

BEFORE THE IOWA BOARD OF BARBERING

IN THE MATTER OF:)	NO. BA 09-11
)	DIA NO. 11BB009
Andrew Harris)	
License No. 014907)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On January 25, 2011, the Iowa Board of Barbering (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Andrew Harris (Respondent) charging him with failure to comply with the terms of a board order, in violation of Iowa Code sections 158.12, 272C.3(2)(a)(2011) and 645 IAC 25.2(20).

The hearing was initially scheduled for January 24, 2012 but was later continued. The hearing was held on October 23, 2012 at 12:45 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent 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 the testimony of Executive Officer Susan Reynolds and State Exhibits 1-6.

FINDINGS OF FACT

1. Andrew Harris disclosed the following criminal convictions when he applied for a barber license on July 29, 2009:

- An August 3, 2005 conviction for carrying weapons. Mr. Harris was sentenced to a 12 month probation;
- An August 10, 2009 conviction for a Class C felony (Controlled Substance Violation). Mr. Harris was sentenced to a suspended 10 year prison sentence and placed on probation for two years;
- An October 6, 2009 conviction for OWI, First Offense. Mr. Harris was sentenced to a one year probation.

On May 17, 2010, the Board approved a Consent Agreement and Order signed by Respondent Andrew Harris. The Consent Agreement and Order provided that Mr. Harris would be eligible for a barber license, subject to an 18-month period of probation commencing on the date the license was issued. The Consent Agreement and Order required Mr. Harris to comply with terms of probation. In relevant part, Mr. Harris was required to:

- Arrange for his probation officer to submit a quarterly report notifying the Board of his compliance with probation requirements; and
- Submit his own quarterly reports, with the first report due within 15 days of the issuance of the license. The written reports were to include the name and address of Mr. Harris's place of employment as a barber.

(Exhibits 2, 5; Susan Reynolds testimony)

2. Andrew Harris was issued Iowa barber license number 014907 on May 18, 2010. On May 19, 2010, the Board sent Mr. Harris his license and wallet card, a signed copy of the Consent Agreement and Order, and a cover letter by certified mail. The letter advised Mr. Harris to review the terms and conditions of the Consent Order. The letter reminded Mr. Harris that his first quarterly report was due on June 1, 2010 and that additional reports were due on August 17, 2010, November 17, 2010, February 17, 2011, May 17, 2011, August 17, 2011, and November 17, 2011. Mr. Harris was further reminded that his probation would end on November 17, 2011 and that he would receive a Termination Order from the Board when all of the terms and conditions of probation were met. (Exhibits 3, 5; Susan Reynolds testimony)

3. On June 15, 2010, Board staff sent Mr. Harris a reminder letter informing him that his first quarterly report was due. Mr. Harris hand-delivered his first quarterly report to the Board office on June 22, 2010, and he was given another copy of the

Consent Agreement and Order. On September 15, 2010, Board staff sent Mr. Harris a letter reminding him that his second quarterly report was due on August 17, 2010. Mr. Harris did not respond to this letter, and he did not submit any further quarterly reports. No reports were received from Mr. Harris's probation officer. (Exhibit 5; Susan Reynolds testimony)

4. On October 26, 2010, the Board sent a letter to Andrew Harris by restricted certified mail. The letter asked Mr. Harris to meet informally with the Board on January 25, 2011 at 10:00 a.m. to discuss the status and requirements of his probation. Mr. Harris was asked to sign and return a copy of the letter to let the Board know if he would attend the meeting. Mr. Harris did not respond to this letter. (Exhibit 5; Susan Reynolds testimony)

5. On January 25, 2011, the Board found probable cause to file a Notice of Hearing and Statement of Charges against Andrew Harris. The Notice of Hearing and Statement of Charges was sent to Mr. Harris by restricted certified mail, and he signed the return receipt card. (Exhibit 1)

The Board later issued an Order Rescheduling the Hearing. This Order was sent to Mr. Harris by restricted certified mail at his address of record with the Board. It was returned to the Board marked "vacant unable to forward" on February 6, 2012.

The Board issued a second Order Rescheduling the Hearing to October 23, 2012 at 12:30 p.m. Notice of this Order was published in the Des Moines Register because Andrew Harris failed to notify the Board of his new address. Mr. Harris failed to appear for the hearing. (Susan Reynolds testimony; Exhibit 6)

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; by 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 was properly served on Respondent Andrew Harris by restricted certified mail. The Order Rescheduling Hearing to October 23, 2012 at 12:30 p.m. was served on Respondent by publication because he had vacated his address of record with the Board and had not notified the Board of his current address.

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 Respondent was properly served but failed to appear, the Board proceeded with the hearing in his absence.

Failure to Comply

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. 645 IAC 25.2(12) provides that the Board may impose any of the disciplinary sanctions provided in rule 645 IAC 25.3 when the Board determines a licensee has violated any regulation, rule, or law of this state, another state, or the United States, which relates to the practice of barbering.

Iowa Code section 272C.3(2)(a)(2011) and 645 IAC 25.2(20) provide that the Board may impose a wide range of disciplinary sanctions for failure to comply with a Board order. The preponderance of the evidence established that Respondent failed to comply with the requirements of the Consent Agreement and Order approved by the Board on May 17, 2010. Respondent has only filed one quarterly report with the Board, and no reports have been received from his probation officer. Respondent has failed to keep the Board informed of his current address, and he failed to appear for hearing. The circumstances justify revocation of Respondent's barber license.

DECISION AND ORDER

IT IS THEREFORE ORDERED that License Number 014907, issued to Respondent Andrew Harris, is hereby REVOKED.

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 \$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 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 basis for the revocation no longer exists and that it is in the public interest for his license 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