

BEFORE THE IOWA BOARD OF BARBERING

IN THE MATTER OF:
TERENCE MILLIS
License No. 00039 and 12588

NO. BA 08-001-001; 10-005
DIA NO. 11BB006

AMERICAN COLLEGE OF HAIRSTYLING
License No. 00002

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

This matter proceeded to an evidentiary hearing on April 23, 2013, before the Iowa Board of Barbering at the Lucas State Office Building in Des Moines, Iowa. Respondent Terence Millis appeared pro se. Assistant Attorney General David Van Compernelle represented the public interest. Board members Charles Wubbena, Chairperson; John Anderson; Valerie Felton, Dennis Rafdal and Gwendolyn Ecklund presided over the hearing. Administrative Law Judge Robert H. Wheeler assisted the Board. The hearing was open to the public, at the Respondent's discretion and pursuant to Iowa Code section 272C.6(1)(2011) and 645 IAC 11.32. The hearing was recorded by certified shorthand reporter Edie Spriggs Daniels. After evidence and arguments of the parties, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate. The Board instructed the administrative law judge to prepare the Board's written decision, in accordance with its deliberations.

On July 26, 2011, the Iowa Board of Barbering (Board) found probable cause to file a Notice of Hearing and Statement of Charges against the Respondents: Terence Millis and the American College of Hairstyling. This disciplinary proceeding concerns the following counts:

Count I

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 22.2 and 25.2(12), with failing to post sanitation rules and the most recent inspection report in a conspicuous place.

Count II

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 22.3 and 25.2(12), with failing to display all licenses.

Count III

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 22.12, 23.6(7) and 25.2(12), with failing to disinfect electrical instruments and maintain clean barbering supplies.

Count IV

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 22.5, 23.6(7) and 25.2(12), with failing to meet building standards such as having a supply of safe hot and cold running water.

Count V

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 22.16(1), 23.6(7) and 25.2(12), with failing to have a red hazardous waste 5 bag available for use at all times when services are being performed.

Count VI

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 22.10(6), 22.11(1), 22.13, 22.16, 22.19, 23.6(7) and 25.2(12), with engaging in unsanitary practices.

Count VII

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 23.9(1) and 25.2(12), with permitting an unlicensed person to perform instructional activities that require an instructors license.

Count VIII

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 23.9(2) and 25.2(12), with failing to meet required instructor to student ratios.

Count IX

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3 (2011), and 645 IAC §§ 23.9(3)(e) and 25.2(12), with failing to identify instructors by distinct attire.

Count X

Respondents are charged under Iowa Code §§147.55, 158.12 and 272C.3(2)(a) (2011), and 645 IAC § 25.2(20), with failing to comply with a prior Board order.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges, Rescheduling Orders, testimony of DIA Investigator Kimberly Groves, Board executive Susan Reynolds, Jason Kauffman and respondent's witness Jim Looker, and State Exhibits 1 through 4, which entered the record without objection.

FINDINGS OF FACT

Respondent Terence Millis holds Iowa barber license number 12588 and Iowa barber instructor license number 00039. His business, American College of Hairstyling, holds barber school license number 00002. (Exhibit 2).

On April 7, 2011, the Board opened complaints against respondent Millis and the school after receiving complaints from a former student. Jason Kauffman attended the Respondent school from January through September of 2010. Mr. Kauffman contacted the Board alleging that Mr. Millis and the school were violating applicable laws and rules. (Exhibit 2; Groves, Kauffman testimony).

The complaints were assigned to the Iowa Department of Inspections and Appeals, and Investigator Kimberly Groves conducted an investigation into Mr. Kauffman's allegations. On April 7, 2011, Investigator Groves interviewed Mr. Kauffman. Mr. Kauffman told Groves that unlicensed instructors at the American College of Hairstyling had engaged in teaching, checking and grading student's work while he was a student. Among others, Mr. Kauffman named Aneesah Shabazz as an unlicensed instructor. (Exhibit 2; Groves testimony).

