

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)	
)	NO. 08-108
Donald Swearingen)	DIA NO. 09DPHCE008
)	
License No. 44076)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On August 6, 2009, the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Notice of Hearing and Statement of Charges against Donald Swearingen (Respondent), a licensed cosmetologist in the state of Iowa. Respondent was charged with failure to comply with a Board order, in violation of 645 IAC 65.2(21). The hearing was held on October 5, 2009 at 12:05 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 4). The state was represented by Assistant Attorney General Jordan Esbrook. The following Board members were present for the hearing: Becky J. Brockmann, Vice-Chairperson; Kimberly Setzer; Richard Mosley; Dana Atkins; Jerry Talbott; 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 1-9 (See Exhibit Index for description)

FINDINGS OF FACT

1. Respondent holds probationary cosmetology license no. 44076, which will next expire on March 31, 2010. (State Exhibit 5)
2. On January 20, 2009, the Board issued Findings of Fact, Conclusions of Law, Decision and Order to Respondent following a contested case hearing. Respondent had been charged with engaging in unsanitary practices but failed to appear for hearing. The Board ordered Respondent to pay a \$350 civil penalty and to complete four (4) hours of continuing education on law and sanitation within 30 days. The Board also placed Respondent's license on probation for a period of one (1) year and required him to file quarterly reports. Finally, Respondent was required to pay \$130 for the hearing and court reporter fees. (State Exhibits 1, 2, 7; Testimony of Marilyn Ubaldo)
3. Board staff sent letters to Respondent on February 24, 2009 and March 24, 2009 reminding him of the requirements of the Board's Decision and Order. As of the date of the hearing, Respondent had not paid the \$350 civil penalty or the \$130 hearing fee, had not completed the required continuing education, and had not filed any quarterly reports. (Testimony of Marilyn Ubaldo; State Exhibits 8, 9)

CONCLUSIONS OF LAW

The legislature has authorized the Board to revoke or suspend a license for failure to comply with a Board order.¹ 645 IAC 65.2(21) provides that the Board may impose any of the disciplinary sanctions provided in rule 645 IAC 65.3 when the Board determines that a licensee has failed to comply with the terms of a board order. The evidence is undisputed that Respondent has completely failed to comply with any of the terms of the Board's January 20, 2009 Decision and Order. Once again, Respondent has failed to respond to the Statement of Charges or to appear for hearing. It is clear that Respondent is unwilling to cooperate with terms of probation or to maintain communication with the Board. Under the circumstances, the Board's only reasonable option is to revoke Respondent's license.

¹ Iowa Code section 272C.3(2)(a)(2009).

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 44076, issued to Respondent Donald Swearingen, is hereby REVOKED effective immediately upon service of this Order.

IT IS FURTHER ORDERED that prior to reinstatement of his license, Respondent must establish that the reasons for the revocation no longer exists and that it is in the public interest for the license to be reinstated. 645 IAC 11.31.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent Donald Swearingen shall pay \$75.00 for fees associated with the disciplinary hearing and \$32.76 for the court reporter fees. The total fees of \$107.76 shall be paid within thirty (30) days of receipt of this decision.

This findings of fact, conclusions of law, decision and order is approved by the board on November 2, 2009.

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. 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(3)(4).

Pursuant to Iowa Code section 17A.19(2009) 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.