

BEFORE THE ARKANSAS STATE BOARD OF COSMETOLOGY

ADMINISTRATIVE HEARINGS
AND
BOARD MEETING

SEPTEMBER 18, 2006

BE IT REMEMBERED that on Monday, the 18th day of September, 2006, before the Arkansas State Board of Cosmetology and it's department staff at 8:30 a.m. in the South Basement Conference Room of the Main Street Mall, located at 101 East Capitol, Little Rock, Pulaski County, Arkansas, business and administrative hearings came on for hearing as follows:

IDEN COURT REPORTING

TERESA IDEN, CCR

Arkansas Supreme Court Certificate No. 646

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APPEARANCES:

Board Members Present:

JANE POWELL - President
CLIFFORD KEENE - 1st Vice President
NICK DOWNEY - 2nd Vice President
VEDA TRAYLOR - Secretary
LAJOY GORDON
ANN PICKERING
PATRICIA TURMAN
BARBARA WARD
SHERRON WEST

Staff Members Present:

KATHY WITTUM, EXECUTIVE DIRECTOR
AMBER MCCUIEN
SHAUNTA BELMONT

Board Inspectors Present:

SHEILA CAUDLE
ROSE HORNER
PAT BLAND JACKSON
LAVONNE LESTER
BRENDA MORGAN

AG Staff Present:

ARNOLD JOCHUMS, Legal Counsel
KENDRA JONES, Administrative Hearing Officer

Court Reporter:

TERESA IDEN, CCR
ARKANSAS SUPREME COURT
CERTIFICATE NO. 646

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P R O C E E D I N G S :

MS. POWELL: The Arkansas State Board of Cosmetology meeting will come to order. Madam Secretary, will you please take the roll?

MS. TRAYLOR: Everybody is present except Mr. Downey. And our new board member is present.

DRAWING FOR STUDENT ADVISORY COMMITTEE POSITIONS

MS. POWELL: Okay. At this time we need to move into the Student Advisory Committee drawing. Our security officer needs to leave pretty quickly. I'll turn this over to Director Wittum.

MS. WITTUM: We appreciate Officer Tankin for agreeing to draw the names for these positions. And just real quickly, I wanted to give you an update on the applications that were received. The deadline to apply was September 1, 2006. Eligibility was determined by either the student's current enrollment or the receipt of a license within the last six months, which equates to receipt of a license between March 1st and September 1st. The board received applications for 36 eligible persons. Of these, 20 represent currently enrolled students and 16 recent licensees. Applications were received from 11 ineligible persons, who either were not currently enrolled or who had not received a license within the

1 required time period. As we have previously stated,
2 our goal has been to have each congressional district
3 and each course of study or license type represented
4 on this committee by randomly selecting people who
5 would fill those different positions. This all, of
6 course, depended upon the availability of the
7 interested applicants. We were partially successful
8 in that each congressional district will be
9 represented, however, there were no eligible
10 applicants for the manicure course of study or
11 license type. There are two instances where an
12 applicant will win by default in order to ensure that
13 a congressional district or course of study or
14 license type was represented. And I'll explain that
15 as we go through it. Officer Tankin, if you wouldn't
16 mind coming up this way.

17 We'll start with the currently enrolled in
18 Congressional District 1. Paige Porter from
19 Blytheville Academy of Cosmetology is the only
20 applicant from this district, so she will serve as
21 one of the cosmetology positions.

22 In Congressional District 3, we'll select a
23 cosmetology applicant.

24 (Officer Tankin draws.)

25 MS. WITTUM: And this is Joel Nutt from

1 Bentonville. He is currently enrolled at Career
2 Academy of Hair Design.

3 In Congressional Districts 2 and 4, there was a
4 collection of cosmetology and instructor applicants
5 who applied. Therefore, we have combined the
6 instructor applicants -- there was one from each
7 district, and we'll draw an instructor applicant to
8 see which of the districts will be represented by an
9 instructor.

10 (Officer Tankin draws.)

11 MS. WITTUM: And that will be Betty Witt, who is
12 currently enrolled at Searcy Beauty College. That
13 was in District 2. In District 4 we're going to
14 select a cosmetology applicant.

15 (Officer Tankin draws.)

16 MS. WITTUM: And this will be Marchell Jordan,
17 who is enrolled at Margaret's Hair Academy in
18 Monticello.

19 And then the remaining applicants from these two
20 districts will be combined and we'll draw for the
21 fifth position.

22 (Officer Tankin draws.)

23 MS. WITTUM: And that is Taylor Johnson, who is
24 enrolled as a cosmetology student at the Fayetteville
25 Beauty College.

1 That gives us our currently enrolled applicants.
2 Now, our recent licensees -- of the recent licensees
3 in Congressional District 3, Krissa Thompson from
4 Mountainburg was the only aesthetics applicant to
5 apply, so she will represent the aesthetics course in
6 that district.

7 In Congressional District 2, we will select an
8 applicant -- a cosmetology applicant.

9 (Officer Tankin draws.)

10 MS. WITTUM: And this is Tiphonie Gatewood from
11 North Little Rock. She attended Lee's Cosmetology.

12 In Congressional Districts 1 and 4, a selection
13 of cosmetology and instructor applicants was
14 received. We combined the instructors and we'll pick
15 from those two districts now.

16 (Officer Tankin draws.)

17 MS. WITTUM: Heather Whitlock from El Dorado in
18 District 4 will be our instructor applicant -- our
19 representative.

20 We'll select a cosmetology applicant from
21 Congressional District 4.

22 (Officer Tankin draws.)

23 MS. WITTUM: That will be Marlana Brennan from
24 Camden. She attended Professional Cosmetology
25 Education Center.

1 The remaining applicants -- there are four, that
2 are current. The remaining applicants will be
3 combined and we'll select for the fifth position.

4 (Officer Tankin draws.)

5 MS. WITTUM: And that will be Natalie Mobley
6 from Jonesboro. She is an instructor, cosmetology
7 instructor, and she attended the Arkansas Academy of
8 Hair Design in Jonesboro and Arthur's in Conway.

9 And I believe we should have five of those now.
10 And this fills the Student Advisory Committee.
11 Officer Tankin, we appreciate your help. Thank you.

12 OFFICER TANKIN: Sure.

13 BOARD MEMBERS: Thank you.

14 (Applause.)

15 MS. POWELL: I think as Kathy as said, the
16 positions to be filled, the applicants did not have
17 to be present here today, but they will be notified.

18 MS. WITTUM: Just to -- if I may, for just a
19 moment. Just to reiterate for those who maybe
20 haven't been here and heard the -- we have formed a
21 Student Advisory Committee in an effort to have
22 student leaders and role models serve in these
23 capacities. They will help the board to facilitate
24 an open door policy between the board staff and
25 cosmetology students. They will provide insight on

1 the changing educational needs in cosmetology. They
2 will provide insight on the changing needs within the
3 cosmetology industry as a whole. They will develop
4 materials to develop students, the industry, and the
5 public on issues relating to cosmetology. And they
6 will, overall, help to improve the image of
7 cosmetology in Arkansas. Each of these applicants
8 who were chosen today to volunteer on that committee
9 will be notified. And we'll probably set a meeting
10 in October to bring them all together. And just so
11 you-all know, there are two members of the board who
12 will participate, as well. That will be Sherron West
13 and Pat Turman. They were specifically chosen to
14 help with this committee because they are non-
15 examining board members. They will not encounter the
16 students, the currently enrolled students, when they
17 come here to examine for licenses.