On June 9, 2011, Investigator Groves visited the school. Ms. Groves inspected payroll records showing that Ms. Shabazz worked at the school from January, 6, 2010, through April of 2011. Board records showed that Ms. Shabazz received a temporary instructor permit on November 3, 2009, which expired on May 3, 2010. Ms. Shabazz did not receive her instructor's license until February 1, 2011. (Exhibit 2; Groves testimony).

Respondent Millis and the school were the subject of Board case 08-001, DIA case 09DPHBE001. In that matter, after a hearing, the Board found that the school and Mr. Millis employed unlicensed instructors, and ordered two years' probation with quarterly reports by Mr. Millis listing the names, license numbers and expiration dates for all employees. Pursuant to this order, Mr. Millis filed a report on June 5, 2010, listing Ms. Shabazz as an instructor. The report listed a temporary permit, but no expiration date. The Board wrote to Mr. Millis on June 14, 2010, stating that Ms. Shabazz' temporary permit had expired on May 3, 2010, and that he was not in compliance with the Board's order. The next quarterly report, dated September 10, 2010, still listed Ms. Shabazz as an instructor with a license number and no expiration date. The Board again advised him that Ms. Shabazz did not have a license or a temporary permit. (Exhibits 2, 3; Reynolds testimony).

During the June 9, 2010, visit, Investigator Groves also noted other violations. Ms. Groves could not initially identify the instructors by their attire. Two instructors on duty were dressed like the students. One of the instructors, Gary Seronko, did not have his license posted in view. The sanitation rules and the most recent inspection report were not posted in view. Mr. Millis

could not locate the inspection report. Investigator Groves also identified sanitation issues. Most of the stations did not have enough disinfectant to cover the tools that were soaking in it. Some stations had no disinfectant at all. Sink strainers contained dirt, hair, chewed gum and a paper clip. Some sinks had hair clippings around the faucet handles, and one sink leaked water onto the floor where an electrical cord and strip sat. No red biohazard bag for contaminated supplies could be located. (Exhibit 2; Groves testimony).

Jim Looker is the director of the American College of Hairstyling. Mr. Looker was present at the school when Investigator Groves made her inspection on June 9, 2010. Mr. Looker admitted most of the sanitation violations, but pointed out that things were different now. Following that inspection he now inspects the school nightly and insures that all jars of disinfectant are full. The sanitation rules, which had been located near the office, were moved to a prominent posting. An instructor's license was moved from the office to a visible posted location. The leaking sinks were repaired, and the electrical cord was moved from the puddle as soon as it was pointed out. No replacement biohazard bags were present because the foot pedal on the receptacle had been broken. The pedal was repaired within two weeks of the inspection. Mr. Looker stated that Mr. Kauffman was a disgruntled former student who complained about everything. However, Mr. Kauffman enrolled at another school after leaving the American College of Hairstyling and completed his studies without incident. (Looker, Kauffman testimony).

Regarding Ms. Shabazz working as an instructor while unlicensed, Mr. Looker stated that she initially had a temporary permit. When she failed the instructor's examination she was reassigned to the cash register and did not teach or check students' work. This testimony is not credible, as it is inconsistent with the other evidence in the case. Mr. Millis continued to list Ms. Shabazz as an instructor on his quarterly reports during this time, even after the Board told him that he could not employ unlicensed instructors. Mr. Kauffman testified credibly that Ms. Shabazz worked as an instructor while unlicensed and checked his work. Mr. Kauffman also pointed out that Mr. Looker would move Ms. Shabazz to non-instructor work only when he thought a Board inspection was about to occur. (Looker, Kauffman testimony).

Susan Reynolds is the Executive Director of the Iowa Board of Barbering. Ms. Reynolds is familiar with Mr. Millis and the American College of Hairstyling through past disciplinary cases before the Board. In case 08-001, 09DPHBE001, Mr. Millis and the school were found to have violated the rules regarding employing unlicensed instructors, unsanitary practices, and failure to comply with Board orders. That case resulted in a two year probation period during which Mr. Millis failed to comply with the terms and conditions of probation. He filed late and incomplete quarterly reports and continued to list an unlicensed person as an instructor at the school. (Reynolds testimony).

