



Arizona State
Board of Cosmetology

November 29, 2007

1721 East Broadway • Tempe AZ 85282
Phone 480.784.4539 • Fax 480.784.4962
www.azboc.gov

Owner/Manager
Lavie Nails & Spa
1534 E Ray Rd
Gilbert AZ 85296

Re: Complaint No.'s 74126 & 74127, Lavie Nails & Spa, Salon's License No.'s M15510 & A15540; La Vie LLC, Owner; Cyndi Vong, Member and Phoung C Vong, Manager, License No's 50601110 & 30600931

Dear Owner/Manager:

Pursuant to A.R.S. § 32-573(C), the Arizona State Board of Cosmetology (the "Board") hereby requests you to attend an informal interview to be conducted:

DATE: Friday, December 14, 2007
TIME: 10:15 a.m.
PLACE: 1721 East Broadway, Tempe, Arizona.

The Board will consider allegations of violations of A.R.S. §§ 32-572 (A) (4) and 32-574 (A) (1) (5) & (10). **You may appear with or without the assistance of an attorney. You will be allowed to present evidence and witnesses on your behalf. You may question Board witnesses through the Board Chair. In the event that you are not present at this informal interview, a complaint shall be issued and formal proceedings shall be initiated pursuant to A.R.S. § 32-573 (D).**

LEGAL REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS

PURSUANT TO ARIZONA SUPREME COURT RULE 31, A NATURAL PERSON MAY APPEAR AT AN ADMINISTRATIVE PROCEEDING WITH OR WITHOUT THE ASSISTANCE OF COUNSEL. HOWEVER, ANY LEGAL ENTITY (CORPORATION, LLC, PARTNERSHIP), MUST APPEAR ONLY THROUGH THE REPRESENTATION OF A LICENSED ATTORNEY.

In the interest of a prompt and speedy settlement of this matter, you may choose to enter into a consent agreement with the Board. If you choose to settle this case with the Board, please sign the Consent Agreement found on the back of this letter and return it to the Board before the date of the informal interview. An informal interview will not be held if the Board has received a signed consent agreement and first payment.

The Arizona State Board of Cosmetology complies with the Americans with Disabilities Act of 1990. In the event that you require special accommodations to attend this informal interview or to receive this information in an alternative format, please advise the Board.

If you have any questions, please feel free to call Donna at extension 231 or Irma at extension 228.

Sincerely,

Sue Sansom
Executive Director

SS/ipt

cc: Bridget F. Harrington, Assistant Attorney General

over

LaVie Nails & Spa
1534 E. Ray Road, #177
Gilbert, AZ 85296

October 30, 2008

Arizona Department of Cosmetology
Compliance Department,
Attn: Donna & Linda
1721 East Broadway
Tempe, AZ 85282-1611

Re: October 29, 2008 Visit

To Whom It May Concern:

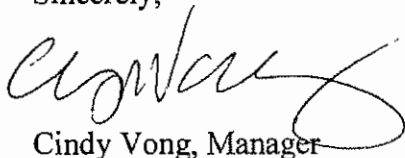
I have two separate business entities: LaVie Nails (file number: NT 15510) and a new business which I have just recently started: Spa Fish Therapy at the location above. The two businesses are formed separately and run separately. Upon researching the laws and regulations of Arizona, it did not appear that the State had jurisdiction over the Spa Fish Therapy operation.

I was not present when Linda visited the facility and she left a blank "Affidavit" form. I am not sure what she wanted me to put on the form. From my staff I understand that she was interested the sanitation procedures that are used with the Spa Fish Therapy operation. I consider the safety of my patrons to be of top priority. Prior to opening that business to the public, I put in place a "Spa Fish Policy and Procedures" that was applicable to this operation. I have attached a copy for your information. I also prepared, and have each client using the spa service sign, a "Spa Fish Therapy Patron Notice." A copy of that document is also attached. As you can see, I have put in place procedures that are meant to ensure the cleanliness of the therapy as well as ensuring the safety of all my patrons.

