

STATE OF IOWA  
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

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IN THE MATTER OF:	)	DIA No. 09DPHCE004
	)	
Michelle Brown Weatherly	)	FINDINGS OF FACT,
License No. 56018	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER
RESPONDENT	)	

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On July 13, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) held a hearing concerning the Request for Reinstatement filed by Michelle Brown Weatherly (Respondent). Respondent Michelle Weatherly appeared for the hearing and was self-represented. The state was represented by Assistant Attorney General Jordan Esbrook. The following Board members were present for the hearing: Jack Morlan, Chairperson; Becky J. Brockmann, Vice-Chairperson; Kimberly Setzer; Richard Mosley; Dana Atkins; Jerry Talbott; and Karen Thomsen. Administrative Law Judge Margaret LaMarche assisted the Board in conducting of the hearing. The hearing was open to the public at Respondent's request, 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 Notice of Hearing, the testimony of the witnesses, and the following exhibits:

State Exhibit 1:	Findings of Fact, Conclusions of Law, Decision and Order, Case No. 04-068
Licensee Exhibit A:	Letter from Respondent's Parole Officer
Licensee Exhibit B:	Acknowledgment and Receipt for Payment of Civil Penalty and Hearing Fee.
Licensee Exhibit C:	Certificate, 5/28/2008 (Substance Abuse Program)

### FINDINGS OF FACT

1. The Board initially issued Iowa license number 843-56018 to Respondent on August 30, 1993. On October 13, 2001, Respondent was convicted of possession with intent to deliver methamphetamine. The court sentenced Respondent to a ten-year suspended sentence and placed her on probation for a period of three years. (State Exhibit 1, Respondent Exhibit A)
2. Respondent allowed her license to lapse on March 31, 2003. On March 4, 2004, Respondent and the Board entered into a Consent Agreement and Order, which reactivated her license and placed it on probation for a period of two years, subject to a number of terms and conditions. The terms included participation in a chemical screening program approved by the Board. On multiple occasions, Respondent failed to call the designated collection facility and failed to report for a drug test. On May 23, 2005, the Board revoked Respondent's license for failure to comply with the terms of probation. Respondent was also ordered to pay a \$500 civil penalty and a \$75 hearing fee. (State Exhibit 1)
3. Respondent admits that she failed to comply with the Board's chemical screening program because she was using drugs at the time. Respondent was later incarcerated at the Iowa Correctional Institution for Women at Mitchellville for two years. While she was incarcerated, Respondent completed the institution's Substance Abuse Treatment Program, which included relapse prevention. Following her release from prison, Respondent resided in a halfway house for three months, where she received further guidance in relapse prevention. Respondent reports that she has now been sober and drug-free for over three years. (Testimony of Respondent; Susan Thompson Failor; Respondent Exhibit C)
4. Respondent submitted a letter from her parole officer, who confirms that Respondent has been compliant with the terms of her parole. While on parole, Respondent has been subject to random urinalysis. All of the urinalysis results have been negative. Respondent believes she may be discharged from parole as early as February 2010. (Testimony of Respondent; Respondent Exhibit A)
5. Respondent is not currently attending Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) but is willing to attend a support group if the Board requires it as a

condition of licensure. Respondent does have the support of her family and friends. She has stopped associating with people who are drug users. (Testimony of Respondent; Susan Thompson Failor)

6. Respondent has been employed full-time at a printing company since December 2008. She has also obtained continuing education hours in cosmetology. (Testimony of Respondent; Susan Thompson Failor)

7. On June 11, 2009, Respondent paid her \$500 civil penalty and the \$75 hearing fee in full. (Respondent Exhibit B)

#### CONCLUSIONS OF LAW

Any person whose license to practice has been revoked or suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked.<sup>1</sup> If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur,...an initial application for reinstatement may not be made until one year has elapsed from the date of the order.<sup>2</sup> An application for reinstatement shall allege facts which, if established, will be sufficient to tenable the board to determine that the basis for the revocation...of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.<sup>3</sup>

The preponderance of the evidence established that the basis for the revocation of Respondent's license no longer exists and that it is in the public interest for her license to be reinstated, so long as her license is subject to terms and conditions of probation. Based on the testimony and evidence presented, the Board was persuaded that Respondent has made positive changes in her lifestyle and has maintained her sobriety for several years. Respondent is complying with the terms and conditions of her parole and has maintained full-time employment. Nevertheless, given the Respondent's

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<sup>1</sup> 645 IAC 11.31(1).

<sup>2</sup> 645 IAC 11.31(2).

<sup>3</sup> 645 IAC 11.31(4).

history of relapse and probation violation, the Board must both monitor and assist Respondent's ongoing recovery through an extended period of probation.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that the Request for Reinstatement filed by Respondent Michelle Brown Weatherly is hereby GRANTED. Respondent's License No. 843-56018 shall be REINSTATED upon her submission of the required hours of continuing education and the license reactivation fee. Respondent's license shall be immediately placed on PROBATION for a period of two (2) years, subject to the following terms and conditions:

1. Respondent shall abstain from all alcohol, from all illegal drugs, and from all prescription drugs not prescribed for her by a duly licensed health practitioner.
2. Respondent shall sign a contract with the Board's approved chemical screening program, FirstLab. Respondent shall fully comply with the FirstLab program requirements, including but not limited to calling in to the program as required and reporting for all drug tests in a timely manner. Respondent is solely responsible for all costs of participating in the FirstLab chemical screening program.
3. Respondent shall attend regular weekly meetings of either Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) and shall obtain a sponsor. Respondent shall verify her attendance at AA or NA by maintaining a list of the meetings attended with the initials of either her sponsor or another participant who was present at the meeting if her sponsor was not present.
4. Respondent shall submit quarterly typewritten reports to the Board that include information concerning her current address, current employment and the name of her supervisor, and verification of her compliance with all terms of probation. Respondent shall attach verification of her AA/NA meeting attendance to the quarterly written reports.

5. Respondent's work supervisor shall also submit quarterly written reports to the Board. The supervisor's written reports shall include information concerning Respondent's work performance and attendance.

6. Respondent shall comply with all of the terms and conditions of probation even if she is not employed as a cosmetologist. If Respondent fails to comply with any of the terms of this Decision and Order, the Board may hold a hearing, pursuant to Iowa Code section 272C.3(2)"a"(2009), and impose further sanctions, including license revocation.

Any adversely affected party may file a petition for judicial review with the district court within 30 days from the issuance of the board's decision. See Iowa Code section 17A.19(2009) and 645 IAC 11.29. 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 August 6, 2009.**