CONCLUSIONS OF LAW

The legislature has authorized the Board to discipline licensees for acts or offenses specified by Board rule. Iowa Code section 147.55(9)(2011). The legislature has further authorized the Iowa Department of Public Health to prescribe sanitary rules for barbershops and barber schools, to include the sanitary conditions necessary for the practice of barbering and for the prevention of infectious and contagious diseases. Iowa Code section 158.5. The Department of Public Health has promulgated rules governing sanitation at 645 IAC chapter 22. Iowa Code section 158.12 specifically authorizes the Board to suspend, revoke, or deny the renewal of any license issued under the provisions of chapter 158 for any violation of chapter 158 or any violation of the rules of the Board.

Count I: *Failing To Post Most Current Sanitation Rules and Inspection Report*

645 IAC 22.2 requires a copy of the most current sanitation rules and the most recent inspection report to be posted in a conspicuous place in the barbershop for the information and guidance of all persons employed therein and the general public. The preponderance of the evidence established that the most current sanitation rules were not posted in a conspicuous location at the American College of Hairstyling on June 9, 2010. The American College of Hairstyling and owner Respondent Terence Millis violated 645 IAC 22.2.

Count II: *Failing to Display Licenses*

645 IAC 22.3 requires that the original license certificates, duplicate certificates, reissued certificates or temporary permits for each licensee and temporary permit holders employed by the barbershop or barber school shall be posted and visible to the public. The preponderance of the evidence established that all licenses were not so posted. The Respondents admitted that all licenses were not posted and visible. American College of Hairstyling and owner Respondent Terence Millis violated 645 IAC 22.3.

Count III: *Failing to Disinfect Electrical Instruments and Maintain Clean Barbering Supplies*

645 IAC 22.10(6) requires all licensees to practice universal precautions, including disinfecting all instruments or implements that do not penetrate or puncture the skin. 645 IAC 22.12(1) requires all nonelectrical instruments to be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity before use on any client. 645 IAC 22.12(2) requires all instruments that have been used on a client or soiled in any manner to be placed in a proper receptacle. 645 IAC 22.12(3) requires all disinfected instruments to be stored in a clean, covered place. 645 IAC 22.13 requires electrical instruments to be disinfected with an EPA-registered disinfectant prior to each use. The preponderance of the evidence

established that American College of Hairstyling and owner Respondent Terence Millis violated 645 IAC 22.10(6), 22.12(1)-(3) and 22.13 by failing to properly disinfect and store barber instruments and supplies. The investigator documented that there were hair clippings on clippers, heads, shears, in sinks, on faucets and in drawers. The instruments in the jar were not fully immersed in the disinfectant.

Count IV: *Failing to Meet Building Standards*

645 IAC 22.5(2) requires barbershops and schools to provide a supply of hot and cold running water and toilet facilities. The Board did not hear evidence of violations of this rule. Therefore, the preponderance of the evidence failed to establish that Respondents violated Iowa Code section 158.12 and 645 IAC 25.2(12) and 22.5(2).

Count V: *Failure To Have Hazardous Waste Containers Available*

645 IAC 22.16(3) provides that hazardous waste containers and bags shall be available for use at all times when services are being performed, and the absence of containers shall be prima facie evidence of noncompliance. The preponderance of the evidence established that there were no red hazardous waste bags at American College of Hairstyling at the time of the June 9, 2010, inspection, and that, therefore, American College of Hairstyling and owner Respondent Terence Millis, were in violation of 645 IAC 22.16(3).

Count VI: *Unsanitary Practices*

645 IAC 22.10(6) requires all licensees to disinfect all instruments or implements that do not penetrate or puncture the skin. 645 IAC 22.11(1), requires all barbershops and barber schools to provide at least one covered waste receptacle for the disposal of all waste, including hair; 645 IAC 22.13 provides that all electrical instruments, excluding curling irons, shall be disinfected prior to each use with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity and used according to the manufacturer's instructions. 645 IAC 22.16 provides that hazardous waste containers and bags shall be available for use at all times when services are being performed. The absence of containers shall be prima facie evidence of noncompliance. The preponderance of the evidence established that American College of Hairstyling and owner Respondent Terence Millis, were in violation of 645 IAC 22.10(6), 645 IAC 22.11(1), 645 IAC 22.13 and 645 22.16(3) on June 9, 2010.

