

BEFORE THE IOWA PLUMBING AND MECHANICAL SYSTEMS BOARD

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|-----------------------|---|--------------------------|
| In the Matter of |) | No. PM20120005 |
| |) | |
| David Beenken, |) | |
| |) | AMENDED NOTICE OF |
| Respondent |) | HEARING |
| |) | |

COMES NOW the Iowa Plumbing and Mechanical Systems Board (Board) and hereby files this Notice of Hearing pursuant to Iowa Code section 17A.12 and 641 Iowa Administrative Code 32.5(5)(c). Respondent does not possess a license issued by the Board.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A contested case hearing shall be held on **September 19, 2012** before the Board. The hearing shall begin at **9:00 a.m.** and shall be located in **State Hygienic Lab, DMACC 2220 S. Ankeny Blvd., Ankeny IA, Iowa Lab Facility Rooms 207 & 208.**

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the Board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 33. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the allegations made against you, produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 641 IAC 33.22. The hearing shall be open to the public pursuant to 641 IAC 32.5(5)(e).

Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 641 IAC 33.21.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: September Lau, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or email, about this Notice of Hearing. Board members may only receive information about the case when aU parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 105.27 and 272C.3.

Legal Authority. Pursuant to Iowa Code section 105.27, the Board may impose a civil penalty of up to \$5000 per offense for violation of any provision of Chapter 105.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code 17A.12(3) and 6411AC 33.26.

C. SECTIONS OF STATUTES AND RULES INVOLVED

Iowa Code section 105.10 requires all persons who perform plumbing and mechanical services in the State of Iowa to possess a license issued by the Board. Under 6411AC 32.5(1)(a) the following is an unlawful practice: "Acts or practices by unlicensed persons which require licensure to install or repair plumbing, HVAC, refrigeration, or hydronic systems."

Announcing to the public in any way (the use of any sign, card, circular, device, vehicle, or advertisement) the intention to provide any service for which a license is required is prima facie evidence of engaging in the practice of a plumber or mechanical professional. Iowa Code § 105.29.

D. FACTUAL AND PROCEDURAL CIRCUMSTANCES

1. On March 20, 2012, the Board issued a Notice of Intent to Impose a \$3,500 Civil Penalty against Respondent. This Notice was issued in full compliance with Iowa Code section 105.27 and 641 IAC 32.5.

2. The Notice stated the following:

- 1) Respondent has never been issued a license by the Board.
- 2) Since state licensing went into effect, Respondent has provided plumbing and HVAC services which require licensure to perform.

3) Respondent performed Plumbing work for Customer 1 ("C1")¹ on six (6) occasions in 2009: Respondent worked on C1's (1) sewer, (2) kitchen sink, (3) water heater, (4 & 5) drains and POC fittings on two occasions, and (6) toilet(s).

4) Respondent performed HVAC work for C1 on two (2) occasions in 2009: Respondent(!) installed and worked on air-conditioning units, and (2) installed a furnace.

5) Respondent performed Plumbing work for Customer 2 ("C2") on four (4) occasions in 2009: Respondent (!) worked on C2's sump pump and drains, (2) installed a water heater, (3) worked on C2's shower, (4) worked on C2's drains.

6) Respondent performed HVAC work for C2 on two (2) occasions in 2009: Respondent(!) worked on C2's air conditioning and ductwork, and (2) installed a furnace.

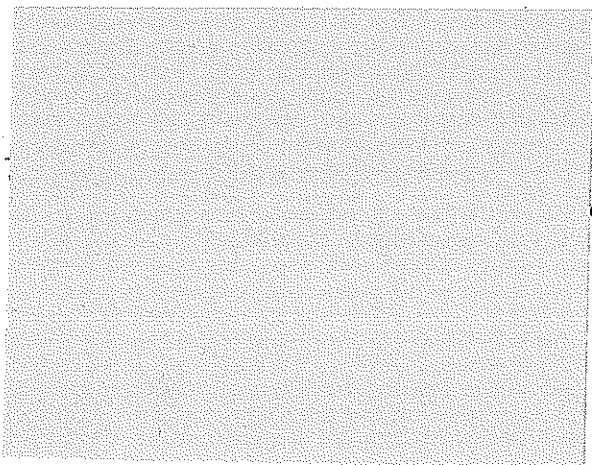
7) Respondent committed fourteen (14) separate violations of Chapter 105.

8) In addition, Respondent holds himself out as "Beenken Plumbing, Heating & Cooling."

3. The Board received an oral request from Respondent for a hearing in this matter on or about April 30, 2012.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 641 IAC 33.23. If you are interested in pursuing settlement in this matter, please contact Assistant Attorney General September Lau at (515) 281-7175.



¹ To protect the privacy of Respondent's customers, their names are omitted.