18 **GENERAL BUSINESS**

19 MS. POWELL: Our attorney, right now, is not
20 here, so I guess we'll move on to the other business
21 of the day.

22 I'll take up the treasurer's report, and at this
23 time I'll go ahead and give it. At our last meeting
24 on July 17th, we had a balance of \$164.35. There was
25 an NIC gift purchased for the NIC conference at the

1 end of August, that was \$70.42, leaving us a balance
2 of \$93.93. The board meeting today is a total of
3 \$80.00 collected, and giving us a balance of \$173.01.

4 The next order of business is the approval of
5 the July 17th board meeting minutes. Do I have a -
6 motion?

7 MR. KEENE: I so move.

8 MS. GORDON: Second.

9 MS. POWELL: I have a motion and a second. Is
10 there any discussion?

11 (No response.)

12 MS. POWELL: All those in favor, raise your
13 right hand.

14 (Show of hands.)

15 MS. POWELL: It's unanimous.

16 Next up for approval are the July 18th, Student
17 Advisory Committee meeting minutes. Do I have a
18 motion?

19 MS. TURMAN: I so move.

20 MS. POWELL: I have a motion.

21 MR. KEENE: Second.

22 MS. POWELL: And a second. Is there any
23 discussion?

24 (No response.)

25 MS. POWELL: All those in favor, raise your

1 right hand.

2 (Show of hands.)

3 MS. POWELL: Motion carries. Okay. Next, we
4 have a Rater Training/School Overview update for
5 2006.

6 MS. WITTUM: Any board members who attended want
7 to give anything on the conference that we just
8 attended.

9 MR. KEENE: Rater Training or the conference?

10 MS. WITTUM: Oh.

11 MS. POWELL: We're talking about the Rater --

12 MS. WITTUM: Oh. We had a Rater training and
13 school overview in August. It was very beneficial, I
14 think, to all of the board members, especially to the
15 ones who haven't had an opportunity to attend those
16 as frequently.

17 We also need to start thinking about how we want
18 to do the 2007 Rater training. Mary Manna from NIC,
19 who told me at the conference, she said that they
20 would like to go ahead and start getting that
21 scheduled for next year. I'll need you-all to be
22 thinking about what month next year you would like to
23 have it. I certainly would suggest that we do it
24 earlier than later.

25 MS. TRAYLOR: You mean like spring instead of

1 fall?

2 MS. WITTUM: Yes.

3 MS. POWELL: Well, I think our contract was
4 actually terminated in July, correct?

5 MS. WITTUM: Yes.

6 MS. POWELL: So we don't have to be in a rush
7 about it -- before July, certainly. So --

8 COURT REPORTER: I need to interrupt just a
9 moment. My microphones are right up here. And you
10 guys are kind of talking to each other. If you
11 could, try to project your comments out here so that
12 I can hear you and it will pick up. I mean, I can
13 barely hear you.

14 MS. POWELL: Thank you.

15 (Multiple discussions taking place at once.)

16 MS. POWELL: Well, maybe the board could submit
17 to Kathy a time that would be good for them, that way
18 she could get a couple of times. How's that sound?

19 MS. WITTUM: That sounds good.

20 MS. POWELL: I think we'll move into the NIC
21 conference update.

22 MS. WITTUM: Anybody who wants to may give an
23 update on the conference.

24 MS. TRAYLOR: I'm not over being wet yet.

25 MS. WITTUM: It was a very good conference.

1 MS. TRAYLOR: It was good.

2 MS. WITTUM: There were a lot of good workshops,
3 a lot of valuable information, that we brought back
4 with us that will help us, especially now that we are
5 moving into law revisions. We can consider, maybe,
6 incorporating some of what we learned into these law
7 revisions. There were several interesting
8 occurrences that happened, but we won't point any
9 fingers to anyone. We'll just let them, if they want
10 to share them, to share.

11 MS. TRAYLOR: I thought that the food was
12 wonderful.

13 MS. TURMAN: Well, first of all, you would have
14 to understand where we were. We were on an island.
15 I thought it was neat. It was going to be an island
16 with pretty beaches and things, but little did I
17 know.

18 (Chorus of laughter.)

19 MS. TURMAN: We spent 30 to 40 minutes going
20 over on a sailboat. It was very cold, pouring down
21 rain, and we looked like a bunch of drowned rats when
22 we got there. Well, actually not that bad going over
23 there. It was raining on us. When we got there, we
24 went on this island and it was just like Survivors, I
25 kid you not.

1 (Chorus of laughter.)

2 MS. TURMAN: And we had this little path that
3 didn't have -- it was just, like -- it was bad. I
4 mean, you know? Anyway, I was going down this little
5 path -- and I will not tell what Anne did, but -- she
6 can tell that if she wishes. But I was on this
7 little bitty path like this, and all of sudden this
8 dog ran out and around my legs. And I thought it was
9 a bear. So I was jumping up and down and screaming
10 and saying, Bear!, Bear!, Bear!

11 (Chorus of laughter.)

12 MS. POWELL: Well, I understand that she
13 probably should've hollered Moose!, Moose!

14 (Chorus of laughter.)

15 MS. TURMAN: And anyway, I will not tell you
16 what Anne did, but LaJoy was sitting down on the
17 ground rolling. So that was my -- and then when we
18 went back, that night, I mean, we went down this
19 little trail probably for three-fourths of a mile, or
20 something like that. It felt like it. That night as
21 we were coming back we got on the sailboat, the
22 little lanterns that were supposed to light the way,
23 went out. So we were like a bunch of little penguins
24 walking down and holding on to each other to get back
25 to the sailboat. It was pouring down rain at that

1 time.

2 MS. GORDON: Cold.

3 MS. TURMAN: I was thinking, here's this and
4 it'll stop, but oh, no. It was wonderful, but I do
5 think the best comment was made when the next morning
6 at our meeting, this lady got up and she said, the
7 first time I ever got in the bathtub and filled it up
8 with water before turning on the water.

9 (Chorus of laughter.)

10 MS. TURMAN: I mean, we were drowned. Water was
11 running out of my clothing, and let me assure you,
12 it's cold in Maine. So, that's my remembrance right
13 now.

14 MS. POWELL: Thank you for that. Our hearing
15 officer just came in.

16 (Multiple conversations taking place at once.)

17 **ADMINISTRATIVE HEARINGS**

18 MS. POWELL: Okay. Our hearing officer is here,
19 Kendra Jones, and we'll be able to move into the
20 hearings.

21 HEARING OFFICER: Good morning. My name is
22 Kendra Jones, and I'm the hearing officer in the
23 matter of -- several issues before the Cosmetology
24 Board. We're going to start with Reginald Hayes, 07-
25 003.

1 (No response.)

2 HEARING OFFICER: Is Mr. Hayes here?

3 (No response.)

4 HEARING OFFICER: Okay. Moving on to 07-005,
5 Linh Tuong Thi Nguyen?

6 (No response.)

7 HEARING OFFICER: Moving right along, Angela
8 Vaughn, 07-006.

9 (No response.)

10 HEARING OFFICER: Ruben Medina, 07-007.

11 (No response.)

12 HEARING OFFICER: Dung Phuong Nguyen, 07-008.

13 (No response.)

14 HEARING OFFICER: Jennifer Coleman, 07-010.
15 Jennifer Coleman.

16 (No response.)

17 HEARING OFFICER: Outlook Pointe Balanced Care,
18 07-012. Outlook Pointe.

19 (No response.)

20 HEARING OFFICER: Okay. Clear Channel
21 Communications, 07-014. Clear Channel.

22 (No response.)

23 HEARING OFFICER: Matt Coburn, 07-020.

24 (No response.)

