### BEFORE THE IOWA BOARD OF BARBERING

IN THE MATTER OF:	)	CASE NO. BA 09-007 DIA NO. 11BB007
Benjamin Clement	)	
License No. 14587	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER
License No. 14587	) ) ) )	FINDINGS OF FACT, CONCLUSIONS OF LAW,

On January 25, 2011, the Iowa Board of Barbering (Board) found probable cause to issue a Notice of Hearing and Statement of Charges to Benjamin Clement (Respondent), charging him with being convicted of a crime related to the practice of barbering, in violation of 147.55,158.12, 272C.3(2011) and 645 IAC 25.2(11) and 25.2 (15). The hearing was initially scheduled for January 24, 2012 but was later rescheduled.

A hearing was held on October 23, 2012 at 9:30 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Appellant Benjamin Clement appeared for hearing by telephone and was self-represented. The state was represented by Assistant Attorney General David Van Compernolle. The following Board members were present for the hearing: Charles Wubbena, Chairperson; Dennis Rafdal; John Anderson; Valerie Felton, and Gwendolyn Ecklund. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2011) and 645 IAC 11.32. After hearing all of the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), 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 DIA Investigator Kim Groves, Benjamin Clement, and State Exhibits 1-3.

#### FINDINGS OF FACT

1. Respondent Benjamin Clement is currently 34 years old. He reports he was initially licensed as both a barber and as a cosmetologist when he was in his early

twenties. On October 27, 2010, Respondent reactivated his Iowa barber license number 14587. (Respondent testimony; State Exhibit 1)

- 2. On April 12, 2010, Respondent was charged with the crimes of possession of marijuana with intent to deliver, a Class D felony, and possession of marijuana without a drug stamp, a Class D felony. Respondent was found guilty by a jury on both felony charges in December 2010. On February 11, 2011, Respondent was sentenced to a five year prison term on each charge. He is currently serving his ten year sentence at the Newton Correctional Facility. Respondent's projected release date is in May of 2015. (Kimberly Groves, Respondent testimony; Exhibits 1, 2)
- 3. Respondent's convictions are based on the delivery of a package containing approximately a half pound of high grade marijuana to the "One Stop Barbershop," where Respondent was working as a barber. The package was addressed to "Les Wright." Respondent identified himself as "Les Wright" and accepted delivery of the package. According to the criminal investigation, the package originated from a fictitious address in California. (Kimberly Groves, Respondent testimony)
- 4. Respondent has a lengthy history of criminal convictions dating back to 2001. These include, in part, convictions for Domestic Abuse/Assault, Harassment, Assault of Police Officers, and Obstruction of Prosecution. (Kimberly Groves, Respondent testimony; Exhibit 3)
- 5. Respondent accepts full responsibility for his criminal convictions. Respondent reports that while in prison, he has completed classes in corrective thinking, life skills, and parenting. He is participating in a full drug treatment program where he has served as a mentor. Respondent expressed remorse for his convictions and requested an opportunity to return to the practice of barbering when he is released from prison. (Respondent testimony)

# **CONCLUSIONS OF LAW**

The Board is authorized to suspend or revoke a license for violations of any of the rules promulgated by the Board.<sup>1</sup> The Board is specifically authorized to impose any of the disciplinary sanctions provided in 645 IAC 25.3 when the Board determines that a licensee has been convicted of a crime related to the licensee's profession or occupation

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<sup>&</sup>lt;sup>1</sup> Iowa Code sections 158.12, 272C.3(2011)

or the conviction of any crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence. <sup>2</sup>

The preponderance of the evidence established that Respondent was convicted of two felonies in December 2010. These felonies are related to the practice of barbering and they adversely affect Respondent's ability to practice barbering, in violation of Iowa Code sections 147.55, 158.12, 272C.3 and 645 IAC 25.2(11). Board rules authorize the discipline of licensees for obtaining, possessing, or attempting to obtain or possess controlled substances without lawful authority.<sup>3</sup> Respondent's conviction for Possession of Marijuana With Intent to Deliver was based on his acceptance of the delivery of the illegal drugs, using a false name. The crime occurred on the premises of the barbershop where Respondent was working and serving the public. Respondent's crime could have endangered the barbershop's customers. The Board must take disciplinary action that will effectively deter licensees from engaging in similar illegal transactions on the premises of a licensed barbershop. The Board has determined that the facts underlying Respondent's conviction justify revoking his license.

The Board commends Respondent for taking full responsibility for his crimes and for the efforts he is making to rehabilitate himself while he is in prison. The Board agrees that licensees should be given second chances, through the reinstatement process, if they are able to establish that the reason for the revocation of their license no longer exists and that reinstatement is in the public interest.<sup>4</sup> Respondent is not precluded from applying for reinstatement of his barber license at some time in the future.

# **DECISION AND ORDER**

IT IS THEREFORE ORDERED that License Number 14587, issued to Respondent Benjamin Clement, shall be REVOKED, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that Respondent shall immediately return his barber license to the Board office. Any future request for license reinstatement will be subject to the requirements of 645 IAC 11.31. The burden will be on Respondent to show that the

<sup>&</sup>lt;sup>2</sup> 645 IAC 25.2(11).

<sup>&</sup>lt;sup>3</sup> 645 IAC 25.2(7).

<sup>&</sup>lt;sup>4</sup> 645 IAC 11.31 (Reinstatement rules).

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basis for the revocation no longer exists and that it is in the public interest for his license to be reinstated.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$68.75 for the court reporter fees. The total fees of \$143.75 shall be paid within thirty (30) days of receipt of this decision.

Dated this 5th day of November, 2012.

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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 Compernolle, Assistant Attorney General