

BEFORE THE IOWA BOARD OF BARBERING

IN THE MATTER OF:)	NO. BA 11-002
)	DIA NO. 11BB008
Hair Force One)	
License No. 003126)	
)	FINDINGS OF FACT,
And)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
Priest Wilson,)	
License No. 014932)	

On July 26, 2011, the Iowa Board of Barbering (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Priest Wilson and Hair Force One (Respondents). Respondents were charged with the following five counts:

- Count I: Failing to post sanitation rules, in violation of Iowa Code sections 147.55, 158.12, 272C.3(2011) and 645 IAC 25.2(12) and 22.2.
- Count II: Utilizing neck dusters, brushes, and shaving mugs, in violation of Iowa Code sections 147.55, 158.12, 272C.3(2011) and 645 IAC 25.2(12) and 22.15(5).
- Count III: Failing to disinfect electrical instruments and maintain clean barbering supplies, in violation of Iowa Code sections 147.55, 158.12, 272C.3(2011) and 645 IAC 25.2(12), 22.10, 22.12, and 22.13.
- Count IV: Failing to meet building standards such as having a supply of hot and cold running water in a functioning sink, in violation of Iowa Code sections 147.55, 158.12, 272C.3(2011) and 645 IAC 25.2(12) and 22.5.
- Count V: Failing to comply with the Iowa Smokefree Air Act, in violation of Iowa Code sections 147.55, 158.12, 272C.3(2011) and 645 IAC 25.2(12) and 22.8.

The hearing was initially scheduled for January 24, 2012 but was later continued. The hearing was held on October 23, 2012 at 10:45 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondents failed to appear for

hearing. The state was represented by Assistant Attorney General David Van Compernelle. 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 open to the public, 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 State Exhibits 1-3.

FINDINGS OF FACT

1. Respondent Priest Wilson has been issued Iowa barber license number 014932, which was current and active through June 30, 2012. On February 17, 2011, a new barbershop license (number 003126) was issued to Priest Wilson for the barbershop located at 1302 Central Avenue in Fort Dodge, Iowa. The new license was issued under the business name of Hair Force One. This barbershop license was also current and active through June 30, 2012. This barbershop was previously licensed to another owner under the name of One Stop Barbershop. (Exhibits 1, 2)
2. On June 15, 2011, the Board referred a complaint regarding barbershop license number 003126 to the Department of Inspections and Appeals (DIA) for investigation. On June 16, 2011, DIA Investigators Kimberly Groves and Tamara Adams made an unannounced visit to the barbershop owned by Priest Wilson and licensed as Hair Force One. There was no business name visible on the outside of the building, and the barbershop was reportedly open under the business name of "Da Kut House." Priest Wilson was not present on the premises when the investigators arrived. Mr. Wilson later arrived and showed the investigators his photo identification and current licenses. Mr. Wilson identified himself as the only barber working in the shop. The investigators' written report (Exhibit 2) documents the following observations and violations:

- When the investigators entered the barbershop, they observed smoke in the air and smelled a heavy odor of smoke. There were several ashtrays full of cigarettes and ashes. There were two individuals present in the barbershop, neither of whom were employees. One of the individuals was smoking what appeared to be a cigarette. While the inspectors were in the barbershop, a third person entered smoking a cigarette;
- The sanitation rules were not posted;
- None of the barber supplies were covered or stored in closed containers or drawers. There were no drawers in the two work stations;
- There were neck dusters and brushes along with a shaving mug with soap. One of the neck dusters had a large amount of a waxy looking substance on the bristles. Priest Wilson told the investigators that this was from the wax some customers use on their hair;
- There were several electrical clippers and blades that had large amounts of hair clippings on them;
- There were several wadded up tissues on the floor of one work station;
- The countertops and floor had a large amount of hair clippings;
- The disinfectant (Barbicide) jars had a very cloudy liquid in them. The supplies were not fully immersed in the liquid, and the jars contained a large amount of debris;
- The hair supplies were haphazardly placed on the work station countertops and intermixed with CD's, lighters, magazines, paper, etc.;
- The sink was not functioning, and Mr. Wilson reported that he was working on it;
- The ceiling fluorescent lights did not have light covers;
- The floor entryway was torn up and there was a large bolt protruding from the floor. Mr. Wilson reported that he was replacing the floor due to water damage. One of the investigators had observed the same flooring issues on a previous inspection of this barbershop on December 17, 2009;
- An electrical outlet box in the unoccupied work station did not have a cover. The drywall for the outlet was cut out and wires were hanging in it;
- There was a clear liquid in an open unlabeled container, which had hair clippings at the bottom. Mr. Wilson reported that he used the liquid to clean clipper blades.

