# STATE OF IOWA BEFORE THE BOARD OF BARBERING

IN THE MATTER OF:	)	NO. BA 08-012 DIA NO. 10DPHBE003	
Richard Daniels	)		
License No. 14279	)	FINDINGS OF FACT,	
	)	CONCLUSIONS OF LAW,	
Respondent	)	DECISION AND ORDER	
-			

On March 19, 2010, the Iowa Board of Barbering (Board) filed a Notice of Hearing and Statement of Charges against Richard Daniels (Respondent). Respondent was charged with providing barbering services without an active barber license, in violation of Iowa Code section 158.2(2009) and 645 IAC 21.9(5) and 25.2(26). The hearing was held on April 26, 2010 at 3:15 p.m. in the Lucas State Office Building, fifth floor conference room, in Des Moines, Iowa. Respondent Richard Daniels appeared and was self-represented. The state was represented by Assistant Attorney General Scott Galenbeck. The following Board members were present for the hearing: Clark (Sam) Kauffman; Chairperson; Charles Wubbena; and Tammy Ortiz. Administrative Law Judge Margaret LaMarche 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 witnesses and State Exhibits 1, 2 and 4 (See Exhibit Index for description).

### FINDINGS OF FACT

1. Respondent Richard Daniels was initially issued Iowa barber license #14279 on January 31, 1996. Respondent's barber license expired on June 30, 2004 and was not renewed. Barber licenses are automatically placed on inactive status if they are not

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renewed within the 30 day grace period following expiration.<sup>1</sup> Respondent has not had an active license since August 1, 2004. (Testimony of Respondent; Lalah McGowen; State Exhibit 2)

2. The Board received a complaint that Respondent was practicing barbering on an inactive license. On May 8, 2009, the complaint was referred to the Department of Inspections and Appeals (DIA) for investigation. On May 15, 2009, DIA Investigator Corey Powell interviewed the complainant, who reported that Respondent's license was inactive and that he continued to provide barbering services at Imperial Kuttz. Imperial Kuttz is a licensed barbershop (license #02931) located at 1604 Sixth Avenue in Des Moines, Iowa.

Investigator Powell performed an unannounced visit/inspection of Imperial Kuttz at 1:45 p.m. on May 15, 2009. Mr. Powell observed Respondent cutting a customer's hair when he entered the barbershop. Mr. Powell verified Respondent's identity by checking his driver's license. Respondent's barber license, #14279, was posted at his work station but did not have a renewal card. (State Exhibit 1)

3. Respondent has been attending continuing education courses at the American College of Hairstyling during the time that his license was on inactive status. Respondent submitted eight (8) hours of continuing education to the Board in 2009 and applied for reactivation of his license but discovered that he had to retake the examinations because his license has been inactive for more than five years.<sup>2</sup> As of the date of the hearing, Respondent had not yet taken the written or the practical examination. Respondent admitted that he has continued to provide barbering services without an active license. (Respondent testimony; State Exhibit 1)

### CONCLUSIONS OF LAW

Iowa Code section 158.2 provides that it is unlawful for a person to practice barbering with or without compensation unless the person possesses a license issued under Iowa Code section 158.3. 645 IAC 21.9(5) 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

<sup>&</sup>lt;sup>1</sup> See 645 IAC 21.1, definitions of "Grace period" and "Inactive license."

<sup>&</sup>lt;sup>2</sup> See 645 IAC 21.16(3)"b" for requirements to reactive a license that has been on inactive status for more than five years.

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is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a barber in Iowa until the license is reactivated. A licensee who practices as a barber in 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 remedies. 645 IAC 25.2(26) provides that the Board may impose any of the disciplinary sanctions provided in rule 645 IAC 25.3 when the Board determines that the licensee represented himself as a licensed barber when his license was on inactive status.

The preponderance of the evidence established that Respondent has been practicing barbering while his license was inactive, in violation of Iowa Code section 158.2 and 645 IAC 21.9(5) and 25.2(26). The DIA Investigator observed Respondent providing barbering services in a licensed barbershop on May 15, 2009. Respondent admitted that he has practiced barbering without an active license and continued to do so after May 15, 2009.

Respondent asked the Board to issue a temporary permit to him pending reactivation of his barber license. Pursuant to Iowa Code section 158.5 and 645 IAC 21.7, a temporary permit may only be issued to an applicant who is applying for *initial* licensure and who has passed all requirements for licensure except for passing the examinations. A licensee seeking to reactivate his barbering license is not eligible for a temporary permit.

## **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Respondent Richard Daniels shall pay a \$500 civil penalty for providing barbering services without an active license. The \$500 civil penalty must be paid in full prior to Respondent taking the practical examination to reactivate his barber license.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Richard Daniels shall pay \$75.00 for fees associated with the disciplinary hearing and \$47.46 for the court reporter fees. The total fees of \$122.46 shall be paid within thirty (30) days of receipt of this decision.

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This findings of fact, conclusions of law, decision and order is approved by the board on May 12, 2010.

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.