eyebrow waxing. Nu Tat is a licensed nail technician and is not a licensed cosmetologist. Eyebrow waxing is outside the permissible scope of practice for a nail technician.

Count VI: Subverting An Inspection

645 IAC 65.2(18) authorizes the Board to impose disciplinary sanctions on a licensee for engaging in any conduct that subverts or attempts to subvert a board investigation. The

preponderance of the evidence established that Respondents Modern Nails and William Nguyen violated 645 IAC 65.2(18) when employees Mai Maria Ngoc Tat and Nu Tat pulled used buffers and nail files from boxes and attempted to dispose of them while the DIA Investigator was present in the salon conducting her inspection. The preponderance of the evidence established that Respondents' employees, in the presence of owner William Nguyen, were attempting to conceal the salon's violations from the Board's Investigator.

Sanction

The violations affect the public health, safety, and welfare and more than justify the maximum civil penalties of \$1,000 for both licensed Respondents. Moreover, if the salon is to continue to operate, it must be subject to ongoing oversight by the Board through a two year period of probation.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Modern Nails shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER that Respondent William Nguyen shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that license number 011262, issued to Respondent Modern Nails and license no. 01691 issued to Respondent William Nguyen, shall immediately be placed on PROBATION for a period of two (2) years, subject to the following terms and conditions:

- A. Respondents 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;
  - and

B. Respondent salon will have a follow up inspection approximately six weeks after issuance of this Decision and Order. In addition, Respondent salon will be subject to random inspections at the discretion of the Board.

IT IS FURTHER ORDERED that Respondent William Nguyen, owner of Respondent Modern Nails, shall complete four (4) hours of continuing education on law and sanitation within six (6) months of the issuance of this decision. Respondent must obtain Board approval before enrolling in any course taken for the purpose of satisfying this obligation. These four (4) hours of continuing education may not be used for license renewal.

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 and \$61.00 for the court reporter fees. The total fees of \$136.00 shall be paid within thirty (30) days of receipt of this decision.

FINALLY, IT IS ORDERED that if Respondent fails to comply with any of the terms of this Order, the Board may hold a hearing, pursuant to Iowa Code section 272C.3(2)"a"(2011), and impose further sanctions, up to and including license revocation.

Dated this 28<sup>th</sup> day of April, 2011.