

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	NO. 08-085
Radiant Skin & Spa)	DIA NO. 09DPHCE018
License No. 011311)	
and)	
Sheryl Ruge)	
License No. 39624)	
)	FINDINGS OF FACT,
Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On November 5, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Radiant Skin & Spa, a licensed salon in the state of Iowa, and its owner, Sheryl Ruge. Respondent was charged with the following two counts:

Count I: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to post the salon license in the reception area at eye level, in violation of 645 IAC 61.5(2) and by failing to post a copy of the most current sanitation rules in the reception area at eye level in violation of 645 IAC 63.2.

Count II: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to properly clean and disinfect whirlpool foot spas and properly maintain a spa cleaning log, in violation of 645 IAC 63.25(2)-(5).

The hearing was held on July 12, 2010 at 10:15 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent was served with the Notice of Hearing and Statement of Charges by restricted certified mail but failed to appear for the hearing. (State Exhibit 4). The Respondent failed to appear for the hearing.

The state was represented by Assistant Attorney General Scott Galenbeck. The following Board members were present for the hearing: Becky J. Brockmann, acting Chairperson; Kimberly Setzer; Richard Mosley; Jerry Talbott; and Richard Sheriff. Administrative Law Judge John M. Priester assisted the Board in conducting the

hearing. The hearing was open 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 witness and State Exhibits 1-4 (See Exhibit Index for description).

FINDINGS OF FACT

1. On May 9, 2006, the Board issued Iowa salon license number 011311 to Radiant Skin & Spa, located at 22 N. 27th Street, Fort Dodge, Iowa. As of the date of the hearing, salon license no. 102708 was current and set to expire on December 31, 2010. Sheryl Ruge is the owner of Radiant Skin & Spa and was issued a cosmetology license and an esthetic license, nos. 39624. (State Exhibit 2)
2. On March 6, 2009, Department of Inspections and Appeals (DIA) Investigator Tamara Adams made an unannounced investigative visit to Respondent salon. (Testimony of Tamara Adams; State Exhibits 1,2)
3. At the time of the March 6, 2009 inspection, Investigator Adams documented the following violations of Board statutes and rules:
 - The salon's license was posted in the reception area; however the individual licenses were not posted in the reception area.
 - The salon's sanitation rules were in the salon but not posted in the reception area at eye level.
 - The investigator was not able to remove the screens from the whirlpool spa. The owner indicated that she did not have the tool to remove the screen. The owner indicated that the spas are cleaned daily by being cleaned with soap, rinsed, filled with Barbicide and run for ten minutes, emptied and flushed with water. The screens are cleaned weekly. The bi-weekly cleaning procedure is the same as

the daily cleaning; the spas do not sit for six to ten hours with disinfectant or bleach.

(Testimony of Tamara Adams; State Exhibit 1)

CONCLUSIONS OF LAW

645 IAC 65.2(13) provides authority for the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

Count I: Failure to Post the Salon License In The Reception Area At Eye Level

645 IAC 61.5(2) provides that a copy of the individual license (and current renewal card) shall be posted and visible in the salon reception area at eye level. The preponderance of the evidence established that the individual licenses was not posted in the salon reception area on March 6, 2009, in violation of 645 IAC 61.5(3).

Count II: Failure To Properly Clean and Disinfect the Whirlpool Spas and Failing to Document the Cleaning and Disinfecting of a Whirlpool Foot Spa

645 IAC 63.25 provides the procedures for proper cleaning and disinfecting whirlpool foot spas after each use, at the end of each day, and biweekly. In addition, the rule requires salons to maintain a record of cleaning and disinfecting. 645 IAC 63.25 provides, in relevant part:

645-63.25(157) Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths.

63.25(1) As used in this rule, “whirlpool foot spa,” “foot spa,” “whirlpool,” or “spa” is defined as any basin using circulating or still water.

63.25(2) After use for each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

- a. All water shall be drained and all debris shall be removed from the spa basin.
- b. The spa basin must be cleaned with soap or detergent and water.

c. The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

d. The spa basin and hydrotherapy bath must be wiped dry with a clean towel.

63.25(3) At the end of each day, the whirlpool foot spa must be cleaned and disinfected in the following manner:

a. The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and inlet shall be washed with soap or detergent and water.

b. Before the screen is replaced, it shall be completely immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

...

63.25(4) Every other week (biweekly), after being cleaned and disinfected as provided in subrule 63.25(3), each whirlpool foot spa and hydrotherapy bath shall be cleaned and disinfected in the following manner;:

a. The spa basin...shall be filled completely with water and one teaspoon of 5.25 percent bleach or recommended whirlpool disinfectant for each one gallon of water, or a solution of sodium hypochlorite (bleach) of approximately 50 ppm used according to the manufacturer's instructions.

b. The spa...shall be flushed with the bleach or recommended whirlpool disinfectant and water solution...for five to ten minutes and allowed to sit for six to ten hours.

c. The spa...shall be drained and flushed with water before use for a patron.

63.25(5) For each foot spa and hydrotherapy bath, a record shall be made of the date and time of each cleaning and disinfecting as required by subrules 63.25(3) and 63.25(4), and shall indicate whether the cleaning was a daily or biweekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting must be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event.

The preponderance of the evidence established that Respondent Radiant Skin & Spa violated 645 IAC 65.2(13) by failing to properly clean and disinfect the whirlpool foot spas, as required by 645 IAC 63.25(2)-(5). Respondent did not properly clean the whirlpool screens or jets, as shown by the presence of debris. The Respondent did not clean the whirlpool spas properly.

Sanction

The nature and seriousness of these violations, coupled with Respondent's failure to appear for hearing, justify the imposition of a civil penalty.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Radiant Skin & Spa and Sheryl Ruge shall pay a total civil penalty of four hundred and fifty dollars (\$450) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that Sheryl Ruge shall complete two (2) hours of continuing education on Iowa nail technology law, rules, and sanitation. The continuing education must be approved by the Board.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$34.37 for the court reporter fees. The total fees of \$109.37 shall be paid within thirty (30) days of receipt of this decision.

This Findings of Fact, Conclusions of Law, Decision and Order is approved by the board September 3, 2010.

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 establishes 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 of 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(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.