

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

IN THE MATTER OF:)	
)	NO. 04-014
DAWN SCHULTE)	DIA NO. 04DPHCE014
License No. 843-56468)	
)	FINDINGS OF FACT,
RESPONDENT)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On November 22, 2004, the Iowa Board of Cosmetology Arts & Sciences (Board) filed a Statement of Charges and issued a Notice of Hearing to Dawn Schulte (Respondent). The Statement of Charges alleged that the Respondent failed to respond within 30 days of receipt of registered mail communication from the Board, in violation of 645 IAC 65.2(20).

A hearing was held on February 2, 2005 at 10:00 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent did not appear and was not represented by counsel. John Baty, Assistant Attorney General, represented the state. The following Board members presided at the hearing: Jack Morlan, Chairperson; Mary Beth Myers; Jerry Talbott; Sheila O'Hern; Lois Leytem; and Becky Brockmann. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2003), and was tape recorded.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2003) to deliberate its decision. The administrative law judge was instructed to prepare the Board's decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of the witness and state exhibits 1-12.

FINDINGS OF FACT

1. The Board issued cosmetology license number 843-56468 to the Respondent on February 18, 1994. The Respondent's cosmetology license lapsed on March 31, 1998 and has been lapsed for four renewal periods. (Testimony of Marilyn Ubaldo; State Exhibit 5)

2. On February 26, 2004, a member of the public filed a complaint alleging that the Respondent had been operating a cosmetology salon at 11 E. Main St. in Waukon, Iowa for more than a year without having a salon license or a cosmetology license. (State Exhibit 3) The 2004-2005 telephone directory for the Waukon area includes a listing for "Main Street Hair Styles Dawn Schulte" at 11 E. Main Street. (State Exhibit 4)

3. On February 27, 2004, the Board sent a letter to the Respondent by restricted certified mail, informing her of the pending complaint and requesting the following specific information in writing by March 15, 2004:

- Your personal Cosmetology license number
- Your social security number
- The name of the salon/s you are now working at and the salon/s license number.

The Board enclosed a reply envelope for the Respondent. The Respondent received and personally signed for the certified letter on March 4, 2004 but did not reply to it. (Testimony of Marilyn Ubaldo; State Exhibits 6, 7)

4. On May 12, 2004, the Board sent a second letter to the Respondent by restricted certified mail and again asked her to provide the information requested by the Board. The Respondent was warned that Board rule 645 IAC 65.2(20) authorizes the Board to take disciplinary action against a licensee for failure to respond to a written communication of the Board within 30 days of receipt by certified mail. A copy of the Board's original letter was enclosed. The Respondent received and personally signed for the certified letter on May 14, 2004 but did not reply to it. (Testimony of Marilyn Ubaldo; State Exhibits 8, 9)

5. The Statement of Charges and Notice of Hearing were served on the Respondent by restricted certified mail on December 6,

2004. She did not file an Answer to the Statement of Charges, as required by 645 IAC 11.12. The Respondent also failed to appear for the hearing. (Testimony of Marilyn Ubaldo; State Exhibits 1, 2, 12)

CONCLUSIONS OF LAW

I. Failure to Appear

645 IAC 11.6(1)"b" provides that the statement of charges and notice of hearing may be served on a licensee by restricted certified mail, return receipt requested. The Respondent was properly served with the statement of charges and notice of hearing but failed to appear for the hearing.

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. 645 IAC 11.21(1). The Board was authorized to proceed with the hearing in the absence of the Respondent.

II. Failure To Respond To Written Communications From The Board

The Iowa Board of Cosmetology Arts & Sciences Examiners was created by the legislature, pursuant to Iowa Code chapters 147 and 157, and was directed to adopt rules to implement the provisions of Iowa Code chapter 157. Iowa Code section 157.14 (2003). Any license issued by the department can be suspended, revoked, or renewal denied for violation of any provision of Iowa Code chapter 157 or the rules promulgated by the Board. Iowa Code section 157.9 (2003).

645 IAC 65.2(20) provides, in relevant part:

645-65.2(157,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645-65.3(157,272C) when the board determines that any of the following acts or offenses have occurred:

...

65.2(20) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

The preponderance of the evidence established that the Respondent violated 645 IAC 65.2(20) when she failed to respond to two certified letters from the Board. In addition, the Respondent failed to respond to the Statement of Charges by filing an Answer and failed to appear for the hearing.

III. Sanction

The Respondent has flagrantly violated Board rules by ignoring the Board's certified letters and the Statement of Charges. The Respondent's serious violations of 645 IAC 65.2(20) are aggravated because the Board was asking the Respondent to respond to a complaint that she is practicing cosmetology without a valid license. The Board has limited resources to carry out its licensing and regulation responsibilities and must be able to rely on the cooperation of its licensees. While the Respondent's lapsed license means that she is no longer authorized to practice cosmetology in the state of Iowa, further disciplinary action is required because Board rules permit reinstatement of a lapsed license upon payment of the required fees and completion of the required continuing education. See 645 IAC 60.11. Under the circumstances, protection of the public health, safety and welfare as well as the integrity of the licensing process require revocation of the Respondent's cosmetology license.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Cosmetology License No. 843-56468, issued to Dawn Schulte, is hereby REVOKED, effective immediately upon service of this Order. Any request for reinstatement would be subject to the provisions of 645 IAC 11.31. In a proceeding for reinstatement, the burden will be on the Respondent to establish that the reason for the revocation no longer exists and that it is in the public interest for her license to be reinstated.

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 within thirty (30) days of receipt of this decision.

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2003) 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 final decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.

This Findings of Fact, Conclusions of Law, Decision and Order is approved by the Board on March 3, 2005.