25 HEARING OFFICER: Matt Coburn.

1 (WHEREUPON, an inaudible off-the-record
2 conversation took place among board members and staff
3 as to the order of the hearings to take place, with
4 proceedings resuming as follows, to-wit:)

5 HEARING OFFICER: Okay. Judy Ivie, 07-021 is
6 the matter before us. The date today is September
7 18, 2006, and we're before the Cosmetology Board in
8 the Main Street Mall. Would the respondent please
9 identify yourself for the record.

10 MS. IVIE: Judy Ivie.

11 HEARING OFFICER: And Ms. Ivie, do you have
12 counsel here with you today?

13 MS. IVIE: No. I do have my other co-workers,
14 co-partners.

15 MR. JOCHUMS: What is the number on this?

16 HEARING OFFICER: 07-021.

17 MR. JOCHUMS: 021.

18 (WHEREUPON, an inaudible off-the-record
19 conversation took place among board members and staff
20 as to the order of the hearings to take place, with
21 proceedings resuming as follows, to-wit:)

22 HEARING OFFICER: Ms. Ivie, we'll need to move
23 on to another one. We'll come back to you in a
24 moment.

25 MS. IVIE: Oh, that's fine.

1 MR. JOCHUMS: Do we have the sign-in sheet of
2 who's --

3 HEARING OFFICER: Who all is here as a
4 respondent?

5 MS. WITTUM: Shaunta, do you have the -- do you
6 have a list of people coming in?

7 MS. BELMONT: Yes.

8 MS. WITTUM: Have you been marking them off on
9 the agenda?

10 MS. BELMONT: Yes.

11 MS. WITTUM: Why don't you give that to the
12 hearing officer, so she'll have that.

13 (Document is given to hearing officer.)

14 HEARING OFFICER: We're just going to go down
15 the list of how you signed in, and take it that way
16 rather than trying to go through all the names of all
17 the people.

18 The first one is Vernell Boozer.

19 **HEARING ORDER NO. 07-089: VERNELL BOOZER**

20 (Respondent comes forward.)

21 HEARING OFFICER: Vernell Boozer, 07-089. Ms.
22 Boozer, have a seat at the table there, and go ahead
23 and introduce yourself for the record, please.

24 (Respondent sits at table.)

25 HEARING OFFICER: Please state your name for the

1 record.

2 MS. BOOZER: My name Boozer.

3 HEARING OFFICER: Okay. Thank you, Ms. Boozer.
4 Do you have counsel with you today?

5 MS. BOOZER: Yes.

6 HEARING OFFICER: What's their name?

7 MS. BOOZER: I don't know their name. I just
8 seen them one time, so I don't know it.

9 HEARING OFFICER: Okay. And is the State
10 present?

11 MR. JOCHUMS: Yes.

12 HEARING OFFICER: Okay. Who represents the
13 State?

14 MR. JOCHUMS: My name is Arnold Jochums. I'll
15 be presenting witnesses before the board this
16 morning.

17 HEARING OFFICER: And Ms. Boozer, you received
18 your order and notice of hearing today?

19 MS. BOOZER: Yes.

20 HEARING OFFICER: For the benefit of those of
21 you who have not been through one of these
22 proceedings before, this is an administrative hearing
23 governed by the Administrative Procedures Act. It
24 will be based -- the board's decision will be based
25 solely on the evidence presented here today. If you

1 have any evidence that you want presented, please
2 have it ready and present it to the board for
3 consideration. To ensure the efficiency of this
4 process, I'm going to grant some leniency towards the
5 hearing proceedings to allow us to move forward
6 efficiently. The board members know this case only
7 as it appears in the notice or this hearing order,
8 which you received in the mail. And all participants
9 of the hearing should be aware that these are subject
10 to the Freedom of Information Act. For those of you
11 who may be called as witnesses in the current case,
12 please raise your right hand. If everyone that is
13 here to testify for Ms. Boozer would please raise
14 your hand, the court reporter will swear you in.

15 (Witnesses sworn.)

16 HEARING OFFICER: Are there any exhibits that
17 either side would like to present at this time?

18 MR. JOCHUMS: Madam Hearing Officer, I would
19 like to offer what would be marked as Board's Exhibit
20 No. 1, which consists of a cover letter from the
21 director, the notice of hearing, and the inspection
22 report.

23 HEARING OFFICER: That will be bound together
24 admitted as Board's Exhibit No. 1.

25 (WHEREUPON, Board's Exhibit No. 1 to HO#07-089

1 having been identified for the record, was received
2 into evidence and marked to append.)

3 MR. JOCHUMS: I also want to incorporate by
4 reference the statues and rules governing this
5 proceeding.

6 HEARING OFFICER: That will be incorporated as
7 Exhibit 2.

8 (WHEREUPON, Board's Exhibit No. 2 to HO#07-089
9 having been identified for the record as the statues
10 and rules of the board governing the hearing, were
11 incorporated into the record and made a part hereof
12 by reference.)

13 HEARING OFFICER: Do you have any exhibits that
14 you would like to have introduced?

15 MS. BOOZER: Well, I got some --

16 (Indicating stack of documents before her.)

17 MS. BOOZER: I had a inspector a long time ago,
18 but no --

19 HEARING OFFICER: Ms. Boozer, do you have any
20 paper -- paperwork that you would like to present to
21 the board today?

22 MS. BOOZER: Yes, uh-huh.

23 (Indicating stack of documents before her.)

24 HEARING OFFICER: We will give you a chance to
25 tell your side in just a minute.

1 MS. BOOZER: Okay. These are my papers.

2 MR. JOCHUMS: These are all --

3 HEARING OFFICER: Ms. Boozer, --

4 MS. BOOZER: Those inspection sheets.

5 MR. JOCHUMS: -- these are all the --

6 MS. BOOZER: They're inspections. I had the
7 last lady inspect my shop.

8 MR. JOCHUMS: Oh, okay.

9 MS. BOOZER: That's the last lady. I ain't seen
10 nobody since.

11 HEARING OFFICER: We will label that as
12 Respondent's Exhibit No. 1, the inspection sheets.

13 MR. JOCHUMS: Her exhibits apparently are the
14 old inspection forms.

15 MS. JACKSON: Those are the old inspection forms
16 that we used to have. They had carbons behind them,
17 and you would tear them off.

18 MR. JOCHUMS: I don't have any objection to them
19 being admitted.

20 HEARING OFFICER: They will be admitted.

21 (WHEREUPON, Respondent's Exhibit No. 1 to HO#07-
22 089 having been identified for the record was
23 admitted into evidence and marked to append.)

24 HEARING OFFICER: Do you have any opening
25 statements?

1 MR. JOCHUMS: Just that this matter is a little
2 different from some of the other hearing matters that
3 we have before us today. If the board members will
4 look at paragraphs two and three in the notice of
5 hearing, they spell out what the -- what's being
6 alleged.

7 Basically, there will be some testimony about
8 health and safety issues, as well as, the size of the
9 establishment and numerous other violations. I'll
10 let -- we'll recount that with testimony, but that
11 doesn't have to be with a licensure. She has a
12 license. It's other issues.

13 HEARING OFFICER: Ms. Boozer, would you like to
14 say anything in opening statements before we call
15 witnesses?

16 MS. BOOZER: Well, all I know that's all I have
17 to show is that. That there's everything. And the
18 rest of it -- she's been gone for a long time, and
19 didn't anybody else come by, inspect my shop at all.
20 But one time. Just one time, not too long ago.

