

BEFORE THE IOWA BOARD OF COSMETOLOGY ARTS AND SCIENCES

IN THE MATTER OF:	)	NOTICE OF HEARING
	)	AND STATEMENT OF CHARGES
Salon Elite,	)	CASE NO. CO 10-102
License No. 102655,)	
Cherilyn McDermott,)	
License No. 56070,)	
Kristine Jolly,	)	CO 10-103
License No. 066082,)	
Brooke Knapp,	)	CO 10-104
License No. 64895,)	
Oksana Willett,	)	CO 10-105
License No. 065658,)	
Wendi Kafer,	)	CO 10-106
License No. 60822,)	
Sarah Myers,	)	CO 10-107
License No. 067485,)	
Kari Thompson,	)	CO 10-108
License No. 60853,)	
Jennifer Robinson,	)	CO 10-109
License No. 60699,)	
and)	
Trisha Holmes,	)	CO 10-110
License No. 58646,)	
Respondents.)	
)	

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing pursuant to Iowa §§ 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) § 11.6.

Respondent Salon Elite was issued salon license no. 102655 on December 16, 2008, which license will next expire on December 31, 2010. Respondent-owner of the salon, Cherilyn McDermott, holds cosmetology license no. 56070, which is current and will next expire on March 31, 2011. Licensees Kristine Jolly, Brooke Knapp, Oksana Willett, Wendi Kafer, Sarah Myers, Kari Thompson, Jennifer Robinson, and Trisha Holmes provide services in Respondent Salon Elite located at 5901 University Ave., Cedar Falls,

IA 50613. All licensees are referred to jointly herein as "Respondents."

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 5, 2011, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 11:00 AM and shall be located in the Lucas State Office Building, Fifth Floor Conference Rooms 517/518, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC § 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address: Board of Cosmetology Arts and Sciences, 5th Floor, Lucas State Office Building, Des Moines, Iowa, 50319.

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 11. 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 charges against you, to 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 645 IAC § 11.18. The hearing may be open to the public or closed to the public at your discretion.

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 645 IAC § 11.17.

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: Kristin Ensign, 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 e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all 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 147, 157, and 272C (2009).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 157, and 272C (2009), and 645 IAC chapter 65.

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) (2009) and 645 IAC § 11.21.

C. CHARGES

COUNT I

Respondents are charged under Iowa Code § 147.55 (2009), and 645 IAC §§ 63.4(3), 63.25(3) and 65.2(13), with failing to clean and fully document cleanings of pedicure spas in violation of 645 IAC §§ 63.25(1-3).

COUNT II

Respondents are charged under Iowa Code § 147.55 (2009), and 645 IAC § 65.2(13) (2009), with engaging in unsanitary practices in violation of Iowa Code § 157.6 and 645 IAC §§ 63.4(3), 63.10, 63.12(1), 63.13(2), 63.14, 63.15, 63.11.

COUNT III

Respondents are charged under Iowa Code § 147.55 (2009) and 645 IAC §§ 63.4(3) and 65.2(13) with failing to properly post a copy of the most recent sanitation rules and inspection report in the salon reception area at eye level in violation of 645 IAC § 63.

COUNT IV

Respondents are charged under Iowa Code § 147.55 (2009) and 645 IAC §§ 63.4(3) and 65.2(13) with failing to provide for biohazard disposal in violation of 645 IAC § 63.11.

COUNT V

Respondents are charged under Iowa Code § 147.55 (2009) and 645 IAC §§ 63.4(3) and 65.2(13) with failing to post professional licenses in the reception area at eye level in violation of 645 IAC §§ 61.5(3) and 61.5(4).

D. FACTUAL CIRCUMSTANCES

1. Salon Elite is owned and operated by Respondent McDermott, who works in the salon. All other respondents rent space and work throughout the common areas of Salon Elite.

2. During an inspection of Salon Elite on February 4, 2010, the sanitation rules and professional licenses were not posted in the reception area at eye level, and the salon did not have a biohazard bag or container.

3. As of February 4, 2010, the last whirlpool spa log entry had been recorded in December 2009 despite the fact Respondent Robinson had performed a pedicure the week before the investigation. Spa jets contained white debris. Neither Respondent Robinson nor Respondent McDermott could verbalize proper cleaning procedures for the whirlpool spa.

4. Debris and hair was located behind the controls of the rinsing stations and hair clippings were underneath the basins.

5. At the time of the inspection, several stations had hair clippings at the bottom of closed drawers where clean supplies were kept (Respondents McDermott, Jolly, Knapp, Willett, Kafer, Myers, Thompson, Robinson and Holmes); Barbicide liquid contained debris and did not fully cover supplies (Respondents McDermott, Knapp, Kafer, Myers, Thompson and Holmes). Respondent Willet's Barbicide container had water in it. Clipper heads contained hair clippings, and hair was found in combs and brushes.

6. The investigator observed clean nail supplies tossed into a container with used nail supplies. Files and buffers that could not be disinfected had been used more than once and were stored with other supplies (Respondent Robinson).

7. Several of Respondents did not use neck strips or towels to protect customers' necks from capes (Respondents Knapp, Thompson and Robinson). Respondents stated they were not aware that customers' necks needed to be protected.

8. The floor around Respondent Holmes' station contained hair clippings despite the fact that she had not yet provided services the day of the investigation.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC chapter 12. If you are interested in pursuing settlement of this matter, please contact Kristin Ensign, Assistant Attorney General, at 515-281-6547.

F. PROBABLE CAUSE FINDING

On April 5, 2010, the Iowa Board of Cosmetology Arts & Sciences found probable cause to file this Notice of Hearing and Statement of Charges.

**This notice of hearing and statement of charges is approved by the board
December 3, 2010.**