As you can see from the Spa policy and the patron notice, there is no commingling of services between the Spa Fish operation and the LaVie Nails operation.

I hope this is responsive to your needs. I would be happy to answer any further questions your might have.

Sincerely,



Cindy Vong, Manager

Attach: Spa Fish Business Registration
Spa Fish Policy and Procedures
Spa Fish Therapy Patron Notice

LaVie LLC.
1534 E. Ray Road, #117
Gilbert, AZ 85296

November 13, 2008

Arizona State Board of Cosmetology
Attn: Sue Sanson, Executive Director
1721 East Broadway
Tempe, AZ 85282-1611

Re: Spa Fish Therapy Operation

Dear Ms. Sanson,

I am the owner of LaVie LLC. LaVie LLC has two separate business operations, LaVie Nails and Spa, and Spa Fish Therapy. Both are located in my facility at 1534 E. Ray Road in Gilbert, Arizona. LaVie Nails and Spa is a salon licensed by the State.

Earlier this year, after reading about and researching a new type of business, I made the decision to form Spa Fish Therapy offering a fish therapy experience to my customers. In my research I found that this type of operation was ongoing and very popular in a number of Far Eastern and European countries, as well as in Turkey and India. I researched activities in the United States and found several states where spa fish operations were open to the public. This process uses tiny carp fish known as Garra Rufa or "doctor fish" to suck away dead, flaking skin cells. The fish are small and have no teeth, thus they are not able to penetrate a user's skin during the therapy session.

I also researched Arizona statutes and regulations and concluded that a spa fish therapy operation was not covered by the then current Arizona laws and regulations.

In an effort to provide this new and exciting service to my customers, I proceeded to acquire the equipment and fish that I would need to start the operation. I also proceeded to make certain modifications and additions to my facility to house the new operation.

As I was making these plans, Linda Stroh, an investigator from the Arizona State Board of Cosmetology, (Board) came by my facility for a normal inspection. At that time I mentioned to her what I was planning to do. The investigator told me that she would discuss my plans with her supervisor and get back to me. Although I did not hear back from her as I proceeded with my plans, I understand that she may have called my business and left a message with one of my employees that there were problems with what I was planning to do. I never got this message, and believing that my planned

operation was not regulated by the State, I completed my remodeling and the acquiring of the fish to start operations, not I will say, a substantially costly undertaking.

Around the middle of October I opened the new business to the public. Since that time I have had a number of customers who have tried the spa fish therapy and all feedback has been positive and, specifically, there has been no feedback on any harmful effect from the service. A review of open literature showed that similar spa fish operations are in effect in Florida, Virginia, Ohio and Connecticut. Operations in Texas and Washington have been stopped by the State. In reviewing the reasons for the stops in Washington and Texas seemed to be a belief that the foot baths and holding tanks, because they are home to live fish, cannot always be properly cleaned and disinfected. It is of interest to note that in an Associated Press story dated Oct. 9, 2008, the spokesperson for the Texas Department of Licensing and Regulation, Susan Stanford said "that she had not heard of any cases in which someone got sick from a fish pedicure". An extensive search of the available literature did not reveal a single case where a customer using the fish spa treatment had gotten sick or suffered any ill effects from the spa fish treatment.

Recently the Board Inspector visited my business again and at that time I was informed that I could not have such a spa fish operation as it was forbidden under Arizona law. Following up on this I wrote to Donna Aune of the Board Compliance section to clarify this comment and my status. After a short phone conversation with Ms. Aune, I invited her and the investigator, Linda Stroh to visit my business and to see the spa fish operation in person.

On November 10, 2008, Ms. Aune and Ms. Stroh visited my business. The outcome of that meeting was the Ms. Aune concluded that my spa fish operation was an exfoliation of the skin operation and thus subject to the regulations of the Board of Cosmetology. She also went on to conclude that the fish were a tool under the regulations and there was no way that I could use fish for exfoliation and meet the standards for sterilization as set forth the Board regulations.

