

STATE OF IOWA
BEFORE THE BOARD OF BARBERING

IN THE MATTER OF:

American College of Hairstyling
License No. 00002

Owner: Terence Millis
Barber license 12588
Instructor license 00039

NO. 08-001
DIA NO. 09DPHBE001

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On July 28, 2009, the Iowa Board of Barbering (Board) issued a Notice of Hearing and Statement of Charges against American College of Hairstyling, a licensed barber school, and Owner Terence Millis, a licensed barber and licensed instructor (Respondent). Respondent was charged with the following three counts:

- Count I: Employing unlicensed instructors, in violation of 645 IAC 23.9(1).
- Count II: Unsanitary practices, in violation of 645 IAC 22.5(6) and (8), 22.11(2),(3), and (4), 22.12(2) and (3), and 22.16(3).
- Count III: Failure to comply with a Board order, in violation of 645 IAC 25.2(20).

The hearing was held on October 27, 2009 at 1:30 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent Terence Millis appeared and was self-represented. The state was represented by Assistant Attorney General Jordan Esbrook. The following Board members were present for the hearing: Charles Wubbena, Vice-Chair; Robert VanVooren, and Rhonda D. Rife. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2009), 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)(2009), 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 the witnesses and State Exhibits 1-8 (See Exhibit Index for description).

FINDINGS OF FACT

1. American College of Hairstyling is located at 603 E. 6th Street in Des Moines, Iowa and holds barber school license no. 00002. License No. 00002 is current and will next expire on June 30, 2010. Respondent Terence Millis owns the barber school and personally holds a current barber license and a current instructor license. (Testimony of Terence Millis; State Exhibit 5)
2. On January 26, 2009, Respondent entered into a Settlement Agreement and Final Order with the Board to resolve the pending Notice of Hearing and Statement of Charges that had been filed on July 29, 2008. Pursuant to the terms of the Settlement Agreement, Respondent was cited and warned for failure to comply with laws and rules governing barbering and agreed to comply with all board rules and regulations applicable to barber schools. Respondent's licenses were placed on probation for one year, subject to certain terms and conditions. (State Exhibit 3)
3. On June 12, 2009, Department of Inspections and Appeals (DIA) Investigator Kimberly Groves made an unannounced visit to the American College of Hairstyling to determine if the school was in compliance with the licensing requirements for its instructors. A student pointed out Richard Medina, James Looker, and Truc Lam as the school's instructors. All three verified that they were instructors employed by the school. Mr. Medina has been employed by the school since January 2009. Mr. Looker has been employed by the school since October 2008. Ms. Lam had been employed since May 2009 and worked "off and on". Ms. Groves asked to speak to Terence Millis but was told that he was on vacation.

Kimberly Groves reviewed photo identification presented by Richard Medina, James Looker and Truc Lam. Ms. Groves observed the following professional licenses posted on the school's back wall:

- a. American College of Hairstyling school license expires 06-30-2010.
- b. Terence Millis, Barber license #12588, expires 06-30-2010; Barber instructor license #00039, expires 06-30-2010.
- c. James Looker, Barber license #12491, expires 06-30-2010, Barber instructor license #00049, expired 06-30-1998.
- d. Shannon Jackson, Barber license #14467, expires 06-30-2010; Barber instructor license #014585, expires 06-30-2010.

No licenses were posted for Richard Medina and Truc Lam, and they told Kimberly Groves that their certificates were at home. Ms. Groves consulted Board records and discovered that Richard Medina had a current Barber license #11624, but his Barber instructor license #00065 had expired on 06-30-2008. Mr. Medina told Ms. Groves that he only had to pay dues to get his instructor license reinstated but had not yet done so because he "doesn't think about it."

Board records showed that Truc Lam had a current Barber license #14733 but did not have an instructor license. Ms. Lam had the wallet card for her Barber license and told Ms. Groves that she only works at American College of Hairstyling part-time. She further reported that she took the barber instructor examination in April but did not pass. (Testimony of Kimberly Groves; State Exhibit 6)

4. At the time of her June 12, 2009 visit to American College of Hairstyling, Ms. Groves observed a number of sanitation violations at the school, including:

- The employees could not locate a biohazard bag; Mr. Looker told Ms. Groves that he did not think they had one;
- The Barbicide at some stations was full of hair clippings while supplies were soaking in it, and there was not enough Barbicide liquid to cover the supplies in the container;
- One sink had dirt in the drain strainer, and some sinks had hair clippings around and behind the controls;
- Some of the electrical razors were covered with hair, including the razor at one station that was not in use;

- Some of the towels that were underneath clean supplies were covered with hair clippings, and some clean towels had hair clippings on them.

(Testimony of Kimberly Groves; State Exhibit 6, p.3)

5. Kimberly Groves returned to the American College of Hairstyling on July 10, 2009. James Looker reported to her that they had made the following changes since her last visit: the Barbicide at each station was cleaned every day, students' stations are inspected every evening, and the school had obtained biohazard bags. (Testimony of Kimberly Groves; State Exhibit 6, p. 3)

Kimberly Groves interviewed instructor Shannon Jackson, who had filed the complaint with the Board concerning the school's unlicensed instructors. Ms. Jackson told Ms. Groves that she had previously spoken to James Looker, Richard Medina, and Truc Lam about not having their instructor licenses. Ms. Jackson also stated that she told Terence Millis about the licensing problem in February 2009.

