

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	NO. 09-004
Macie McCoy)	DIA NO. 09DPHCE022
)	
License No. 62953)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On November 23, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Macie McCoy (Respondent), a licensed cosmetologist in the state of Iowa. Respondent was charged with violating 645 IAC 65.2(21) by failing to comply with a Board order. (State Exhibit 1) The hearing was held on January 11, 2010 at 1:10 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent was served with the Notice of Hearing and Statement of Charges by restricted certified mail on November 25, 2009 but failed to appear for the hearing. (State Exhibit 2). The state was represented by Assistant Attorney General Scott Galenbeck. The following Board members were present for the hearing: Jack Morlan, Chairperson; Becky J. Brockmann; Kimberly Setzer; Richard Mosley; and Dana Atkins. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public and was recorded by a certified court reporter. The Board convened in closed session following the hearing to deliberate its decision.¹ The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes State Exhibits 1-4 (See Exhibit Index for description) A protective order was issued for Exhibits 3-4, which may be confidential documents under Iowa Code section 272C.3(1)(k) and 272C.6(2009) and 645 IAC 16.11.

¹ Closed session is authorized by Iowa Code section 21.5(1)(f)(2009).

FINDINGS OF FACT

1. Respondent holds cosmetology license no. 62953, which will next expire on March 31, 2011. (State Exhibit 1)

2. On June 27, 2008, Respondent entered into an Initial Agreement with the Impaired Practitioner's Review Committee (IPRC). Respondent agreed that her ability to properly practice as a cosmetologist may be impaired by reason of chemical substance abuse/dependency. Respondent further agreed to comply with the terms of the Initial Agreement and acknowledged that failure to comply may result in referral of her case to the Board for formal charges.

Paragraph 1 of the Initial Agreement provides that Respondent "will assure records and treatment notes are forwarded directly to the IPRC if additional information is needed." Paragraph 7 of the Initial Agreement provides that Respondent will "participate in the chemical screening program if determined by the IPRC to be appropriate." (State Exhibit 3)

3. On January 5, 2009, the IPRC referred Respondent's case to the Board for formal charges or other appropriate disciplinary action. As of that date, Respondent had not responded to the IPRC's request for treatment information and had not responded to First Lab so that chemical screening could begin. (State Exhibit 4)

CONCLUSIONS OF LAW

The legislature has authorized the Board to revoke or suspend a license for failure to comply with a Board order.² 645 IAC 65.2(21) provides that the Board may impose any of the disciplinary sanctions provided in rule 645 IAC 65.3 when the Board determines that a licensee has failed to comply with the terms of a board order. The evidence is undisputed that Respondent has failed to comply with the terms of her Initial Agreement with the IPRC. Respondent also failed to respond to the Statement of Charges or appear for hearing. Under the circumstances, the Board's only reasonable option is to indefinitely suspend Respondent's cosmetology license.

² Iowa Code section 272C.3(2)(a)(2009).

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 62953 issued to Respondent Macie McCoy is hereby INDEFINITELY SUSPENDED, effective immediately upon service of this Order. IT IS FURTHER ORDERED that prior to reinstatement of her license, Respondent must establish that the reasons for the suspension no longer exist and that it is in the public interest for the license to be reinstated. 645 IAC 11.31.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent Macie McCoy shall pay \$75.00 for fees associated with the disciplinary hearing and \$55.00 for the court reporter fees. The total fees of \$ 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 on February 22, 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 establish 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. 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(3)(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.