21 HEARING OFFICER: Okay. We'll proceed with
22 calling witnesses. State may call their first
23 witness.

24 MR. JOCHUMS: Okay. I'll call Inspector Bland.

25 MS. JACKSON: Good morning.

1 **THEREUPON,**

2 **TESTIMONY AND EVIDENCE**

3 **GIVEN ON BEHALF OF THE STATE BY**

4 **INSPECTOR PAT BLAND JACKSON,**

5 having been called for and on behalf of the
6 State, and having been first duly sworn to tell the
7 truth, testified on her oath as follows, to-wit:

8 **DIRECT EXAMINATION**

9 BY MR. JOCHUMS:

10 Q State your name.

11 A Pat Bland.

12 Q And are you an inspector for the Cosmetology Board?

13 A Yes, I am.

14 Q Is this shop owned and operated by Vernell Boozer, located
15 in Gurdon, Arkansas in your territory?

16 A Yes, sir. It is.

17 Q Okay. And did you have occasion to visit the shop in June
18 of this year?

19 A Yes, I did.

20 Q Okay. Had you previously visited this particular shop?

21 A I had been by there, and it had been closed. It took me --
22 -- I've had the southwest territory for five years, and Ms.
23 Boozer had a P.O. Box. We couldn't locate her. I've tried to
24 locate her for five years, and finally did. So that's why --
25 in my previous time, this salon was not inspected. And I left

1 a notice, but I did come by there one day and she was closed.
2 The next time I visited, she was open.

3 Q So you have -- this is first visit inside her shop?

4 A Right.

5 Q Tell us about the things you saw on this visit and that
6 are on the inspection report that the board has a copy of.

7 A All right. Okay. Yes. Unfortunately, Ms. Boozer had not
8 had an inspector come by in a number of years. And while we
9 were visiting, I asked her if her salon had always been like
10 this. So I want to put that up front. And she said that it
11 had -- in the 35 years, I think she told me, that she had been
12 there. But there were several health and safety violations,
13 and they consisted from no liquid sanitizer, no local
14 containers for used instruments, floor space was limited. Her
15 building was large enough, but it was sectioned off. And on
16 one side she had, I believe it was, a couch and a chair. And
17 on the other side, the little space she was using to do a
18 client's hair at that time, was very limited. I would say it
19 was about a four by eight space. She had a little hydraulic
20 chair in there that was the one I started using years ago,
21 which you wind up. It didn't have the pump on it, if I'm not
22 mistaken.

23 MS. BOOZER: I had two in there.

24 BY THE WITNESS:

25 A Anyway, the space was limited. And no shampoo bowl, no

1 cabinet for clean towels. She did have a cabinet there, but I
2 didn't see towels stored in that.

3 BY MR. JOCHUMS:

4 Q Did the establishment have running water?

5 A Not to my knowledge. No running water.

6 Q Okay.

7 A And I asked -- there again, I asked Ms. Boozer about this,
8 and she said the previous inspector knew all of this, all of
9 these years, and I noted that on a report that I sent in, that
10 it had always been like this. And I explained to her that my
11 job, too, was just to report what I saw.

12 Q Are licensees required to post health and safety --

13 A Health and safety rules, yes.

14 Q Did she have them posted?

15 A I did not see those.

16 MS. BOOZER: I have them.

17 BY MR. JOCHUMS:

18 Q Is there a regulation that specifies what kind of floor
19 covering that you have?

20 A Non-absorbent floor covering.

21 Q And did that meet that requirement?

22 A No.

23 Q Were there sufficient number of closed receptacles for
24 soiled towels?

25 A I did not see a closed receptacle, no.

1 Q Did you see closed receptacles for sanitized instruments?

2 A No, sir. I did not see one.

3 Q And you've already talked about liquid sanitizer. Were
4 there laundry facilities on the premises?

5 A I did not see any.

6 Q Did she have labeled containers for used instruments?

7 A I did not see them.

8 Q Were disinfected instruments stored in a clean covered
9 place?

10 A I did not see an area for -- for that, sir.

11 Q Where is this? Is the shop in a house or in a --

12 A It's in a -- no. It is out in the country next to, I
13 believe it's your home, Ms. Boozer?

14 MS. BOOZER: Outside my home is where it's at.

15 BY THE WITNESS:

16 A And it's a building. You know, just like a shop building,
17 but it's not attached to the home.

18 BY MR. JOCHUMS:

19 Q Okay. It's free standing, then?

20 A Right.

21 Q Okay. Is there anything else that you think the board
22 should know about your observations?

23 A No, sir.

24 Q Okay.

25 MR. JOCHUMS: I have no other questions for this

1 witness.

2 HEARING OFFICER: Ms. Boozer, do you want to ask
3 the Inspector any questions?

4 MS. BOOZER: Well, -- I have taken care of a lot
5 of things on that paper -- I didn't know.

6 HEARING OFFICER: But do you have any questions
7 you would like to ask her about her inspection?

8 MS. BOOZER: Well, about how much I have to pay.
9 I don't think I should have to pay all that. Pay
10 anything.

11 HEARING OFFICER: But Ms. Boozer, right now --
12 do you have any questions? That's all I want right
13 now. Do you have any questions?

14 MS. BOOZER: Do I have to pay that amount,
15 what's on the --

16 MR. JOCHUMS: Let's go ahead and call another
17 witness.

18 HEARING OFFICER: Yes. Okay. We'll let you
19 have your chance to say --

20 MS. BOOZER: Yes, ma'am.

21 HEARING OFFICER: -- all of that. We're moving
22 --

23 MS. BOOZER: Do I have any questions --

24 HEARING OFFICER: -- on to the next witness.

25 MS. BOOZER: Do I have any questions --

1 MR. JOCHUMS: We'll call Kathy Wittum.

2 MS. BOOZER: I have taken care of some of that
3 stuff already, that was down on the paper. I've
4 taken care of that already.

5 HEARING OFFICER: Okay. Ms. Boozer, we'll give
6 you a chance in just a minute to explain what all
7 you've done, okay?

8 MS. BOOZER: Yeah.

9 HEARING OFFICER: We're going to move on to the
10 State's next witness.

11 **THEREUPON,**

12 **TESTIMONY AND EVIDENCE**

13 **GIVEN ON BEHALF OF THE STATE BY**

14 **KATHY WITTUM,**

15 having been called for and on behalf of the
16 State, and having been first duly sworn to tell the
17 truth, testified on her oath as follows, to-wit:

18 **DIRECT EXAMINATION**

19 BY MR. JOCHUMS:

20 Q Ms. Wittum, you are the executive director?

21 A Yes.

22 Q And based on information the Inspector brought in, sent
23 in, to you -- you issue notices of violation of codes?

24 A Yes, sir.

25 Q And in this case, you also issued the ultimate notice of

1 hearing?

2 A Yes.

3 Q I notice that in paragraph four of the notice of hearing,
4 you recommend a penalty of \$525.00 be assessed.

5 A Yes, sir.

6 Q Would you explain to the board the way you came upon that
7 number?

8 A This is based upon each of the instances where Inspector
9 Pat had noted that the salon was not in compliance. I took the
10 fee schedules that the board typically goes by, and applied
11 each of those instances of non-compliance to the appropriate
12 fee and determined that it was \$525.00.

13 Q And in the notice of hearing, you set out a money amount
14 for each, with the first one being \$25.00 for violation of Rule
15 4.2(C)(1)?

16 A Yes.

17 Q And each one subsequently?

18 A Yes.

19 Q To your knowledge, has this individual or her salon ever
20 been before the board?

21 A According to the file that we have on this establishment,
22 Vernell's Beauty Shop, she has not been brought before the
23 board. There were two copies of inspection reports in the
24 file, where Ms. Jackson noted that she missed the respondent.
25 One is dated July 21, '05. The other is dated December 9, '05.

