# STATE OF IOWA BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

| IN THE MATTER OF:     | ) | CASE NO. C0 10-061  |
|-----------------------|---|---------------------|
|                       | ) | DIA NO. 11IBC011    |
|                       | ) |                     |
| Dawn M. Schultz Luett | ) | FINDINGS OF FACT,   |
| License No. 55422     | ) | CONCLUSIONS OF LAW, |
|                       | ) | DECISION AND ORDER  |
| Respondent            | ) |                     |
|                       |   |                     |

On January 5, 2011, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Dawn M. Schultz Luett (Respondent), a licensed cosmetologist in the state of Iowa. Respondent was charged with two counts:

Count I: Failing to meet the continuing education requirement for licensure, in violation of Iowa Code section 147.55(2009) and 645 IAC 65.2(13), 4.13(2) and 60.8(3)(a); and

Count II: Submitting a false report of continuing education, in violation of Iowa Code section 147.55(2009) and 645 IAC 4.13, 65.2(13), and 65.2(30).

The hearing was held on April 6, 2011 at 1:10 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent was served with the Notice of Hearing and Statement of Charges by restricted certified mail but failed to appear for the hearing. (State Exhibit D). 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; Jerry Talbott; and Karen Thomsen. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public and was recorded by a certified court reporter. The Board convened in closed session following the hearing 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 Lalah McGowan and State Exhibits A-D (See Exhibit Index for description).

### FINDINGS OF FACT

- 1. Respondent Dawn M. Schultz Luett has been issued Iowa Cosmetology license number 55422. Respondent's license is current and will expire on March 31, 2012. When Respondent renewed her license in 2010, she verified that she had obtained the required eight (8) hours of continuing education between April 1, 2008 and March 31, 2010. Respondent signed the renewal application and attested that the information provided was true and correct. (State Exhibits A-C; Lalah McGowan testimony)
- 2. Respondent's 2010 license renewal was subjected to a random audit in May 2010. Respondent was sent an audit notification letter on May 13, 2010 notifying her that she was selected for a post renewal continuing education audit. Respondent was required to complete the Post Renewal Continuing Education Audit Report form and submit it by June 12, 2010 along with copies of continuing education certificates identifying the course title, date(s), contact hours, sponsor, and the licensee's name. Respondent did not reply to the audit notice. (Exhibit A, p. 4; Lalah McGowan testimony)
- 3. On June 24, 2010, Respondent was sent an Audit Final Notice. The deadline to provide the Post Renewal Audit Continuing Education Form with the course certificates was extended to July 9, 2010. Respondent was warned that if she did not submit the requested information by July 9, 2010, her case would be reviewed by the Board for possible disciplinary action. The Audit Final Notice was sent to Respondent by certified mail and signed for by Respondent. (Exhibit A, pp. 2, 5-7; Lalah McGowan testimony)
- 4. Respondent did not respond to the Audit Final Notice. Respondent was also sent a letter and a form to voluntarily inactivate her license to avoid disciplinary action by the Board. Respondent did not return the form to inactivate her license. (Exhibit A, p. 2; Lalah McGowan testimony)

5. Respondent was served with the Notice of Hearing and Statement of Charges by restricted certified mail on March 3, 2011 but failed to appear for hearing. (State Exhibits B, D)

## **CONCLUSIONS OF LAW**

A person shall not engage in the practice of cosmetology arts and sciences unless the person has obtained a license from the Board.¹ Licensing boards are required to issue rules for continuing education requirements as a condition to license renewal.² The Board has established such rules at 645 IAC chapters 60 and 64. Iowa cosmetology licenses are currently renewed on a biennial basis. The renewal period begins on April 1 of one year and ends on March 31 two years later.³

A licensee seeking renewal shall meet the continuing education requirements in rule 645-64.2.<sup>4</sup> A licensee in this state is required to complete a minimum of 8 hours of board-approved continuing education, of which 4 hours shall be in the prescribed practice discipline. A minimum of two hours of the 8 hours shall be in the content areas of Iowa cosmetology law and rules and sanitation.<sup>5</sup>

The Board is authorized to audit licensees to review their compliance with the continuing education requirements.<sup>6</sup> Board rule specifies the information to be provided by the licensee for auditing purposes.<sup>7</sup> The information to be provided includes, in part: a course description, course outline, names and qualifications of instructors/speakers, and method of presentation.<sup>8</sup> For auditing purposes, all licensees must retain the required documentation for two years after the biennium has ended.<sup>9</sup>

The Board is authorized to revoke, suspend, or otherwise discipline a licensee for knowingly making misleading, deceptive, untrue, or fraudulent representations

<sup>&</sup>lt;sup>1</sup> Iowa Code section 147.2(1)(2009).

<sup>&</sup>lt;sup>2</sup> Iowa Code section 272C.2(1)(2009).

<sup>&</sup>lt;sup>3</sup> Iowa Code section 60.8(1)"b"(2).

<sup>4 645</sup> IAC 60.8(3)"a."

<sup>5 645</sup> IAC 64.2(3)"a."

<sup>6 645</sup> IAC 4.11

<sup>&</sup>lt;sup>7</sup> 645 IAC 4.11(2).

<sup>8 645</sup> IAC 4.11(2)"a."

<sup>&</sup>lt;sup>9</sup> 645 IAC 4.11(3).

in the practice of a profession.<sup>10</sup> In addition, the Board may take formal disciplinary action for failure to cooperate with a board audit, for failure to meet the continuing education requirement for licensure, and for falsification of continuing education information.<sup>11</sup> The Board is also authorized to impose disciplinary sanctions for submission of a false report of continuing education.<sup>12</sup>

The preponderance of the evidence established that Respondent renewed her cosmetology license in 2010. At that time, Respondent claimed that she had completed the required hours of continuing education for the April 1, 2008-March 31, 2010 biennium. However, when Respondent was selected for a post renewal audit, she failed to provide any verification that she in fact completed the required hours of continuing education. Therefore, Respondent failed to comply with the continuing education requirements for renewal of her license in 2010, in violation of 645 IAC 60.8(3)"a" and 65.2(13)[Count I]. In addition, by renewing her license and falsely claiming that she met the continuing education requirements, Respondent has violated Iowa Code section 147.55 and 645 IAC 4.13(4) and 65.2(30). [Count II]

#### **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Iowa Cosmetology license number 55422 issued to Respondent Dawn M. Schultz Luett is hereby SUSPENDED, effectively immediately upon service of this Decision and Order. IT IS FURTHER ORDERED that Respondent's license shall remain suspended until she:

- a) Demonstrates that she has fully complied with all continuing education requirements applicable to her cosmetology license for the period from April 1, 2008 through March 31, 2010;
- b) Submits verification of her completion of an additional two (2) hours of continuing education on Iowa law. Respondent must obtained Board approval before enrolling in any course taken for the purpose of satisfying this obligation. These two (2) hours of continuing education may not be used for license renewal; and

<sup>&</sup>lt;sup>10</sup> Iowa Code section 147.55(3)(2009).

<sup>&</sup>lt;sup>11</sup> 645 IAC 4.13.

<sup>12 645</sup> IAC 65.2(30).

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c) Has paid the civil penalty and hearing fees assessed in this Decision and Order.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$250.00 within thirty (30) days of the issuance of this Decision and Order.

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 \$15.50 for the court reporter fees. The total fees of \$90.50 shall be paid within thirty (30) days of receipt of this decision.

Dated this 28th day of April, 2011.