Per Ms. Aune's suggestion, I have looked to see if the FDA had any regulations on this subject, and unless we plan to eat the fish, they have no regulations in this area. In addition, I have looked at the ICE regulations, and again there is nothing on this service. I will note here for the record that the fish which I ordered and which are used in my business were legally imported into the U.S. and had no problem in clearing customs.

While I might take issue with her conclusion that the spa fish operation is an exfoliation, I have concluded that argument is not appropriate to make at this time. It is my position that when the regulations of the Board were written in 2001 and 2003 on exfoliation, it was never contemplated that something like the spa fish therapy would be used and therefore, it is inappropriate to try and apply those rules and requirements to a spa fish operation. Based upon my research, as stated above, I could find no basis for the proposition that a properly run spa fish operation posed a health problem to the public generally and to customers using the service specifically. I clearly understand and support the role of the Board in assuring that all operations that come within their

jurisdiction must be conducted in such a way to ensure the health and safety of all customers. However, I believe that opinions that this type of operation is not safe are lacking in any specific proof of that fact and are based on potential scenarios with no concrete supporting evidence. I would contend that it in the best interest of the public and the State that this new type of operation and its effects on the customer be studied in more depth and treated as a different type of operation than that currently covered by the Board regulations and one which needs its own specific regulations and guidelines.

In my short time of planning for and operating the spa fish therapy, I have found great enthusiasm and desire to use this service. As a matter of fact, I have even received a few calls from people residing outside the State of Arizona who wanted to travel to Gilbert to have the spa fish therapy experience. I truly believe, and to a limited extent I have found with my new venture, that there is a market for and a desire to be able to use such a therapy. Spa Fish operations have the potential of opening up a new customer market for the East Valley and for Arizona helping our struggling economy. It is important that we not dismiss this proposed new therapy out of hand, but rather we work together to see if indeed this type of therapy can be provided in a safe and sanitary manner to a desirous customer base.

The central issue is whether or not the fish can be used in a setting and with certain regulated processes such that they do the skin sucking without the possibility of causing infection to the users. Again, it is important to state that in my research I could find no incidence of infection resulting from the use of the fish. Specifically, I could find no technical discussion by a scientist or anyone knowledgeable in the public health field of any health or safety issues associated with the use of the fish.

I believe we need to put forth an effort to determine if the spa fish therapy is indeed safe for the customer. I am therefore recommending that before the Board forbids such operations, a study be conducted to see the actual results of such an operation and any impact on the health of customers.

To that end, I am proposing that I work with staff at the Board to run a pilot program in my facility for a period of 6 months (or whatever other period may be deemed appropriate by Board staff) wherein Board staff would oversee my operations and I would collect data on all customers who used the therapy both before they use the therapy and for some period of time afterward to determine if there were any negative impacts resulting from the spa fish.

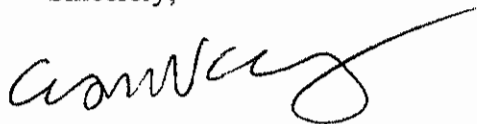
I would put in place procedures reviewed by the Board staff to assure the cleanliness of the operation. Safety of my customers has always been a top priority of mine and I believe the record of inspections of LaVie Nails and Spa will attest to my past performance. In planning for the spa fish therapy operation, I looked very carefully at the steps that would need to be taken to assure the health and safety of all who used the therapy. I have written the procedures out and previously furnished them to Ms. Aune. In reviewing my discussion with Ms. Aune and attempting to further address her concerns, I have made certain changes to those procedures to further insure the cleanliness of the

process. I developed a revised set of procedures that would cover operations and use of the spa fish which I believe do insure the cleanliness of the process. These procedures, with any changes resulting from the pilot program, could serve as a basis for new Board regulations/guidance covering any future spa fish operations. I would be happy to work with Board staff to determine if any further changes need to be made to my procedures both before and during this pilot program.

