

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	CASE NO. 09-070
The Beauty Shop)	DIA NO. 12IBC006
License No. 011024)	
)	FINDINGS OF FACT,
Keisha Jackson)	CONCLUSIONS OF LAW,
License No. 60043)	DECISION AND ORDER
)	

RESPONDENTS

On August 13, 2012, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Respondent The Beauty Shop, a licensed salon in the state of Iowa, and its owner, Keisha Jackson, who is a licensed cosmetologist. Both Respondents were charged with the following six counts:

Count I: Engaging in unsanitary practices, in violation of Iowa Code sections 157.6(2011)¹ and 645 IAC 63.11, 63.13, 63.14, 63.15, and 63.19.

Count II: Failing to provide for biohazard disposal, in violation of 645 IAC 63.11.

Count III: Failing to post a copy of the most recent sanitation rules at eye level, in violation of 645 IAC 63.2.

Count IV:² Employing unlicensed individuals to provide services, in violation of 645 IAC 65.2(28).

The hearing was held on July 8, 2013 at 2:05 p.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The state was represented by Assistant Attorney General David Van Compernelle. No one appeared on behalf of Respondents.

¹ The citations in the legal counts should have been to the 2009 Iowa Code and not the 2011 Code because the violations were observed in September 2009. This is a moot point, however, because the cited Code provisions did not change between 2009 and 2011.

² This count was misnumbered as Count VI in the Statement of Charges. It will be referred to as Count IV in this Decision and Order. The Statement of Charges only included four counts.

The following Board members were present for the hearing: Kimberly Page, Chairperson; Richard Mosley; Richard Sheriff; Mary Clausen; and Nicole Schultz. 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)(2013), and was recorded by a certified court reporter.

After hearing the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2013), 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 Susan Reynolds, Kimberly Groves, proof of service, and State Exhibits A and B.

FINDINGS OF FACT

1. On October 11, 2005, the Board issued Iowa salon license number 011024 to The Beauty Shop, which is located at 451 Highway 1 West in Iowa City, Iowa. The Beauty Shop's license was current at the times relevant to this Decision and Order but expired on December 31, 2012. Respondent Keisha Jackson was the owner of record for The Beauty Shop at all times relevant to this Decision and Order. Keisha Jackson holds Iowa cosmetologist license no. 600433, which next expires on March 31, 2014. (State Exhibit B; Notice of Hearing and Statement of Charges)
2. On September 18, 2009, the Board referred a complaint regarding The Beauty Shop to the Iowa Department of Inspections and Appeals (DIA) for investigation. The complainant reported that The Beauty Shop: had unlicensed individuals working in the salon, reused razors on customers, and had an unlicensed individual named "Monica" who was mentoring employees. DIA Investigator Kimberly Groves made several unsuccessful attempts to contact the complainant to arrange an interview. (Groves testimony; State Exhibit B)
3. On September 18, 2009, Investigator Groves made an unannounced visit to The Beauty Shop. Ms. Groves obtained photo identification from Owner Keisha Jackson and from John Gillespie, who was renting a barber chair from Ms. Jackson. Neither

Keisha Jackson nor John Gillespie had their professional license posted at the salon. According to the Iowa Department of Public Health's data base, Ms. Jackson had a current cosmetology license at the time of Groves' visit. Ms. Jackson did not have a current wallet card, however, and she thought that her license might be at home. According to the Iowa Department of Public Health's data base, John Gillespie only had a pending temporary Barber permit. He was not properly licensed to practice barbering at that time. (Groves testimony; State Exhibit B)

Two additional employees were listed in the salon's appointment book, Ryan Sims and a person referred to only as "Monica." Keisha Jackson and John Gillespie both told Investigator Groves that Ryan Sims and Monica no longer worked at the salon. Ms. Groves was able to verify that Ryan Sims had an active Iowa barber license through the Department of Public Health data base. Keisha Jackson could not recall "Monica's" last name so Ms. Groves was unable to verify whether "Monica" had an Iowa license. (Groves testimony; State Exhibit A)

4. Investigator Groves documented the following deficiencies at Keisha Jackson's work station during her visit to The Beauty Shop on September 18, 2009:

- Sanitation rules were not posted at Ms. Jackson's work station or in the salon. Kimberly Groves gave Keisha Jackson a current copy of the rules to post in the salon;
- The salon still did not have a biohazard bag or a biohazard container;
- Permanent hair rods were in closed drawers that contained hair, and Ms. Jackson identified these permanent hair rods as clean supplies;
- Keisha Jackson's Barbicide container contained debris along with hair. The Barbicide did not cover all of the supplies in the container. Ms. Jackson reported that she changed the Barbicide that day and that she cleaned her supplies at the end of the day;
- The electric shaver heads at Ms. Jackson's work station contained hair.

Investigator Groves documented the following deficiencies in the salon during her visit to The Beauty Shop on September 18, 2009:

- The towels located in a closed cabinet had hair on them, and there was hair in the bottom of the cabinet;

- The sink had a large amount of hair in the drain, and there was a large amount of hair on the floor under the sink basin.

