

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:

CASE NO. 09-049

DIA NO. 09DPHCE019

Big J's Salon

License No. 102359

John Day III, Owner

License No. 61596

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

RESPONDENT

On November 23, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent Big J's Salon, a licensed salon in the state of Iowa, and its owner, John Day III, a licensed cosmetologist. Respondents were charged with the following five counts:

Count I: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to properly post copies of the salon and individual licenses as required by 645 IAC 61.5(2) and (3).

Count II: Violating a regulation, rule, or law of this state, pursuant to 645 IAC 65.2(13), by failing to post a copy of the most recent sanitation rules at eye level in the salon as required by 645 IAC 63.2.

Count III: Engaging in unsanitary practices, in violation of Iowa Code section 157.6 and 645 IAC 63.12(1), 63.13(2), 63.17(3), and 65.2(13).

Count IV: Violating Iowa Code section 157.13(1) and 645 IAC 65.2(28) by employing an unlicensed individual to practice cosmetology arts and sciences.

Count V: Failing to provide drinking water in the salon, in violation of 645 IAC 63.5(5). Practicing outside the scope of practice of a cosmetologist, in violation of Iowa Code section 157.1(5) and 645 IAC 65.2(5) and (29).

The hearing was held on October 4, 2010 at 3:00 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondents were properly served with the Notice of Hearing and Statement of Charges and the Board Order Rescheduling Hearing by personal service but failed to appear for the hearing. (State Exhibits 2, 5). The state was represented by Assistant Attorney General Kristin Ensign. The following Board members were present for the hearing: Becky J. Brockmann, Chairperson; Kimberly Setzer; Richard Mosley; Dana Atkins; Richard Sheriff; and Karen Thomsen. 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 witness and State Exhibits 1-6 (See Exhibit Index for description).

FINDINGS OF FACT

1. On August 28, 2008, the Board issued Iowa salon license number 102359 to Big J's Salon, located at 329 E. College Street in Iowa City, Iowa. As of the date of the hearing, salon license no. 102359 was current and set to expire on December 31, 2010. John Day III is the owner of record for Big J's Salon. On March 20, 2003, the Board issued cosmetologist license number 61596 to John Day III. License number 61596 expired on March 31, 2009 and has not been renewed. (State Exhibits 2, 6; Testimony of Tamara Adams)

2. On July 30, 2009, Department of Inspections and Appeals (DIA) Investigator Tamara Adams made an unannounced investigative visit to Respondent salon. The sign out front identified the salon as "Big J's Barbershop" even though the business was licensed as a cosmetology salon. Upon entry, the investigator observed an employee, later identified as owner John Day III, shaving a patron's face using shaving cream and a straight razor.

The salon had a reception area adjoining a room with one hair station. No licenses were posted in the reception area. The salon's license and Mr. Day's license were both posted at the hair station. The salon's license had a current renewal card; Mr. Day's renewal card had expired on March 31, 2009. (Testimony of Tamara Adams; State Exhibit 2)

3. At the time of the July 25, 2009 inspection, Investigator Adams documented the following violations of Board statutes and rules:

- The salon's license and Mr. Day's license were not posted in the reception area;
- The sanitation rules and inspection report were not posted in the salon;
- There was no biohazard container or biohazard bag on the premises, and Mr. Day admitted that the salon did not have them;
- Hair was found on scissors stored in a pouch;
- Clipper blades in a drawer and electrical instruments were covered with hair;
- A straight razor was observed in the salon;
- The container of Barbicide, which was used to disinfect instruments, was semi-cloudy and contained hair and debris.

The inspection report also noted that there was no drinking water for patrons. However at hearing, the investigator verified that there was a bathroom sink, which presumably had potable water. (Testimony of Tamara Adams; State Exhibit 2)

4. Respondent John Day identified himself to Ms. Adams as the only employee of the salon. Mr. Day admitted that he provided shaves and haircuts to customers. Mr. Day claimed that he had renewed his cosmetologist license when he renewed his salon license. The investigator advised Mr. Day that according to the web-site for the Bureau of Professional Licensure, his cosmetology license was inactive. The investigator observed Mr. Day working on a customer as she left the salon. (Testimony of Tamara Adams; State Exhibit 2)

CONCLUSIONS OF LAW

645 IAC 65.2(13) provides authority for the Board to impose disciplinary sanctions for violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

Count I: Failure to Post the Salon License and Individual Licenses In The Reception Area At Eye Level

645 IAC 61.5(2) provides that a copy of the salon license (and current renewal card) shall be posted and visible in the salon reception area at eye level. 645 IAC 61.5(3) provides that a copy of the license (and current renewal card) for each licensee employed by the salon shall be posted and visible in the salon reception area at eye level. The preponderance of the evidence established that neither the salon license nor John Day's cosmetology license were posted in the salon reception area on July 25, 2009, in violation of 645 IAC 65.2(13) and 61.5(2) and (3).