Count VII: *Employing Unlicensed Instructors*

Iowa Code section 158.7 provides that any person employed as a barbering instructor in a licensed barber school shall be a licensed barber and shall possess a separate instructor's

license which shall be renewed annually. 645 IAC 23.9(1) requires all instructors in a barber school to be licensed by the department. The preponderance of the evidence established that American College of Hairstyling and owner Respondent Terence Millis, violated 645 IAC 23.9(1) by employing Aneesah Shabazz as an instructor after the expiration of her temporary permit and after her failure of the instructor's exam.

Count VIII: Failure to Meet Instructor to Student Ratios

645 IAC 23.9(2) requires the number of instructors for each barber school to be based upon total enrollment, with a minimum of two instructors employed on a full-time basis for up to thirty students and one additional instructor for each additional fifteen students or fraction thereof. The Board did not hear evidence of the instructor to student ratios and finds that a preponderance of the evidence did not establish a violation of this rule by the Respondents.

Count IX: Failure to Identify Instructors by Distinct Attire

645 IAC 23.9(3)(e) requires that 23.9(3) instructors shall be attired in distinct and identifiable attire. A preponderance of the evidence established that instructors failed to dress distinctively at the time of the inspection on June 9, 2010. Therefore, American College of Hairstyling and owner Respondent Terence Millis violated 645 IAC 23.9(3)(e).

Count X: Fail To Comply With Board Order

645 IAC 25.2(20) provides that the board may impose any of the disciplinary sanctions provided in rule 645-25.3 when the board determines that the licensee has failed to comply with a board order or with the terms of a settlement agreement or consent order. The preponderance of the evidence established that Respondent violated 645 IAC 25.2(20) when the school continued to operate with unlicensed instructors and in violation of the Board's sanitation rules. On January 26, 2009, American College of Hairstyling and owner Respondent Terence Millis had entered into a Settlement Agreement and specifically agreed to comply with all board rules and regulations applicable to barber schools.

Sanction

The Board considered the following factors in determining the nature and severity of the disciplinary sanction to be imposed: the relative serious nature of the violation as it relates to assuring citizens of this state a high standard of professional care; any extenuating facts or other countervailing considerations; the number of prior violations or complaints; the seriousness of prior violations or complaints; whether remedial action has been taken; and such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee. 645 IAC 13.2.

The multiple violations in this case are serious and they directly relate to public health and safety. This is not the first disciplinary action that the Board has taken against the Respondents. The Board notes prior disciplinary case 08-001, which resulted in a two year probation with terms and conditions. The Respondents repeatedly failed to comply with the probation conditions and with the Board's rules.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the License No. 00039 and 12588 of Respondent Terence Millis and License No. 00002 of the American College of Hairstyling are suspended for a period of 30 days from that date of this Decision and Order.

IT IS FURTHER ORDERED that Respondent Terence Millis shall pay a civil penalty of one thousand dollars (\$1,000) within thirty (30) days of the date of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents Terence Millis and the American College of Hairstyling shall pay \$75.00 for fees associated with the disciplinary hearing and \$178.75 for the court reporter fees. The total fees of \$253.75 shall be paid within thirty (30) days of receipt of this decision.

IT IS FURTHER ORDERED that the Respondents may not apply for reactivation or reinstatement of the respective licenses following the 30 day suspension until the \$1000 civil penalty and the \$253.75 hearing fee have been paid in full.

Dated this 20th day of May, 2013.



Charles Wubbena, Chair
Iowa Board of Barbering

Pursuant to Iowa Code section 17A.19(2011) 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.

cc: David Van Compernelle, Assistant Attorney General