

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	NO. 09-18
Shear Joy)	DIA NO. 09DPHCE023
License No. 102499)	
)	FINDINGS OF FACT,
Joy Wheat,)	CONCLUSIONS OF LAW,
License No. 53904)	DECISION AND ORDER
)	
Respondent)	

On October 5, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Shear Joy, a licensed salon in the state of Iowa, and its owner, Joy Wheat. Respondent was charged with the following six counts:

Count I: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to post her individual license in the reception area at eye level, in violation of 645 IAC 61.5(3) 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 provide a supply of hot and cold running water and clean lavatory facilities, in violation of 645 IAC 63.5(4), and failing to provide clean drinking water in violation of 645 IAC 63.5(5).

Count III: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to equip the salon's service area with air filtration equipment that is of sufficient capacity to be capable of removing chemical fumes from the air, in violation of 645 IAC 63.5(1).

Count IV: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to provide disinfectant solution in the dispensary area or work stations, in violation of 645 IAC 63.11(3).

Count V: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to disinfect all instruments or implements that do not penetrate the skin, in violation of 645 IAC 63.10(6).

Count VI: Respondent is charged with practicing cosmetology arts and sciences without a valid license in violation of 645 IAC 60.8(6) and 65.2(26).

The hearing was held on July 12, 2010 at 10:30 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent was personally served with the Notice of Hearing and Statement of Charges but failed to appear for the hearing. (State Exhibit 4). 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 September 3, 2008, the Board issued Iowa salon license number 102499 to Shear Joy, located at 402 N. Main Street in Clarksville, Iowa. Respondent is the owner of Shear Joy. As of the date of the hearing, salon license no. 102499 was current and set to expire on December 31, 2010. The Respondent's cosmetology license, No. 53904, is currently expired. (State Exhibit 4)

2. On April 10, 2009, Department of Inspections and Appeals (DIA) Investigator Tamara Adams made an unannounced investigative visit to the Respondent's salon.

Investigator Adams found that the salon's license was posted, but the Respondent's individual cosmetology license was not posted. The sanitation rules were also not posted. (Testimony of Adams and State Exhibit 1).

3. During the investigation, Investigator Adams observed the sanitary and building conditions of the salon. The salon did not have a ventilation system, and was heated by three space heaters. The salon did not have a bathroom or drinking water available. (Testimony of Adams and State Exhibit 1).

4. The Respondent stated that she did not have any Barbicide in the salon, and that the Respondent used her sink at home to clean her implements, or she cleans them in a next-door store's bathroom. The Respondent was observed contaminating clean implements with dirty ones. (Testimony of Adams and State Exhibit 1).

5. During the investigation the Respondent's appointment book showed appointments back to January of 2009. The Respondent indicated that she had ceased practicing between April 6 and 8th of 2009 after discovering that her license was inactive. The Respondent's license was inactive between May 1, 2008 and April 9, 2009. (Testimony of Adams and State Exhibit 1).

CONCLUSIONS OF LAW

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences and to make necessary inspections for enforcement purposes.¹ 645 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 April 10, 2009, in violation of 645 IAC 61.5(3).

¹ Iowa Code section 157.6(2009).

Count II: Failure To Provide a Supply of Hot and Cold Running Water, Clean Lavatory Facilities and Clean Drinking Water

645 IAC 63.5 provides that salons shall have and maintain hot and cold running water and clean lavatory facilities (63.5(4)) and safe drinking water (63.5(5)). The preponderance of the evidence establishes that the Respondent's salon did not have hot and cold running water, clean lavatory facilities or safe drinking water.

Count III: Failure to Equip the Salon's Service with Air Filtration Equipment

645 IAC 63.5(1) provides that a "service area is equipped with exhaust fans or air filtration equipment that is of sufficient capacity to be capable of removing chemical fumes from the air." The preponderance of the evidence establishes that the Respondent's salon did not have exhaust fans or air filtration equipment.

Count IV: Failure to Provide Disinfectant Solution

645 IAC 63.11(3) requires that "disinfectant solution shall be stored in the dispensary area or at each work station for disinfecting instruments and equipment." The preponderance of the evidence establishes that the Respondent did not provide disinfecting solution in the dispensary or at her work station.

Count V: Failing to Disinfect All Instruments

645 IAC 63.10(6) provides that a licensee shall "disinfect all instruments or implements that do not penetrate or puncture the skin." The preponderance of the evidence establishes that the Respondent did not properly disinfect all instruments or implements as required.

Count VI: Practicing Cosmetology Arts and Sciences Without a Valid License

645 IAC 60.8(6) provides that a "licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice cosmetology arts and sciences in Iowa until the license is reactivated. A licensee who practices cosmetology arts and sciences in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83,

criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.”

The preponderance of the evidence establishes that the Respondent’s cosmetology license was inactive from May 1, 2008 to April 9, 2009. The Respondent continued to practice cosmetology arts and sciences while her license was inactive.

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 shall pay a total civil penalty of seven hundred dollars (\$700) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that the Respondent shall complete four (4) 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 \$ 34.38 for the court reporter fees. The total fees of \$ 809.38 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.