

Before Iowa Plumbing and Mechanical Systems Board

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IN THE MATTER OF	)	No. PM20110011
	)	
Gary Billings,	)	AMENDED NOTICE OF HEARING
	)	
Respondent.	)	

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COMES NOW the Iowa Plumbing and Mechanical Systems Board (Board) and hereby files this Notice of Hearing pursuant to Iowa Code sections 17A.12 and 641 Iowa Administrative Code (IAC) 32.5(5)(c). Respondent does not possess a license issued by the Board.

**A. Time, Place and Nature of Hearing**

Hearing. A contested case hearing shall be held on **February 22, 2012** before the Plumbing and Mechanical Systems Board. The hearing shall begin at **10:00 a.m.** and shall be located in Room 125 of the Public Safety Building, 215 E. 7<sup>th</sup> Street, Des Moines, Iowa.

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 33. 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 allegations made against you, 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 641 IAC 33.22. The hearing shall be open to the public pursuant to 641 IAC 32.5(5)(e).

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 641IAC 33.21.

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: September Lau, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50219.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Amended Notice of Hearing. 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 105.27 and 272C.3.

Legal Authority. Pursuant to Iowa Code section 105.27, the Board may impose a civil penalty of up to \$5000 per offense for violation of any provision of Chapter 105.

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 section 17A.12(3) and 641 IAC 33.26.

### C. SECTIONS OF STATUTES AND RULES INVOLVED

Iowa Code section 105.10 requires all persons who perform plumbing and mechanical services in the State of Iowa to possess a license issued by the Board. Under 641 IAC 32.5(1)(a) the following is an unlawful practice: "Acts or practices by unlicensed persons which require licensure to install or repair plumbing, HVAC, refrigeration , or hydronic systems."

Announcing to the public in any way (the use of any sign, card, circular, device, vehicle, or advertisement) the intention to provide any service for which a license is required is prima facie evidence of engaging in the practice of a plumber or mechanical professional. Iowa Code 105.29.

### D. FACTUAL CIRCUMSTANCES

1. On April 19, 2011, the Board issued a Notice of Intent to Impose a \$500 Civil Penalty against Respondent. This Notice was issued in full compliance with Iowa Code section 105.27 and 641 IAC 32.5. Respondent was served with said Notice on May 5, 2011.

2. The Notice of Intent to Impose a \$500 Civil Penalty against Respondent stated the following:

- 1) Respondent has never been issued a license by the Board
- 2) Since state licensing went into effect, Respondent has provided plumbing and mechanical services which require licensure to perform
- 3) Respondent has advertised that he performs plumbing and HVAC work

3. The Board received from Respondent a written request for a hearing in this matter. The request for hearing was timely made under Iowa Code section 105.27(1) and 641 Iowa Administrative Code 32.5(5)(a).

4. A contested case hearing was scheduled for August 17, 2011. Respondent did not appear at the hearing, and the State presented evidence and argument in his absence. On September 21, 2011, the Board issued a decision.

4. On October 6, 2011, Respondent filed a motion to vacate the Board's decision. He stated he had been hospitalized on the date of the hearing and could not attend. The State did not object to the motion. The motion to vacate was granted on October 12, 2011 and referred to the Board to issue a new notice of hearing.

#### E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 641 IAC 33.23. If you are interested in pursuing settlement of this matter, please contact September Lau, Assistant Attorney General at (515) 281-7175.

Copies to:

September Lau  
Assistant Attorney General's Office  
2<sup>nd</sup> Floor Hoover Building  
Des Moines, IA 50319

Gary Billings