

**BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES  
OF THE STATE OF IOWA**

<b>IN THE MATTER OF:</b>	)	
	)	<b>CASE NO. 08-108</b>
<b>Donald Swearingen</b>	)	
	)	<b>NOTICE OF HEARING</b>
<b>License No. 44076</b>	)	<b>AND STATEMENT OF</b>
	)	<b>CHARGES</b>
<b>RESPONDENT</b>	)	
	)	

---

**COMES NOW** the Iowa Board of Cosmetology Arts and Sciences and files this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent holds a current probationary cosmetology license which will next expire on March 31, 2010.

**A. TIME, PLACE AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on October 5, 2009 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 11:30 AM and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 517, 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, 5<sup>th</sup> 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: Jordon Esbrook, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> 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.

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 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 Section 17A.12(3) and 645 IAC 11.21.

## **C. SECTIONS OF STATUTES AND RULES INVOLVED**

### **COUNT I**

Respondent is charged with failure to comply with the terms of a board order in violation of 645 IAC rules 65.2(21).

## **D. FACTUAL CIRCUMSTANCES**

1. A decision and order following a contested case hearing on January 5, 2009, the Respondent was placed on probation for one year and he was required to complete the following requirements:

a. Pay civil penalty of \$350 and hearing and court reported fees of \$130 for a total of \$480.

b. Obtain four hours of continuing education on law and sanitation

within thirty days of the issuance of the decision, which cannot be used for future license renewal.

c. File quarterly reports providing the Respondent's current home address and the name and address of any salon where Respondent is working as a cosmetologist.

2. Respondent has not complied with any of the requirements detailed in the Decision and Order signed on January 20, 2009.

#### **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 Jordan Esbrook, Assistant Attorney General, at 515-281-7262.

#### **F. PROBABLE CAUSE FINDING**

On this 13th day of July, 2009, the Iowa Board of Cosmetology Arts and 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 on August 6, 2009.**