1 When we looked at this record on our computer system, we found
2 that's there been -- it appears to be a total of five
3 inspections. Two of the inspections, one occurring April 13,
4 '99, and another August 18, '99, neither indicating who the
5 inspector was that went to the salon to do those inspections.
6 The other three do indicate that Ms. Jackson was the inspector.
7 One was April 18, '02; one December 9, '05; and then this one
8 of June 23, '06 that has brought us here today.

9 Q Did you have a chance to look at the respondent's exhibit?

10 A Yes.

11 Q I'm going to pass it around in a minute, but are each of
12 these ten documents an older form of the cosmetology license?

13 A Yes.

14 Q And did many of them, on the left side, have a place for
15 inspection report?

16 A Yes.

17 Q Does it appear that all of these date from between '97 and
18 -- it looks like sometime in the 80s?

19 A Yes.

20 Q '82, perhaps?

21 A Yes.

22 Q And that was before you were computerized?

23 A I don't know if the office was computerized during that
24 whole time, but I know that the information is not all in the
25 computer even if they were.

1 Q I see.

2 MR. JOCHUMS: I have no other questions of this
3 witness.

4 HEARING OFFICER: Do you have other witnesses?

5 MR. JOCHUMS: No, I have no other witnesses.

6 HEARING OFFICER: Ms. Boozer, do you have any
7 witnesses that you would like to call? Anybody that
8 could testify for you?

9 MS. BOOZER: What -- her.

10 MS. WILLIS: She has been there all those many
11 years and nobody, it's like they said, no one have
12 been to visit.

13 HEARING OFFICER: Can I get your name?

14 MS. WILLIS: Ms. Willis.

15 HEARING OFFICER: Willis?

16 MS. WILLIS: Uh-huh.

17 HEARING OFFICER: And what is your first name,
18 Ms. Willis?

19 MS. WILLIS: Leanna.

20 HEARING OFFICER: Ma'am?

21 MS. WILLIS: Leanna.

22 HEARING OFFICER: Okay. And Ms. Boozer, what
23 are your questions for Ms. Willis?

24 MS. BOOZER: Well, in December -- the one in
25 2005, I didn't see anybody to come to my shop in 2005

1 -- in December. And in July '05, haven't seen
2 nobody. No letter left, no nothing, no report left
3 in my shop at all.

4 HEARING OFFICER: But Ms. Boozer, do you have
5 any questions for your witness?

6 MS. BOOZER: That's -- no.

7 HEARING OFFICER: And we'll give you a chance in
8 a just minute to make your statement, okay?

9 MS. BOOZER: Okay.

10 HEARING OFFICER: If you have no other
11 witnesses, you can, at this time, go ahead and say
12 what you would like to say to the board.

13 MS. BOOZER: It's my time now?

14 HEARING OFFICER: It is your time now.

15 MS. BOOZER: Okay. In 2005 in December, I
16 didn't see anybody. No letter left at my shop at
17 all. In April, wasn't nobody left no note there. I
18 didn't see nobody -- in 2005. Nobody -- un 2005.
19 And in '02, two inspection sheets. There wasn't
20 nothing left there at my shop. So I still didn't
21 know nothing about this. Now, how come two --
22 December 2005, why they didn't leave no slip to let
23 me know they been by? I didn't see anything. Didn't
24 know nothing. Except in July 2005, they said they
25 left it at my shop. All I know is the one that was

1 left there. I was gone. And the last time she came.
2 That's the only time I know. I don't know nothing
3 about them other two. That's all I have to say.

4 HEARING OFFICER: Would the board like to ask
5 any questions of Ms. Boozer?

6 MR. JOCHUMS: Let me ask a couple of questions.
7 Are you -- you've been there 35 years?

8 MS. BOOZER: Yes, sir. All my life.

9 MR. JOCHUMS: All your life.

10 MS. BOOZER: Yeah.

11 MR. JOCHUMS: Are you now -- do you have regular
12 customers, -- are you --

13 MS. BOOZER: Oh, yes.

14 MR. JOCHUMS: -- still working?

15 MS. BOOZER: Yes.

16 MR. JOCHUMS: How many days a week?

17 MS. BOOZER: About every day, -- day and night.

18 MR. JOCHUMS: How big a town is Gurdon?

19 MS. BOOZER: It's a little small town.

20 MS. JACKSON: You're actually at Curtis, aren't
21 you?

22 MS. BOOZER: Curtis, uh-huh.

23 MR. JOCHUMS: I have nothing further.

24 HEARING OFFICER: We'll proceed to closing
25 arguments. State, do you have any closing arguments

1 at this time?

2 MR. JOCHUMS: I believe that we have presented
3 testimony to show violations of numerous health and
4 safety rules and regulations of the board. At this
5 point, essentially, the decision is whether the fine
6 should be as proposed or in some other amount. I'll
7 leave that to the board's discretion. Thank you.

8 HEARING OFFICER: Ms. Boozer, --

9 MS. BOOZER: Yes?

10 HEARING OFFICER: -- would you like to make a
11 closing statement to the board?

12 MS. BOOZER: Well, as far as I know -- how much
13 I have to pay? That's all I want to know. Do I have
14 to pay anything -- or nothing? I don't know.

15 HEARING OFFICER: Okay. At this time the record
16 will be closed and the board will recess for
17 deliberations, and we'll go back on the record for
18 the board's decision.

19 (WHEREUPON, discussion and deliberations were
20 had by the board, after which proceedings resumed as
21 follows, to-wit:)

22 HEARING OFFICER: We'll go back on record at
23 this time for a motion.

24 MS. POWELL: Do I hear a motion?

25 MS. PICKERING: Okay. I would like to make a

1 motion -- and first of all, I'm not a tough person,
2 but I would like to make the motion that Ms. Boozer's
3 shop will be closed until she brings it up to code
4 with running water, with a shampoo bowl and the
5 restroom --

6 MS. POWELL: A restroom isn't -- restrooms are
7 not a requirement.

8 MS. PICKERING: Oh, it's not? Okay. But the
9 others -- the running water, hot and cold water, and
10 the shampoo bowl -- that she be closed or we give her
11 30 days, let me rephrase that.

12 HEARING OFFICER: We need to have one or the
13 other.

14 MS. PICKERING: The first one.

15 HEARING OFFICER: A definite motion.

16 MS. PICKERING: The first one.

17 HEARING OFFICER: So your motion is -- so
18 everybody is clear and we'll make a clear record
19 here. That she will close shop until she meets the
20 standards of running water and a shampoo bowl?

21 MS. PICKERING: Yes. Running water and a
22 shampoo bowl.

23 HEARING OFFICER: Okay.

24 MS. PICKERING: Hot and cold water.

25 MS. POWELL: What do you want to do with the

1 other health and safety issues that are here in the
2 report?

3 MS. PICKERING: Include those.

4 MS. POWELL: To include those?

5 HEARING OFFICER: So the motion would be close
6 her down until she gets hot and cold running water, a
7 shampoo bowl, and addresses the other health and
8 safety issues stated in the inspection report.

9 MS. WEST: I second.

10 MS. POWELL: I have a motion and a second to
11 close Ms. Boozer's salon until all reported health
12 and safety issues are addressed, and she has hot and
13 cold running water, and a shampoo bowl in her
14 facilities. Is there any discussion?

15 MS. TURMAN: Madam President, would this include
16 the \$525.00 fine? We are going -- is this included
17 in your motion, Anne?

