

BEFORE THE IOWA BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)
)
Spa by Zender, Riverside) **CASE NO. 09-071**
License No. 011451)
)
Spa by Zender, Iowa City) **NOTICE OF HEARING AND**
License No. 008941) **STATEMENT OF CHARGES**
and)
Donna Zender, owner,)
License No. 37875)
)
RESPONDENTS)

The Iowa Board of Cosmetology Arts and Sciences files this Notice of Hearing and Statement of Charges pursuant to Iowa Code §§ 17A.12(2), 17A.18(3) (2009), and 645 Iowa Administrative Code (IAC) § 11.6. Spa by Zender located at 3184 Highway 2, Riverside, IA 52327 was issued Iowa salon license no. 011451 on August 29, 2006. Spa by Zender, located at 2 S. Linn St., Iowa City, IA 52240 was issued Iowa salon license no. 008941 on September 19, 2001. Respondent's salon licenses are both current and will next expire on December 31, 2010. Respondent Donna Zender has a current cosmetology license that will next expire on March 31, 2011. The two Zender spas, and Donna Zender, are referred to jointly herein as "Respondents."

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on October 4, 2010 before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 9:30 a.m. and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 517, 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, 5th 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 of Iowa) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Kristin Ensign, Assistant Attorney General, Iowa

Attorney General's Office, 2nd 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 (2009).

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 (2009) 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 § 17A.12(3) (2009) and 645 IAC § 11.21.

C. CHARGES

COUNT I

Respondents are charged under Iowa Code § 147.55 (2009), and 645 IAC §§ 63.25(6) and 65.2(13), with failing to clean and fully document cleanings of pedicure spas in violation of 645 IAC §§ 63.25(1-5).

COUNT II

Respondents are charged under Iowa Code § 147.55 (2009), and 645 IAC § 65.2(13) (2009), with engaging in unsanitary practices in violation of Iowa Code § 157.6 and 645 IAC §§ 63.10(3), 63.12(1), 63.13(2), 63.14, 63.15, 63.17(3) and 63.18(3).

COUNT III

Respondents are charged under Iowa Code §§ 147.55 and 157.13(1) (2009), and 645 IAC §§ 65.2(13) and 65.2(28), with employing unlicensed individuals to practice cosmetology arts and sciences.

COUNT IV

Respondents are charged under Iowa Code § 147.55 (2009) and 645 IAC § 65.2(13) with failing to properly post a copy of the most recent sanitation rules and inspection report in the reception area at eye level in violation of 645 IAC § 63

COUNT V

Respondents are charged under Iowa Code § 147.55 (2009) and 645 IAC § 65.2(13) with failing to provide for biohazard disposal in violation of 645 IAC § 63.17(3).

COUNT VI

Respondent Donna Zender is charged under Iowa Code § 147.55 (2009) and 645 IAC § 65.2(13) with practicing cosmetology arts and sciences without a valid license in violation of Iowa Code § 157.2(1) (2009) and 645 IAC § 65.5(1).

FACTUAL CIRCUMSTANCES

A. An investigator's visit to Spa by Zender, Riverside Casino, on March 19, 2010, revealed the following:

1. Professional licenses, renewal cards, and sanitation rules were posted in a notebook behind the front desk.
2. The investigation revealed that there was no biohazard bag or container on the sites. Customers did not have a towel or neck strip protecting their necks from the capes. Some hair brushes and combs contained hair although the investigator was informed that the brushes and combs were clean, hair clippings were observed in closed drawers of the stylists' stations, and clipper heads contained hair clippings. Disinfectant was not located at each hair station. A jar of Barbicide containing an extreme amount of debris was observed by a sink basin.
3. Used, oily gloves were located in a drawer with clean supplies. Hair clippings were located in drawers and on clipper heads.
4. Pedicure basins contained a gritty substance; cleaning logs were not being maintained.
5. Respondent Donna Zender admitted providing cosmetology services during a multi-year period during which she was not licensed.

B. An investigator's visit to the Iowa City location on March 19, 2010, revealed the following:

1. The last date noted on the whirlpool cleaning log for was December 2, 2009; however, the investigator was told that there had been pedicures since that date. The

whirlpool cleaning logs was incomplete. The whirlpool cleaning log did not include the name and license number of the licensee who performed the spa cleaning.

2. Professional licenses, renewal cards, and sanitation rules were posted in a notebook behind the front desk. A September 23, 2009 inspection report was not posted.

3. Pedicure basins have rusty grates which are left in the basins during use.

4. The investigation revealed that there was no biohazard bag or container on site.

5. The investigator observed stylists performing hair services. Customers did not have a towel or neck strip protecting their necks from capes.

6. Individual hair stations did not have disinfectant solution. Hair clippings were found in drawers and on clipper heads.

7. A first aid kit could not be located.

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 Kristin Ensign, Assistant Attorney General, at 515-281-6547.

F. PROBABLE CAUSE FINDING

On the April 5, 2010, 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 August 24, 2010.