

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

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<b>IN THE MATTER OF</b>	)	
	)	<b>NO. 09-018</b>
<b>Shear Joy</b>	)	
<b>License No. 102499</b>	)	<b>NOTICE OF HEARING</b>
<b>and</b>	)	<b>AND STATEMENT OF CHARGES</b>
<b>Joy Wheat, Owner</b>	)	
<b>License No. 53904</b>	)	
	)	
<b>RESPONDENTS</b>	)	

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COMES NOW the Iowa Board of Cosmetology Arts and Sciences (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued Iowa salon license No. 102499 on September 3, 2008. Respondent is the owner of Respondent salon, Shear Joy, located at 402 N. Main Street, Clarksville, IA 50619. Respondent's salon license is current and will next expire on December 31, 2010. Respondent holds a current cosmetology license, No. 53904. The licenses will next expire on March 31, 2010.

**A. TIME, PLACE AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on January 11, 2010, before the Board of Cosmetology Arts and Sciences. The hearing shall begin at 1:00 p.m. and shall be located in the Lucas State Office Building, Fifth Floor Board Conference Room 517/518, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the

following address: Board of Cosmetology Arts and Sciences, 5<sup>th</sup> Floor, Lucas State Office Building, Des Moines, Iowa, 50319.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 645 IAC 11.17.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Scott Galenbeck, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon

all parties in the case.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 157, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 157, and 272C and 645 IAC chapter 65.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 645 IAC 11.21.

## **C. SECTIONS OF STATUTES AND RULES INVOLVED**

### **Count I**

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to post the individual license in the reception area at eye level in violation of 645 IAC 61.5(3) and by failing to post a copy of the most current sanitation rules in the reception area at eye level in violation of 645 IAC 63.2.

### **Count II**

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to provide a supply of hot and cold running water and clean lavatory facilities in violation of 645 IAC 63.5(4) and failing to provide clean drinking water in violation of 645 IAC 63.5(5).

### **Count III**

Respondent is charged with violating a regulation, rule, or law of this state pursuant to

645 IAC 65.2(13) by failing to equip the salon's service area with air filtration equipment that is of sufficient capacity to be capable of removing chemical fumes from the air, in violation of 645 IAC 63.5(1).

#### **Count IV**

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to provide disinfectant solution in the dispensary area or work stations, in violation of 645 IAC 63.11(3).

#### **Count V**

Respondent is charged with violating a regulation, rule, or law of this state pursuant to 645 IAC 65.2(13) by failing to disinfect all instruments or implements that do not penetrate the skin, in violation of 645 IAC 63.10(6).

#### **Count VI**

Respondent is charged with practicing cosmetology arts and sciences without a valid license in violation of 645 IAC rules 60.8(6) and 65.2(26).

### **D. FACTUAL CIRCUMSTANCES**

1. During an investigation on April 10, 2009, the investigator found that the salon license was posted, but Respondent's individual cosmetology license was not posted. Sanitation rules were also not posted.
2. During the investigation, the investigator also observed the sanitary and building conditions of the salon. The salon did not have a ventilation system, and was heated by three space heaters. The salon did not have a bathroom or drinking water available
3. During the inspection, Respondent stated that she did not have any Barbicide in the

salon, and that Respondent used her sink at home to clean her implements, or cleans them in a next-door store's bathroom. Respondent was observed contaminating clean implements with dirty ones.

During the investigation on April 10, 2009, Respondent's appointment book showed appointments back to January of 2009, but claimed that she had ceased practicing between April 6 and April 8 of 2009 after discovering that her license was inactive. Respondent's license was inactive between May 1, 2008 and April 9, 2009.

#### **E. SETTLEMENT**

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC chapter 12. If you are interested in pursuing settlement of this matter, please contact Scott Galenbeck, Assistant Attorney General, at 515-281-6658.

#### **F. PROBABLE CAUSE FINDING**

On this 5<sup>th</sup> day of October, 2009, the Iowa Board of Cosmetology Arts and Sciences found probable cause to file this Notice of Hearing and Statement of Charges.

**This notice of hearing and statement of charges is approved by the board on November 23, 2009.**