18 MS. POWELL: It was not included in your motion.

19 MS. PICKERING: No.

20 MS. TURMAN: Thank you.

21 MS. POWELL: Is there any further discussion?

22 MS. GORDON: What about the fine? Is it going
23 to sit as is, or will it be --

24 MR. JOCHUMS: Not in --

25 MS. POWELL: It was not addressed.

1 MS. GORDON: That was my question.

2 MS. POWELL: Yes. It wasn't addressed. Okay.

3 All those in favor, raise your right hand.

4 (Show of hands.)

5 MS. POWELL: All those opposed?

6 (Show of hands.)

7 MS. POWELL: The motion is denied.

8 MS. TURMAN: Madam President, I would like to
9 make a motion that we fine the respondent \$525.00.
10 We close the shop until she meets all the rules and
11 regulations, all the health and safety regulations
12 addressed.

13 MS. TRAYLOR: I second.

14 MS. POWELL: I have a motion and a second that
15 Ms. Boozer's salon be shut down, that her civil
16 penalty be \$525.00, and that she would further cease
17 and desist until the shampoo bowl, and hot and cold
18 running water, and all other health and safety issues
19 are addressed that are in this report.

20 Is there any discussion?

21 (No response.)

22 MS. POWELL: All those in favor, raise your
23 right hand. Please let me do the count.

24 (Show of hands.)

25 MS. POWELL: All those opposed?

1 (Show of hands.)

2 MS. POWELL: Motion carries.

3 (Pause.)

4 MS. BOOZER: Look here.

5 HEARING OFFICER: Go ahead.

6 MS. BOOZER: If I be shut down, I can't put no
7 water in my shop. I ain't have no money to do it
8 with. Let me go ahead and work, so I can fix my shop
9 up so I can have running water and cold water. If I
10 don't work, I can't put nothing in there. If y'all
11 don't mind.

12 (Pause.)

13 MS. BOOZER: If y'all don't mind. I need to
14 work. I can't put that water and cold water in my
15 shop -- hot water and cold water. Everything else is
16 fixed up, except the water. All the rest, everything
17 on the list except for water. I can fix that if I
18 can work. Let me work so I can put that hot water
19 and cold water in the shop, if y'all don't mind.

20 (Pause.)

21 HEARING OFFICER: I believe --

22 MS. BOOZER: I need to work.

23 HEARING OFFICER: -- the motion, at this point,
24 has passed. It was not a unanimous decision, but it
25 was a majority decision. It will be reduced to

1 writing and service will be made on all the parties.
2 If the respondent cares to appeal, this decision can
3 be appealed under the Arkansas Administrative
4 Procedures Act 25-15-201.

5 If there are no other questions or comments,
6 this hearing is concluded and the record of this
7 hearing is closed.

8 MS. WITTUM: Ms. Boozer?

9 MS. BOOZER: Yes.

10 MS. WITTUM: We're making copies of the
11 inspection reports that you sent up here.

12 MS. BOOZER: Uh-huh.

13 MS. WITTUM: So if you'll just wait -- wait
14 outside the room, we'll bring the originals back down
15 to you.

16 (Pause.)

17 **HEARING ORDER NO. 07-021: JUDY IVIE**

18 HEARING OFFICER: Judy Ivie. This is 07-021.

19 (Respondent comes forward.)

20 HEARING OFFICER: Ms. Ivie, please state your
21 name for the record.

22 MS. IVIE: Judy Ivie.

23 HEARING OFFICER: Ms. Ivie, do you have counsel
24 here today?

25 MS. IVIE: No, ma'am.

1 HEARING OFFICER: Okay. Mr. Jochums, is counsel
2 for the State ready?

3 MR. JOCHUMS: Yes, ma'am.

4 HEARING OFFICER: Are there any exhibits that
5 you would like to introduce at this time?

6 MR. JOCHUMS: Yes. I would like to make Board
7 Exhibit 1, a bulk exhibit including a conveyance
8 letter from the director, the notice of hearing, and
9 the document entitled, "Inspection Report."

10 (WHEREUPON, Board's Exhibit No. 1 to HO#07-021
11 having been identified for the record, was received
12 into evidence and marked to append.)

13 HEARING OFFICER: Okay. Any further exhibits?

14 MR. JOCHUMS: I also want to incorporate by
15 reference the board regulations, rules, and statutes.

16 (WHEREUPON, Board's Exhibit No. 2 to HO#07-021
17 having been identified for the record as the statutes
18 and rules of the board governing the hearing, were
19 incorporated into the record and made a part hereof
20 by reference.)

21 HEARING OFFICER: Okay. Ms. Ivie, do you have
22 any exhibits you'd like to present?

23 MS. IVIE: No, ma'am.

24 HEARING OFFICER: And just to make sure we've
25 got it at one time, everybody who is going to be a

1 witness today just go ahead and raise your hand.
2 We'll get everybody sworn in right now, and we don't
3 have to do it later. So if you're going to be a
4 witness at any point today, raise your right hand so
5 we can have the reporter swear you all in and get
6 that out of the way.

7 (Witnesses sworn.)

8 HEARING OFFICER: Opening statements for the
9 State?

10 MR. JOCHUMS: I just want to say this is a case
11 involving health and safety issues as reflected in
12 paragraph two. That's all.

13 HEARING OFFICER: Ms. Ivie, do you have any
14 opening statement that you'd like to make?

15 MS. IVIE: Well, -- I don't know -- I don't know
16 if I'm making the right one. I've been in -- I've
17 been a hairdresser for almost 30 years, and this is
18 the first time I've ever been before the board or
19 written up. Uhm -- but on some of the things, I was
20 guilty.

21 HEARING OFFICER: Mr. Jochums, you may call your
22 first witness.

23 MR. JOCHUMS: Okay. Inspector Caudle.

24 **THEREUPON,**

25 **TESTIMONY AND EVIDENCE**

1 implements in a clean covered place. The drawer is fine, as
2 long as it's clean and labeled. Their drawers were dirty. And
3 they need to clean and disinfect their clippers.

4 Q Have you previously inspected this establishment?

5 A No, sir. I just took over this county.

6 Q So, it's new to you?

7 A Yes.

8 Q Those were the only items that you noted?

9 A Yes, sir.

10 Q That you cited?

11 A Yes, sir.

12 Q Thank you.

13 MR. JOCHUMS: I have no other questions.

14 HEARING OFFICER: Do you have any questions for
15 the inspector?

16 MS. IVIE: The only thing that I was curious of
17 -- and I realize that I did not have everything
18 stored the way I should. The clippers -- on the
19 clippers, do you have to put those away after every
20 haircut? Or are you allowed to clean them and leave
21 them laying out?

22 MS. CAUDLE: They're supposed to be cleaned,
23 disinfected, and then stored in a clean, covered
24 place.

25 MS. IVIE: Between each --

1 MS. CAUDLE: Yes, ma'am.

2 MS. IVIE: -- each person?

3 MS. CAUDLE: Between each person, yes, ma'am.

4 MS. IVIE: Okay. All right.

5 HEARING OFFICER: Does the board have any
6 questions of this witness?

7 (No response.)

8 HEARING OFFICER: Call your next witness.

9 MR. JOCHUMS: I call Kathy Wittum.

10 **THEREUPON,**

11 **TESTIMONY AND EVIDENCE**

12 **GIVEN ON BEHALF OF THE STATE BY**

13 **KATHY WITTUM,**

14 having been called for and on behalf of the
15 State, and having been first duly sworn to tell the
16 truth, testified on her oath as follows, to-wit:

17 **DIRECT EXAMINATION**

18 BY MR. JOCHUMS:

19 Q Ms. Wittum, you're the executive director?

20 A Yes.

21 Q And you prepared the notice of hearing?

22 A Yes.

23 Q Have you suggested a civil penalty in this matter, and how
24 did you derive it?

25 A Yes. The suggested penalty is \$325.00. That's based on

1 the infractions that were noted by Inspector Caudle, and it's
2 in line with the fee schedule that the board has typically used
3 in the past.