Kimberly Groves also interviewed Terence Millis. Mr. Millis told Ms. Groves that he knew that Richard Medina and James Looker are not licensed but he thought that after failing the instructor exam, Mr. Looker was permitted to continue as an instructor until he took the examination again. Mr. Millis also admitted that he knew that Mr. Medina did not have an instructor license but that he thought he had renewed it in July. Mr. Millis had not taken any action to verify that Mr. Medina renewed his license. Mr. Millis also admitted that Ms. Lam continued to work part-time as an instructor even though she had failed her instructor exam. Mr. Millis told Ms. Groves that he allowed Ms. Lam to continue to instruct students because "we need the hands." (Testimony of Kimberly Groves; State Exhibit 6, pp. 4-5)

6. Truc Lam and James Looker both had taken the barber instructor examination in April 2009 but reported that they failed it by a small margin. Mr. Looker, who has 30 years of experience as a barber and past experience as a barber instructor, passed the barber instructor examination in July 2009. Richard Medina has now reactivated his instructor license. Truc Lam no longer works as an instructor at the school. Shannon Jackson continues to work as an instructor at the school, although she has filed a Civil Rights Complaint against her employer. Mr. Millis suggested that Ms. Jackson filed the complaint against him because she was upset that he did not give her the position as the school's director. (Testimony of Terence Millis)

7. Board staff verified that as of the date of the hearing before the Board, both James Looker and Richard Medina had valid barber instructor licenses. Truc Lam still was not licensed as a barber instructor in Iowa. None of them has ever held a temporary instructor license. (Testimony of Tammy Hidlebaugh)

CONCLUSIONS OF LAW

Iowa Code section 158.12 authorizes the Board to suspend, revoke, or deny the renewal of any license issued under the provisions of chapter 158 for any violation of chapter 158 or any violation of the rules of the Board.

Count I: *Employing Unlicensed Instructors*

Iowa Code section 158.7 provides that any person employed as a barbering instructor in a licensed barber school shall be a licensed barber and shall possess a separate instructor's license which shall be renewed annually. 645 IAC 23.9(1) requires all instructors in a barber school to be licensed by the department.

The preponderance of the evidence established that American College of Hairstyling and owner Respondent Terence Millis violated 645 IAC 23.9(1) by employing three unlicensed instructors: Richard Medina, James Looker, and Truc Lam. Mr. Medina and Mr. Looker were both employed as instructors for more than six months when they did not have instructor licenses, and Ms. Lam was employed part-time for several months without having an instructor license. The motive of the person reporting the unlicensed instructors is irrelevant to the Board. Terence Millis knew that the instructors were not licensed, and his claim that he thought some of them had temporary licenses was not credible.

Count II: *Unsanitary Practices*

645 IAC 22.5(6) and (8) provide that barbershops and schools shall provide a floor surface in the service area that is nonabsorbent and easily cleanable and work surfaces that are easily cleaned. 645 IAC 22.11(2), (3), and (4) provide that barbershops and schools shall provide receptacles to hold all soiled towels and capes; clean, closed cabinets or drawers to hold all clean towels; and disinfectant solution kept in the storage area and at each workstation. 645 IAC 22.12(3) provides that all disinfected

instruments shall be stored in a clean, covered place. The preponderance of the evidence established that Respondent was in violation of 645 IAC 22.11(2),(3) and (4) and 22.12(3) on June 12, 2009 when towels underneath clean supplies as well as clean towels were observed to have hair clippings on them and when the disinfectant solution was full of hair clippings and insufficient to cover the supplies in the container. Sinks were dirty and partially covered with hair clippings.

645 IAC 22.12(2) provides that all instruments that have been used on a client or soiled in any manner shall be placed in a proper receptacle. The preponderance of the evidence established that Respondent was in violation of 645 IAC 22.12(2) on June 12, 2009 when electrical razors were found covered with hair. 645 IAC 22.16(3) provides that hazardous waste containers and bags shall be available for use at all times when services are being performed. The absence of containers shall be prima facie evidence of noncompliance. The preponderance of the evidence established that Respondent was in violation of 645 IAC 22.16(3) on June 12, 2009 when there was no biohazard bag on the premises.

Count III: Fail To Comply With Board Order

645 IAC 25.2(20) provides that the board may impose any of the disciplinary sanctions provided in rule 645-25.3 when the board determines that the licensee has failed to comply with a board order or with the terms of a settlement agreement or consent order. The preponderance of the evidence established that Respondent violated 645 IAC 25.2(20) on June 12, 2009 when the barber school was operating with unlicensed instructors and in violation of the Board's sanitation rules. On January 26, 2009, Respondent had entered into a Settlement Agreement and specifically agreed to comply with all board rules and regulations applicable to barber schools.

DECISION AND ORDER

IT IS THEREFORE ORDERED that American College of Hairstyling, License No. 00002, and owner Terence Millis, Barber License No. 12588 and Instructor License 00039, shall pay a civil penalty of \$1,000, within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that license number 00002, issued to American College of Hairstyling and license numbers 12588 and 00039 issued to Respondent Terence Millis,

shall immediately be placed on PROBATION for a period of two (2) years, subject to the following terms and conditions:

- A. Terence Millis must complete the four hour instructor course on teaching methodology within six (6) months of the issuance of this Decision and Order. These hours may not be used by Mr. Millis to renew his instructor license.
- B. American College of Hairstyling and Terence Millis must file quarterly typewritten reports with the Board during the period of probation. The written reports shall include the name, license numbers, and license expiration dates for all employees.
- C. American College of Hairstyling will be subject to random unannounced inspections at the discretion of the Board throughout the period of probation.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that American College of Hairstyling and Terence Millis shall pay \$75.00 for fees associated with the disciplinary hearing and \$79.45 for the court reporter fees. The total fees of \$154.45 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"(2009), and may impose further sanctions, up to and including license revocations.

Dated this 14th day of December, 2009.



Charles Wubbena, Vice-Chair
Iowa Board of Barbering

Pursuant to Iowa Code section 17A.19(2009) 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 decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.

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cc: Jordan Esbrook, Assistant Attorney General