I believe we have a service that the public wants to use and a procedure to make sure that the service is delivered in a safe manner. I believe my proposed pilot program will provide the actual evidence necessary for the Board staff to make an informed decision on future operations or possibly the Arizona State Legislature if it was determined that new law was needed to cover this service. I commit that if at anytime during the pilot program that the operation proves to be of harm to the customers, I will immediately cease all operations. I request your favorable consideration of my proposal and will be happy to answer any questions or to meet with you at any time to discuss it further.

In closing, I want to say that I certainly appreciate the professionalism of Ms. Aune throughout and her responsiveness in coming to my place of business to discuss this item.

Sincerely,



Cindy Vong,
Manager, Owner

Attch: Spa Fish Therapy Procedures

cc w/attch: Ms. Donna Aune, AZBOC
Senator Thayer Verschoor, AZ State Legislature



Arizona State
Board of Cosmetology

Cindy Vong, Owner
LaVie, L.L.C.
1534 E. Ray Road #117
Gilbert, AZ 85296

1721 East Broadway • Tempe AZ 85282
Phone 480.784.4539 • Fax 480.784.4962
www.azboc.gov

RE: Spa Fish Pedicures

Dear Ms. Vong:

The Arizona State Board of Cosmetology (Board) received a complaint regarding your salon which alleged that you were performing fish pedicures. As you are aware, the Board's Investigators have been to your salon on October 29, 2008 and again on November 10, 2008. We have also received legal advice on this issue from the Arizona Attorney General's Office.

Fish Pedicures constitute a violation of the Board's statutes and rules and you should therefore refrain from conducting these pedicures immediately. Fish Pedicures are not within the scope of practice of cosmetology nor of nail technology found in A.R.S. §32-501(6) and (9).

In addition, this type of pedicure is a clear violation of the Board's Rule A.A.C. R 4-10-112 on Infection Control and Safety Standards. Any tool or piece of equipment used in a pedicure must be stored in a dry storage and disinfected in a very specific way and it is impossible to disinfect the fish coming in contact with your clients' skin in the required manner. See A.A.C. R 4-10-112(A) (5) (6) (C) (1) (2) (G) (1) (2). You are jeopardizing you clients' health by performing this type of pedicure.

Only certain products designed for the removal of the epidermis may be used in salons and may be used only in a manner approved by the FDA. See A.A.C. R 4-10-112 (M) (1) (2) (P) (3) (4). It is obvious that the fish you are using as part of the pedicure are not available for the purpose of removal of the epidermis and for beautification as required by A.A.C. R 4-10-112(P) (3) (4). This rule also prohibits animals and fish (except for regular aquariums) from being present in a salon. A.A.C.R 4-10-112 (T) (2) (3).

Your conduct is in violation of A.R.S. §32-574(A) (10) and could therefore constitute a class 1 misdemeanor pursuant to A.R.S. §32-574(C). This matter will be placed on the next available Board agenda for further action. In the meantime you should immediately refrain from offering or performing fish pedicures in your salon.

Please respond to this letter within 10 days of receipt and detail what actions you will be taking to rectify this situation.

Sincerely,

Sue Sansom

Executive Director
Arizona State Board of Cosmetology

cc Bridget F. Harrington
Assistant Attorney General

La Vie LLC.
Spa Fish
1534 E. Ray Road, #117
Gilbert, AZ 85296

January 7, 2009

Arizona State Board of Cosmetology
Attn: Sue Sansom, Executive Director
1721 East Broadway
Tempe, AZ 85282-1611

Re: Spa Fish Therapy Operation

Dear Ms. Sansom,

On January 3, 2009, I received your undated and unsigned letter, subject: Spa Fish Therapy. At the end of the letter, you asked for my response within 10 days of receipt of the letter detailing what actions I will be taking.