4 Q The -- I notice that most of those are \$25.00. I also see
5 a \$50 -- and a \$150 penalty. Explain what that goes with.

6 A The \$150.00 penalty is for Rule 4.2(C)(22)(b)(2). And
7 that is referring to non-electrical instruments that have not
8 been disinfected or not properly immersed for ten minutes in an
9 EPA-registered disinfectant.

10 MR. JOCHUMS: I have no other questions.

11 HEARING OFFICER: Ms. Ivie, would you like to
12 ask this witness any questions?

13 MS. IVIE: No, because I feel like I'm just here
14 asking for leniency because I feel like that I was
15 not up to the standard that I should have been.

16 HEARING OFFICER: Does the board have any
17 questions?

18 (Pause.)

19 MR. JOCHUMS: Well, let me ask you, ma'am. You
20 said, when you first came up to the table, I was
21 guilty of several of these things. Which things?

22 MS. IVIE: I was guilty of the clippers, not
23 properly doing those. I did -- we thought we were
24 right on having a place on our back bar to put the
25 dirty brushes and the water -- I mean, cleaner, and

1 then we had a place to store them in the back until
2 they dried. But my solution for my combs, even
3 though I had the Barbicide in, it was cloudy.

4 MR. JOCHUMS: Are you a cosmetologist?

5 MS. IVIE: Yes, sir.

6 MR. JOCHUMS: And you have several other people
7 working for you in your shop?

8 MS. IVIE: Well, this is something that I -- we
9 just didn't think about. We -- I've been in business
10 for 18 years with another -- with Diane Hennessy, but
11 the shop license were written in my name instead of --
12 -- so I -- there's -- we have three co-owners, but the
13 license are in my name. I'm going to rectify that.
14 We're going to straighten all that up, too, now that
15 I know that we need to.

16 MR. JOCHUMS: I have no other questions.

17 HEARING OFFICER: Do you have any witnesses you
18 would like to call on your behalf?

19 MS. IVIE: Other than my other two partners
20 here, that's about it.

21 HEARING OFFICER: Would you like for them to say
22 anything?

23 MS. IVIE: Oh, and my husband.

24 MR. IVIE: I would like to say thing, ma'am.
25 All of these violations have been corrected since she

1 got the violations.

2 HEARING OFFICER: Would you like to say anything
3 further?

4 MS. IVIE: No.

5 HEARING OFFICER: Would you please state your
6 name for the record, sir?

7 MR. IVIE: My name is Ron Ivie.

8 HEARING OFFICER: Please state your name before
9 you speak so we can get it on the record.

10 MS. NAPIER: I'm Delores Napier. And I was just
11 curious as to why that we didn't have a chance to
12 rectify this before we had the penalty put on us.
13 And I know that particular day, I was extremely busy
14 when she came in. And it makes it sound like the
15 shop is a dirty shop, and it's -- it's not. But Judy
16 said, we were guilty of the some of the instances,
17 like my clippers were out. And I had been using
18 them, and they weren't cleaned up. I have to admit
19 that was so. And also, at the time, I had four
20 people in there. I was giving a permanent, and I had
21 three in there that I was trying to get out. I was
22 behind. And I'm also guilty of having my brushes and
23 used combs. They were on the back of my station,
24 instead of having them in a drawer as I should've.
25 But I had to stand, you know, guilty with my part of

1 it also.

2 HEARING OFFICER: Thank you.

3 MS. NAPIER: It's good to come down here and
4 meet you ladies, and see what goes on, because I've
5 never come in before.

6 HEARING OFFICER: Ms. Ivie, would you like to
7 say anything else?

8 MS. IVIE: Other than what my husband said, we
9 do have marked containers now with all of our brushes
10 and combs and things adequately marked. I did have
11 my brushes in the drawer, but I did have the drawer
12 open so hair did get in there. I had my clippers
13 laying over, so -- we have gotten -- I've got a
14 drawer that I store my clippers in now. And I closed
15 the drawers on my station. So I feel like that we've
16 weighed up to the standard that you -- and again, I
17 should've had it.

18 HEARING OFFICER: Does the board have any
19 questions for Ms. Ivie?

20 MS. TURMAN: Ms. Ivie, once again, I'm going to
21 recommend -- we -- I read this rules and regulations,
22 and our law every time before I come to the board
23 meeting. I'm going to suggest that as you are -- and
24 I know that you've been in cosmetology for a long
25 time, but --

1 MS. IVIE: Yes, ma'am.

2 MS. TURMAN: -- sometimes we're forgetful. But
3 these are available to every one.

4 MS. IVIE: Okay.

5 MS. TURMAN: Our staff has these readily
6 available to every one, so therefore you can meet
7 your rules and regulations and be up to date on what
8 you need to be doing in your shop.

9 MS. IVIE: Thank you.

10 MS. TURMAN: Thank you.

11 MS. IVIE: I will receive that.

12 HEARING OFFICER: Any other questions from the
13 board?

14 MS. TRAYLOR: I'd like to tell her that she
15 doesn't have to wait until she gets violations to
16 come visit our board meetings. She's welcome any
17 time.

18 MS. IVIE: Thank you very much. I appreciate
19 that.

20 HEARING OFFICER: And now we'll have closing
21 arguments. State?

22 MR. JOCHUMS: I'll waive my closing.

23 HEARING OFFICER: Ms. Ivie, would you like to
24 add anything further?

25 MS. IVIE: No.

1 HEARING OFFICER: At this time, we'll go off the
2 record. The board will deliberate and come to a
3 decision, at which point, we'll go back on the record
4 for that decision.

5 (WHEREUPON, discussion and deliberations were
6 had by the board, after which proceedings were
7 resumed as follows, to-wit:)

8 HEARING OFFICER: We're back on the record for
9 the board's decision.

10 MS. POWELL: Do I hear a motion?

11 MS. TURMAN: Madam President, I make a motion
12 that the fine of \$325.00 stands.

13 MS. TRAYLOR: I second the motion.

14 MS. POWELL: I have a motion and a second that
15 Judy Ivie's fine of \$325.00 stands. Is there any
16 discussion?

17 (No response.)

18 MS. POWELL: All those in favor, raise your
19 right hand.

20 (Show of hands.)

21 MS. POWELL: All those opposed?

22 (Show of hands.)

23 MS. POWELL: Motion carries.

24 HEARING OFFICER: The board has made their
25 motion and voted in this hearing. The decision will

1 be reduced to writing and it will be served upon you,
2 Ms. Ivie.

3 MS. IVIE: Yes?

4 HEARING OFFICER: If you care to take an appeal
5 of this decision, you may do so under the Arkansas
6 Administrative Procedures Act 25-12-201.

7 If there are no further questions or comments,
8 this meeting is closed and the record is complete.

9 MS. IVIE: Could I get my copy back, please?

10 (Documents are given back to respondent.)

11 **HEARING ORDER NO. 07-380: GREG ELLIOTT**

12 HEARING OFFICER: Next up, Greg Elliott. Greg
13 Elliott.

14 MR. JOCHUMS: What number is it?

15 HEARING OFFICER: 380.

16 (Respondent comes forward.)