Investigator Groves documented the following deficiencies at John Gillespie's work station during her visit to The Beauty Shop on September 18, 2009:

- Sanitation rules were not posted at his work station or in the salon;
- Mr. Gillespie's Barbicide container contained debris along with hair. The Barbicide did not cover all of the supplies in the container. Mr. Gillespie reported that he changed the Barbicide that day and that the hair was from earlier customers;
- Mr. Gillespie was observed not cleaning an electric shaver prior to working on a male customer. He told Investigator Groves that he was "straightening the hair lines."

(Groves testimony; Exhibit B)

5. On August 6, 2010, Investigator Groves made a follow-up visit to The Beauty Shop to verify compliance. The Board had sent Keisha Jackson a Report of Corrected Action on January 15, 2010, but Ms. Jackson had not responded. When Groves asked her about this paperwork, Keisha Jackson denied receiving any paper work from the Board and claimed she would have responded if she did receive it. She told Groves that Mr. Gillespie might have done something with the mail, and she asked for any future Board communication to be sent to her home address. (Exhibit B; Groves testimony)

During this visit, Investigator Groves observed that Keisha Jackson had posted her cosmetology license but that her renewal card had expired. Ms. Jackson told Groves that she lost the renewal card. John Gillespie was not working on August 6, 2010, but he was still renting a chair from Keisha Jackson and was still practicing barbering at The Beauty Shop. Ms. Jackson believed that he had worked at the salon within the previous week. Mr. Gillespie's barber license was now posted at the salon, but it had expired on June 30, 2010. Ms. Jackson told Groves that she did not know that John Gillespie's license had expired until Groves pointed this out to her.

There were two customers receiving services in the salon at the time of Investigator Groves' August 6, 2010 visit. Ms. Groves documented the following deficiencies at Keisha Jackson's work station:

- Sanitation rules were still not posted at Keisha Jackson's work station or in the salon. Ms. Jackson told Groves that she did not know that rules had to be posted;
- The salon still did not have a biohazard bag or a biohazard container. Keisha Jackson told Groves that she did not think she needed these because she disposes of razors in a plastic container in the trash;
- Permanent hair rods were still in closed drawers which contained hair, and Ms. Jackson continued to identify these as clean supplies;
- Ms. Jackson's Barbicide container did not contain any liquid; only supplies. Ms. Jackson reported that she places the used supplies in the jar and then cleans them at the end of the day;
- The electric shaver heads at Ms. Jackson's work station contained hair clippings;
- Both customers were wearing aprons but neither one had any neck protection. Keisha Jackson asked one of the customers if she had taken off her neck protection, and the customer responded that she had;
- Keisha Jackson did not know that the handles of curling irons and hair dryers needed to be disinfected after every customer. Jackson told Groves that she cleans the head of the curling irons as they get sticky from one customer to the next.

Investigator Groves documented the following deficiencies in the salon during her visit to The Beauty Shop on August 6, 2010:

- The sink had a large amount of hair in the bottom of the sink basin in the strainer, and there were hair clippings in the back of the basin drain. One of the customers cleaned the drain while Investigator Groves completed her inspection;
- There was a large amount of hair clippings pushed to the side of the floor near the garbage can.

Investigator Groves documented the following deficiencies at John Gillespie's work station during her visit to The Beauty Shop on August 6, 2010:

- Sanitation rules still were not posted at his work station;
- Mr. Gillespie's Barbicide container was cloudy and had extreme amounts of hair clippings and debris. The Barbicide did not cover all of the supplies in the container;

- Mr. Gillespie had supplies lying on towels on the top of his station. The towels had visible hair on them.

(Groves testimony; Exhibit B)

6. The Notice of Hearing and Statement of Charges was issued by the Board on August 13, 2012 and was served on Respondents by restricted certified mail on August 21, 2012. The Board's Rescheduling Order setting the hearing for July 8, 2013 was served on Respondents by restricted certified mail on May 28, 2013. Respondents were properly served but failed to appear for the hearing.³ (State Exhibit A; proof of service for Notice of Hearing and Statement of Charges; Susan Reynolds testimony; See 645 IAC 11.6)

CONCLUSIONS OF LAW

Iowa Code section 147.55(9), 157.9 (2009) and 645 IAC 65.2(13) authorize the Board to impose disciplinary sanctions, including license revocation or suspension, for violations of Iowa Code chapters 157 or rules promulgated by the Board. The Statement of Charges alleges four separate counts of violation of Board rules by The Beauty Shop and Keisha Jackson (Respondents).

Count I: *Unsanitary Practices*

The legislature has authorized the Board to prescribe sanitary rules for salons and schools of cosmetology arts and sciences, including sanitary conditions necessary for the practice of cosmetology arts and sciences and for the prevention of infectious and contagious diseases. The Board is also authorized to make necessary inspections for enforcement purposes. Iowa Code section 157.6 (2009). The Board has promulgated rules on Sanitation for Salons and for Schools of Cosmetology Arts and Sciences at 645 IAC chapter 63.