In your letter you referred to a complaint received by the Board regarding my salon. This is the first time in all of the interactions I have had with the Board representatives on this subject that I have been advised that a complaint had been filed. To my knowledge I do not know of any client who used my fish service and filed a complaint. I would like to see a copy of that complaint so that I can properly respond to any allegations contained therein.

I am disappointed that you chose not to respond to any of the arguments or proposals that were included in my letter to you dated November 13, 2008. As you should have seen from my letter, I am desirous of working with the Board to assure the Board that this service, desired by many in the public, can be offered in a safe manner. The safety of my operation is a fact which I sincerely believe to be true and which has not been countered by any specifics from the Board. As I pointed out in my letter, the Board regulations you have cited both previously by your representatives and again in your undated letter, were written at a time when the use of fish in the manner I have proposed, was not known or contemplated, and that to apply such rules to a fish operation is an inappropriate application of the regulations. I have proposed to you certain operational procedures that could be turned into a Board regulation and used to assure public safety in a fish operation should a determination be made that this type of operation falls within the Board's jurisdiction (see the next paragraph).

In your letter to me, you state that: "Fish Pedicures are not within the scope of practice of cosmetology nor of nail technology found in A.R.S. Sections 32-501(6) and (9)." If this statement in your letter is correct, and I see no reason to argue with you over that conclusion, then it follows that the Board of Cosmetology has no jurisdiction over my fish therapy operation and no authority to apply their regulations to my fish operation. Therefore, it would seem that we can both consider this matter closed.

Taking a different point of view from the regulations just cited above, you also cite A.R.S. Sections 32-574(A)(10) and 32-574(C) in the same letter. It is my belief that, even if the Board did have jurisdiction over the fish operation, these sections are not applicable in that the regulations you cite do not cover my situation – the same arguments I have previously made to you and to which you have not responded.

Also, I do not know whether or not you are aware that a lawsuit has been filed in the State of Washington by the owner of a salon there which has offered the fish pedicure. The lawsuit is over the State's action to shut down her operation. I have been in touch with that salon owner and am following the progress of her case in court.

In conclusion, I believe you are correct in stating that the Board has no jurisdiction over my fish operation and no further action is necessary. However, if you disagree, I respectfully request that you respond to the specific points and proposals that I made in my November 13, 2008 letter to you. As I have previously offered, I would be willing to meet with you at anytime to discuss this matter.



Cindy Vong,
Owner

Cc: Thayer Verschoor, Arizona State Senator



Arizona State
Board of Cosmetology

February 3, 2009

1721 East Broadway • Tempe AZ 85282
Phone 480.784.4539 • Fax 480.784.4962
www.azboc.gov

Owner/Member/Manager
Lavie Nails & Spa
1534 E Ray Rd Ste 117
Gilbert, AZ 85296

Re: Complaint No. 77093, Lavie Nails & Spa, Salon License No. M15510; La Vie LLC., Owner, Cindi Vong, Member, License No's 50800113 & 30700868 and Phong "John" V Nguyen, Manager, License No. 50000214

Dear Owner/Member/Manager:

Pursuant to A.R.S. § 32-573(C), the Arizona State Board of Cosmetology (the "Board") hereby requests you to attend an informal interview to be conducted:

DATE: Friday, February 20, 2009
TIME: 10:45 a.m.
PLACE: 1721 East Broadway, Tempe, Arizona.

The Board will consider allegations of violations of A.R.S. §§ 32-541; 32-574 (A) (10) and A.A.C. R4-10-112 (A) (5) (B) (1) & (2) (C) (1) & (2) (E) (1) & (7) (G) (1) & (2) (P) (3) & (4). **You may appear with or without the assistance of an attorney. You will be allowed to present evidence and witnesses on your behalf. You may question Board witnesses through the Board Chair. In the event that you are not present at this Informal Interview, a complaint shall be issued and formal proceedings shall be initiated pursuant to A.R.S. § 32-573 (D).**

LEGAL REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS

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Sincerely,

Sue Sansom
Executive Director

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cc: Bridget F. Harrington, Assistant Attorney General

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