Count II: Failure to Post the Most Current Sanitation Rules

645 IAC 63.2 provides that a copy of the most current sanitation rules shall be posted in the reception area at eye level in the salon for the information and guidance of the general public. The preponderance of the evidence established that Respondents Big J's Salon and John Day III violated 645 IAC 65.2(13) by failing to post the current sanitation rules in the reception area, in violation of 645 IAC 63.2.

Count III: Engaging In Unsanitary Practices

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences and to make necessary inspections for enforcement purposes.¹ 645 IAC 63.12 requires licensees to disinfect all nonelectrical instruments and equipment by an EPA-registered, hospital-grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity; to store all disinfected instruments in a clean, covered place; and to place all instruments that have been used on a client or soiled in any manner in a proper receptacle. 645 IAC 63.13(2) specifies cleaning procedures for electric file bits after each use and also provides that sanding bands are single use items that must be discarded immediately after use. 645 IAC 63.17(3) provides that salons must have hazardous waste containers and bags available for use at all times when services are being performed. The absence of containers is prima facie evidence of noncompliance.

¹ Iowa Code section 157.6(2009).

Respondents violated 645 IAC 65.2(13) by failing to comply with these sanitation rules. The preponderance of the evidence established that Respondent salon did not have a biohazard container or biohazard bags on the premises and that electrical instruments and other tools were not properly disinfected and not properly stored following disinfection.

Count IV: Employing Individuals Without A Current License To Practice Cosmetology

Iowa Code section 157.13(1)(2009) provides that it is unlawful to employ an individual to practice cosmetology arts and sciences unless that individual is licensed or has obtained a temporary permit under this chapter. 645 IAC 65.2(28) provides that the Board may impose any of the disciplinary sanctions provided in rule 645-65.3 when the Board determines that a licensed salon has permitted an unlicensed employee or person under the salon's control to perform activities requiring a license. The preponderance of the evidence established that Respondents Big J's Salon and John Day III violated Iowa Code section 157.13(1)(2009) and 645 IAC 65.2(28) when John Day III provided cosmetology services after his license had expired.

Count V: Failure to Provide Drinking Water; Practicing Outside The Scope Of A Cosmetologist

645 IAC 63.5(5) requires salons to provide a supply of safe drinking water. The preponderance of the evidence failed to establish that Respondent salon did not have safe drinking water available through its bathroom faucet.

Iowa Code section 157.1(5) defines the practice of cosmetology. The practice of cosmetology includes removing superfluous hair from the face or body of a person with the use of depilatories, wax, sugars or tweezing but does not include shaving. Iowa Code section 157.1(5)(c)(2009). 645 IAC 63.18(2) provides, in relevant part, that no salon shall have on the premises any razor-edged device or tool which is designed to remove skin, with the exception of cuticle nippers used for manicure or pedicure services. If such equipment is on site, it shall be prima facie evidence of its use. 645 IAC 65.2(5) authorizes the Board to discipline licensees for practicing outside the scope of the profession. The preponderance of the evidence established that Respondents Big J's Salon and John Day III violated Iowa Code section 157.1(5) and 645 IAC 65.2(5) when John Day III shaved a customer using a straight razor and admitted that he shaved other customers.

Sanction

The nature and seriousness of these violations, coupled with Respondents' failure to appear for hearing, justify the maximum civil penalty. The violations also justify a period of probation to ensure that both Respondents are complying with the cosmetology statutes and rules.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondents Big J's Salon and John Day III shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that Respondent John Day III shall immediately cease practicing cosmetology unless and until license number 61596 has been reactivated by the Board.

IT IS FURTHER ORDERED that license number 102359, issued to Respondent Big J's Salon, and license number 61596 issued to John Day III (if it is reactivated) shall be placed on probation for a period of one (1) year subject to the following terms and conditions:

- A. Respondents Big J's Salon and John Day III shall file a typewritten corrective action report within thirty (30) days of receipt of this Decision and Order. The corrective action report shall verify that all violations cited in this Decision and Order have been corrected.
- B. Respondents Big J's Salon and John Day III must file quarterly written reports with the Board during the period of probation. The written reports shall include the name, license number, and license expiration date for each employee of the salon.
- C. Respondent salon will be subject to random inspections at the discretion of the Board.

IT IS FURTHER ORDERED that if Respondents fail to comply with any of the terms of this Decision and Order, the Board may hold a hearing, pursuant to Iowa Code section 272C.3(2)"a"(2009), and impose further sanctions, up to and including license revocations.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondents shall pay \$75.00 for fees associated with the disciplinary hearing and \$13.75 for the court reporter fees. The total fees of \$88.75 shall be paid within thirty (30) days of receipt of this decision.

Dated this 16th day of December, 2010.