

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

|                           |   |                                 |
|---------------------------|---|---------------------------------|
| <b>IN THE MATTER OF:</b>  | ) |                                 |
|                           | ) | <b>CASE NO. 09-049</b>          |
| <b>Big J's Salon</b>      | ) |                                 |
| <b>License No. 102359</b> | ) |                                 |
| <b>and</b>                | ) | <b>NOTICE OF HEARING</b>        |
| <b>John Day III</b>       | ) | <b>AND STATEMENT OF CHARGES</b> |
| <b>License No. 61596</b>  | ) |                                 |
|                           | ) |                                 |
| <b>RESPONDENT</b>         | ) |                                 |
|                           | ) |                                 |

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**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 was issued Iowa salon license no. 102359 on August 28, 2008. Above named Respondent is the owner of Respondent salon, Big J's Salon, located at 329 E. College St., Iowa City, Iowa 52240. Respondent's salon license is current and will next expire on December 31, 2010. Respondent owner was issued cosmetology license no. 61596 on March 20, 2003 and the license has been inactive since May 31, 2009.

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

Hearing. A disciplinary contested case hearing shall be held on January 11, 2010 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 10:30 AM and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 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, 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: Scott Galenbeck, 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 violation a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to properly post copies of the salon and individual licenses in violation of 645 IAC 61.5(2) and (3).

### **COUNT II**

Respondent is charged with violation a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to properly post a copy of the most current sanitation rules in the reception area at eye level in violation of 645 IAC 63.2.

### **COUNT III**

Respondent is charged with engaging in unsanitary practices in violation of Iowa Code section 157.6 and 645 IAC rules 63.12(1), 63.13(2), , 63.17(3) and 65.2(13).

#### **COUNT IV**

Respondent is charged with employing individuals to practice cosmetology arts and sciences without a current license in violation of Iowa Code section 157.13(1) and 645 IAC rule 65.2(28).

#### **COUNT V**

Respondent is charged with violation a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to provide drinking water in the salon in violation of 645 IAC 63.5(5).

Respondent is charged with practicing outside the scope of practice of a cosmetologist in violation of Iowa Code section 157.1(5) and 645 IAC rules 65.2(5) and 65.2(29).

#### **D. FACTUAL CIRCUMSTANCES**

1. During an investigation of Respondent salon on July 25, 2009, it was discovered that the sanitation rules were not current and not posted in the reception area.
2. The salon and individual license belonging to respondent were not posted in the salon.
3. The Respondent admitted that he does not provide drinking water for patrons.
4. Hair was found on scissors, clipper blades and electrical instruments were covered in hair, hair and debris were observed in jars of cloudy Barbicide.
5. Respondent's individual cosmetology license has been inactive since May 1, 2009.
6. Respondent admitted that the salon did not have a biohazard container.
7. During the investigation, the Respondent was observed providing a shave to a patron using a straight razor.

### **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 Scott Galenbeck, Assistant Attorney General, at 515-281-6658.

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

On the 5th day of October, 2009, 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 on November 23, 2009.**