3. The Board filed a Notice of Hearing and Statement of Charges on July 26, 2011. The Board later issued an Order Rescheduling the hearing to October 23, 2012 at 10:30

a.m. The Order Rescheduling the Hearing was served on Priest Wilson by restricted certified mail on May 3, 2012. (Exhibit 3) Priest Wilson failed to appear for the hearing.

CONCLUSIONS OF LAW

Failure to Appear

645 IAC 11.6(1) provides that the notice of hearing and statement of charges constitutes commencement of the contested case proceeding. Delivery of the notice of hearing and statement of charges may be executed by: personal service, as provided in the Iowa Rules of Civil Procedure; restricted certified mail, return receipt requested; or by publication as provided in the Rules of Civil Procedure.

The Notice of Hearing and Statement of Charges and the Order Rescheduling Hearing were properly served on Respondents by restricted certified mail.

645 IAC 11.21 provides that when a party fails to appear for hearing after proper service of notice, the Board may enter a default decision or proceed with the hearing and render a decision in the absence of the party. After Respondents were properly served but failed to appear, the Board proceeded with the hearing in their absence.

The Violations

The legislature has authorized the Iowa Department of Public Health to prescribe sanitary rules for barbershops and barber schools which shall 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 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 properly posted at Hair Force One on June 16, 2011, in violation of 645 IAC 22.2. As the barbershop owner, Respondent Priest Wilson was responsible for ensuring that the sanitation rules were properly posted.

Count II: Utilization of Neck Dusters, Brushes, and Shaving Mugs

645 IAC 22.15(5) specifically provides that neck dusters, brushes and common shaving mugs and soap shall not be used in any barbershop or barber school. As the owner of Hair Force One, Priest Wilson was responsible for ensuring that neck dusters, brushes, and shaving mugs were not used in the barbershop. Based on the investigators' observations that are documented in their written report, it is clear that these items were present and in use. The preponderance of the evidence established that Respondents violated Iowa Code section 158.12 and 645 25.12(2) and 22.15(5).

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 22.13 requires electrical instruments to be disinfected with an EPA-registered disinfectant prior to each use.

The preponderance of the evidence established that Respondents violated 645 IAC 22.10(6), 22.12(1), 22.12(2) and 22.13 by failing to properly disinfect and store electrical and nonelectrical barber instruments and supplies. The investigators documented that there were electrical clippers and blades covered with large amounts of hair clippings. Barber supplies were located haphazardly on the countertops and intermixed with items that could not be disinfected (CD's, lighters, magazines). None of the supplies were covered or stored in closed containers or drawers. The disinfectant jars were cloudy and contained an extreme amount of debris. The instruments in the jars were not fully immersed in the disinfectant.

Count IV: Failing to Have a Supply of Hot and Cold Running Water In a Functioning Sink

645 IAC 22.5(2) requires barbershops and schools to provide a supply of hot and cold running water and toilet facilities. 645 IAC 22.5(7) requires barbershops and schools to have a minimum of one washbasin or lavatory for every two barber chairs in use. The preponderance of the evidence established that Respondents violated Iowa Code section 158.12 and 645 IAC 25.2(12) and 22.5 by not having a functioning sink in the barbershop.

Count V: Failing to Comply With the Smokefree Air Act

645 IAC 22.8 requires all licensed barbershops to comply with the Smokefree Air Act as found in Iowa Code chapter 142D. The preponderance of the evidence established that Respondents violated 645 IAC 22.8 and the Iowa Smokefree Air Act by allowing smoking on the barbershop premises.

DECISION AND ORDER

The number and nature of the violations, in conjunction with Respondents' failure to appear for hearing, justify revocation of both licenses. IT IS THEREFORE ORDERED that License Number 014932, issued to Respondent Priest Wilson, and License Number 003126, issued to Respondent Hair Force One, are hereby REVOKED.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents Priest Wilson and Hair Force One shall pay \$75.00 for fees associated with the disciplinary hearing and \$41.25 for the court reporter fees. The total fees of \$116.25 shall be paid within thirty (30) days of receipt of this decision.

IT IS FURTHER ORDERED that the Respondents shall immediately return their licenses 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 Respondents to show that the basis for the revocation no longer exists and that it is in the public interest for the licenses to be reinstated.

Dated this 5th day of November, 2012.



Charles Wubbena, Chair
Iowa Board of Barbering

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. 645 IAC 11.21(3). 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(4).

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