645 IAC 63.11 addresses universal precautions, which are to be consistently practiced by all licensees and students. In addition to requirements for biohazard disposal, this rule

³ 645 IAC 11.21 authorizes the Board to proceed with the hearing in the absence of the licensee if they fail to appear for hearing after proper service of notice.

specifies that instruments and supplies used on a client or soiled in any manner shall be placed in a proper receptacle. 645 IAC 63.11(7).

645 IAC 63.13 provides the proper procedures for disinfecting instruments and equipment. The rule requires all tools and implements to be disinfected by complete immersion in an EPA-registered disinfectant mixed and used according to the manufacturer's directions. 645 IAC 63.13(1). Disinfected implements shall be stored in a disinfected, dry, covered container and shall be isolated from contaminants. 645 IAC 63.13(2). Disinfectant solutions shall be changed at least once per week or whenever visibly dirty. 645 IAC 63.13(3). Scissors, trimmers, clippers, handles of hair dryers and curling irons, and other implements that cannot be immersed in a disinfectant shall be cleaned and disinfected after each use. 645 IAC 63.13(5).

A shampoo apron, haircloth, or similar article shall not be placed directly against the neck of a patron but shall be kept from direct contact with the patron by means of a paper neckband or clean towel. A neckband of paper shall not be used more than once. Towels or cloth neckbands shall not be used more than once without proper laundering. 645 IAC 63.19.

The preponderance of the evidence established a number of violations of the Board's sanitation rules at The Beauty Shop during the September 18, 2009 and the August 6, 2010 investigative visits. Cosmetology and barber supplies were not properly disinfected, as required by 645 IAC 63.13. Some of the supplies were not fully immersed in disinfectant, and the disinfectant liquid was visibly dirty with an extreme amount of hair clippings and debris, in violation of 645 IAC 63.13(1) and 63.13(3). During one visit, Ms. Jackson's supplies were in a container with no disinfectant solution. Electric shaver heads had hair clippings on them and were not properly disinfected. Permanent hair rods, which were identified by Ms. Jackson as clean supplies, were stored in drawers that contained hair, in violation of 645 IAC 63.13(2). The handles of hair dryers and curling irons were not cleaned and disinfected after each use, in violation of 645 IAC 63.13(5). Customers were not provided proper neck protection, in violation of 645 IAC 63.19.

Count II: Failure to Provide Biohazard Disposal

645 IAC 63.11(2) requires all salons to have a sharps container for disposing of used needles, razor blades, and other sharp instruments, and the sharps container must be

located as close to the use area as practical. 645 IAC 63.11(3) requires all licensees and students to consistently practice universal precautions by placing disposable material that will release blood or other potentially infectious materials in a liquid or semiliquid state if compressed in a red hazardous waste bag and to dispose of it in accordance with the regulations for removal of hazardous waste. The preponderance of the evidence established that Respondents repeatedly violated 645 IAC 63.11(2) and (3) by failing to have a sharps container or a red hazardous waste bag in the salon at the time of the September 18, 2009 and the August 6, 2010 investigative visits.

Count III: Failure to Post Rules

645 IAC 63.2 provides that a copy of the most current sanitation rules (Subchapter 63) 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 repeatedly violated 645 IAC 63.2 by failing to have sanitation rules posted at the time of either investigative visit. Investigator Groves provided Keisha Jackson with a copy of the current sanitation rules at the time of the first visit and told her that they needed to be posted in the salon. Jackson failed to do so.

Count IV: Employment of Unlicensed Individual

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 The Beauty Shop and Keisha Jackson repeatedly violated 645 IAC 65.2(28) by permitting John Gillespie to provide barber services at The Beauty Shop when he did not have an active Iowa barber license.

Sanction

Respondents' violations directly affect the public health, safety, and welfare, and they more than justify a civil penalty of \$1,000. In addition, the number and nature of the violations warrant a one year period of probation for Keisha Jackson as the owner of the salon at the time of the violations and as a licensed cosmetologist. The violations further warrant completion of additional continuing education on Iowa Law and Sanitation by Respondent Keisha Jackson.

DECISION AND ORDER

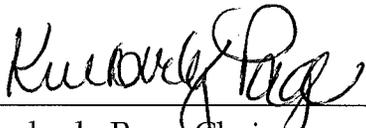
IT IS THEREFORE ORDERED that The Beauty Shop and Keisha Jackson shall pay a total civil penalty of one thousand dollars (\$1,000) within thirty (30) days of issuance of this Decision and Order.

IT IS FURTHER ORDERED that Respondent Keisha Jackson shall complete eight (8) hours of continuing education on Iowa Law and Sanitation within ninety (90) days of the issuance of this decision. Board approval must be obtained before enrolling in any course taken for the purpose of satisfying this obligation. These eight (8) hours of additional continuing education may not be used for license issuance or renewal.

IT IS FURTHER ORDERED that license number 60043, issued to Respondent Keisha Jackson, shall immediately be placed on PROBATION for a period of one (1) year.

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 \$16.50 for the court reporter fees. The total fees of \$91.50 shall be paid within thirty (30) days of receipt of this decision.

Dated this 15th day of August, 2013.



Kimberly Page, Chairperson

Iowa Board of Cosmetology Arts & Sciences

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

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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(2013) 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