

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

IN THE MATTER OF:)	CASE NO. 04-073
)	
Pretty Nails)	COMBINED STATEMENT OF
License No.002-008710)	CHARGES, INFORMAL
)	SETTLEMENT AGREEMENT
RESPONDENT)	AND CONSENT ORDER

The Iowa Board of Cosmetology Arts and Sciences Examiners (Board) and Pretty Nails, through its owner Phuong T. Thanh Duong, (Respondent) enter into this Combined Statement of Charges, Informal Settlement Agreement, and Consent Order (Agreement) pursuant to Iowa Code sections 17A.10(2), 272C.3(4), and chapter 645 Iowa Administrative Code (IAC) rule 12.1.

1. Respondent presently possesses license number 002-008710 to operate a nail technology salon in the State of Iowa. Board records indicate that Respondent salon is owned by Phuong T. Thanh Duong and is located at 2194 W. Kimberly Road, Davenport, Iowa 52806.

2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 157, and 272C. Licenses issued by the Board are subject to the laws of the State of Iowa and the administrative rules promulgated by the Board.

STATEMENT OF CHARGES

COUNT I

3. Respondent is charged with engaging in practices that are harmful or detrimental to the public and operating its nail technology salon in violation of 645 IAC rule 63.18. Violation of a rule is prohibited by Iowa Code section 157.6.

CIRCUMSTANCES

4 During an inspection of Respondent salon on December 3, 2004, cosmetic products were found containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products, namely products containing methyl methacrylate.

COUNT II

5. Respondent is charged under 157.6, 157.9, 157.13.14, 272C.3(1) and 645 IAC rules 65.2(3) and 65.2(13) by engaging in practices that are harmful or detrimental to the public and operating a nail technology salon in violation of 645 IAC rules 63.16(1) and 63.5(1).

CIRCUMSTANCES

6. During an inspection of Respondent salon on December 3, 2004, it was observed that not all cosmetic products were labeled, Rule 63.16(1), and the salon was not adequately ventilated by exhaust fans or air filtrators, Rule 63.5(1).

7. On December 2, 2004, the Davenport Fire Department detected an excessive level of noxious fumes on the premises. The Fire Department had been called to the scene because a child had "passed out" on the premises.

SETTLEMENT AGREEMENT

8. Respondent, without admission of wrongdoing or guilt, agrees not to contest the above stated charge before the Board.

9. Respondent has a right to receive notice of the charge and to request a hearing before the Board on the merits of the charge, but waives its right to notice and a hearing and all attendant rights, including the right to appeal or seek judicial review of

the Board's actions, by freely and voluntarily entering into this Agreement. This Agreement shall constitute the final order of the Board in this case.

10. Respondent agrees that the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

11. This Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of future violations.

12. Any failure by Respondent to comply with the terms and conditions of this Agreement shall subject Respondent to further licensee disciplinary action which could be initiated by the Board through the filing of a statement of charges with a hearing to be held on the merits.

13. This Agreement is subject to approval by the Board:

- (a) If the Board does not approve this Agreement, it shall be of no force or effect on either party and it shall not be admissible for any purpose in further proceedings in this matter.
- (b) If the Board approves this Agreement, it shall fully dispose of all issues in this case.

14. This Agreement is a public record pursuant to Iowa Code sections 272C.3(4) and 272C.6(4)(2005).

15. This Agreement shall not be binding as to any new complaints received by the Board.

CONSENT ORDER

IT IS THEREFORE ORDERED:

16. Respondent's license to operate a nail technology salon shall be placed on probation for a period of one (1) year.

17. This Agreement shall not restrict or otherwise limit Respondent's operation of a nail technology salon in the state of Iowa except as expressly stated by the terms of this Agreement. During the probationary period, Respondent shall comply with the following terms.

- (a) Respondent shall comply with all relevant statutes and administrative rules in the course of its operations as a nail technology salon.
- (b) Respondents shall within 30 days provide adequate ventilation or filtration for the salon and provide evidence to the Board that this has been accomplished. The evidence shall include documentation from Scott County that the ventilation was inspected and approved and either a statement of the actions taken or a bill of materials for the ventilation project.
- (c) Respondents shall not have on its premises any cosmetic products containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products, including, but not limited to, any product containing methyl methacrylate monomer and methylene chloride. The presence of any such product in Respondent salon shall be prima facie evidence of its use in Respondent salon. Respondents shall label all containers containing cosmetic products.
- (d) Respondent shall file quarterly reports with the Board. The quarterly reports shall be typewritten and shall attest to the following information:
 - i) that all MSDS files are current and complete;
 - ii) that all cosmetic products are properly labeled;
 - iii) that no banned substances are in use;
 - iv) that the ventilation or filtration system is being properly maintained and is functional. This shall include the date the filter was last cleaned or inspected;

The failure of Respondent salon to provide complete and truthful information in the quarterly reports shall constitute a violation of this Agreement.

- (e) Upon request of the Board, the owner of Respondent salon shall appear before the Board to report on the status of Respondent's operations as a nail technology salon and to answer any questions or concerns the Board may have regarding Respondent's compliance with this Agreement. The Board shall provide Respondent with reasonable notice of the date, time, and place of any requested appearance. Respondent agrees that any such appearance would be governed by 645 Iowa Administrative Code rule 9.7 and that it waives any and all objections to the members of the Board both participating in the appearance and later participating as decision makers in a contested case proceeding.

18. Respondent agrees to pay to the Board a civil monetary penalty of \$500.

Respondent shall remit full payment of the civil monetary penalty to the Board within 30 days of the date this Agreement is executed by the Board.

19. Upon full compliance with the above terms and conditions, Respondent's license to operate a nail technology salon in the state of Iowa shall be restored to its full privileges free and clear of all probationary restrictions.

WHEREFORE, the terms of this Statement of Charges, Informal Settlement Agreement, and Consent Order are agreed to and accepted by the Iowa Board of Cosmetology Arts and Sciences and Respondent.

This Combined Statement of Charges, Informal Settlement Agreement, and Consent Order is approved by the board on May 4, 2005.