17 HEARING OFFICER: We're here in the matter of
18 Greg Elliott, number 380. Mr. Elliott, please
19 identify yourself --

20 MR. ELLIOTT: I'm --

21 HEARING OFFICER: -- for the record.

22 MR. ELLIOTT: -- Greg Elliott.

23 HEARING OFFICER: Do you have counsel here
24 today, Mr. Elliott?

25 MR. ELLIOTT: No.

1 HEARING OFFICER: And would counsel for the
2 State introduce yourself?

3 MR. JOCHUMS: I'm Arnold Jochums. I'll be
4 presenting this to the board for the State.

5 HEARING OFFICER: Preliminary matters, Mr.
6 Jochums?

7 MR. JOCHUMS: Yes. If we could make Board
8 Exhibit 1, the letter of conveyance, notice of
9 hearing, and the inspection report. There's also an
10 establishment relocation packet that's included in
11 this bulk exhibit.

12 HEARING OFFICER: Any further exhibits?

13 MR. JOCHUMS: And I would ask you to incorporate
14 the statutes, rules and regulations, as well.

15 HEARING OFFICER: Those exhibits will be
16 admitted.

17 (WHEREUPON, Board's Exhibit No. 1 to HO#07-380
18 having been identified, was admitted into evidence
19 and marked to append, while Board's Exhibit No. 2 was
20 incorporated by reference into the record and made a
21 part hereof.)

22 HEARING OFFICER: Mr. Elliott, do you have any
23 exhibits that you would like to be admitted?

24 MR. ELLIOTT: No. Only -- all I have are some
25 wrong addresses that the office sent notifications

1 to.

2 HEARING OFFICER: Opening statements?

3 MR. JOCHUMS: I just want to say that this
4 particular case is not a health and safety case.
5 It's a matter of operating with an expired license,
6 so it's a different scenario. And I just want to
7 make the board aware of that.

8 HEARING OFFICER: All right. Mr. Elliott, would
9 you like to make an opening statement to the board?

10 MR. ELLIOTT: Well, I thought I had my license.
11 I went down January 9th to change my shop location
12 address and to pay my license fees for my personal
13 and shop. And -- I thought I had it. I mean, every
14 year -- I've done this for 29 years before and I've
15 always just written one check. I've never had to
16 write two checks. So I thought I had it, and I
17 didn't realize I had it until the inspector found it
18 at the new shop. And then she's the one that caught
19 it instantly. So within 30 minutes, I went down
20 there and paid my fees.

21 HEARING OFFICER: Mr. Jochums, call your first
22 witness.

23 MR. JOCHUMS: Yes.

24 **THEREUPON,**

25 **TESTIMONY AND EVIDENCE**

1 A Numerous times.

2 Q Okay. Have there been any problems?

3 A No, sir.

4 Q Thank you. But did the check with the office show that
5 the Broadway location had not been issued a license?

6 A The shop had been issued a license. It was his personal
7 license, --

8 Q His operator's license.

9 A -- his operator's -- his practitioner license were the
10 ones that were not current. Not the salon, because I brought
11 the new salon license with me that day.

12 Q Okay. I'm sorry. Forgive me, I may have misread this.

13 MR. JOCHUMS: I have no further questions.

14 HEARING OFFICER: Mr. Elliott, would you like to
15 ask her any questions?

16 MR. ELLIOTT: Uh, no.

17 HEARING OFFICER: Would the board like to ask
18 any questions of this witness?

19 MS. PICKERING: You said that you wrote one
20 check for your personal --

21 HEARING OFFICER: Ma'am, is that for this
22 witness, for the inspector?

23 MS. WEST: No, not the inspector.

24 HEARING OFFICER: Okay. Just a minute, okay?

25 MR. JOCHUMS: We have no further witnesses.

1 HEARING OFFICER: Mr. Elliott, do you have any
2 witnesses?

3 MR. ELLIOTT: Uh, no.

4 HEARING OFFICER: Would you like to make a
5 statement on your own behalf at this time?

6 MR. ELLIOTT: Well, I think I shouldn't be fined
7 anything because in all good fairness, I went down to
8 the office to pay my fees like I've done every year
9 for 29 years. And I thought I had them. I thought I
10 paid for them in that payment. The payment was
11 larger than normal, so I just assumed that the prices
12 had gone up. Here's my total, and whenever you ask a
13 total on an amount, I would assume the total was
14 adding license fees to license fees. It was \$50
15 instead of the \$38.

16 HEARING OFFICER: Anything further?

17 MR. ELLIOTT: No.

18 HEARING OFFICER: Okay. Board questions?

19 MS. PICKERING: Okay. Now, I want to ask you.
20 It's usually \$38 for your operator's --

21 MR. ELLIOTT: And shop. Personal.

22 MS. PICKERING: Personal and shop is usually
23 \$38?

24 MR. ELLIOTT: Yes.

25 MS. PICKERING: Okay. Can I ask Ms. Wittum a

1 question?

2 MS. WITTUM: It's usually \$32.

3 MR. ELLIOTT: They're whatever -- okay. \$32.

4 MS. PICKERING: So you wrote a check for that
5 amount?

6 MR. ELLIOTT: I wrote a check that day on
7 January 9th.

8 MS. PICKERING: For your personal operator's
9 license?

10 MR. ELLIOTT: Well, I thought it was, but
11 apparently it wasn't.

12 (Pause.)

13 MR. ELLIOTT: And apparently the fees went up --
14 or the fees are different for a new shop, which I
15 didn't know.

16 MS. PICKERING: I need to get that clear. I
17 need to get it clear in my mind. You paid \$50 for
18 your shop license.

19 MR. ELLIOTT: Which I thought also included my
20 personal license, but it didn't. Apparently.

21 MS. WITTUM: Ms. Pickering. I would suggest
22 that we have Shaunta explain the -- the process that
23 she would've taken in taking his payment.

24 MS. BELMONT: Well, when Mr. Elliott came in --

25 MR. JOCHUMS: Please state your name.

1 MS. BELMONT: Oh, Shaunta Belmont. I work at
2 the front desk. When Mr. Elliott came in, he just
3 needed a relocation on his shop, which is \$50. The
4 prices had changed.

5 MR. ELLIOTT: No.

6 MS. BELMONT: It's \$50.00 -- \$30.00 for the
7 authorization and \$20.00 for the new license fee.
8 That's why he wasn't charged an additional \$20.00 for
9 his license, because that is part of the relocation
10 fee.

11 I don't ask people, usually, when they come in,
12 did you renew your personal license? It's not my
13 responsibility, so it wasn't done.

14 MS. PICKERING: But you personally --

15 MR. ELLIOTT: I assumed it was.

16 MS. PICKERING: -- told him that there was a
17 \$30.00 transfer fee --

18 MR. ELLIOTT: No, she didn't tell me that.

19 MS. BELMONT: I told him it was a \$50.00 fee for
20 relocation. That's it. When you come in to do a
21 process, like say you're there for a student
22 enrollment. I don't ask you anything but to do the
23 student enrollment. If you come in for a relocation,
24 I do the relocation. I don't add on and ask you what
25 else you need to do or anything like that.

1 MS. PICKERING: All right. That clears that up
2 for me in my mind. Thank you.

3 HEARING OFFICER: Any other questions from the
4 board?

5 MS. PICKERING: One more. How long did you say
6 you had had a shop?

7 MR. ELLIOTT: This will be my 30th year.

8 MS. PICKERING: 30th year, and you've never
9 failed to --

10 MR. ELLIOTT: I've never had a violation of any
11 kind.

12 HEARING OFFICER: Are there any further
13 questions for Mr. Elliott, --

14 MS. GORDON: I have a question. Normally, don't
15 you post the license, --

16 MR. ELLIOTT: Yes.

17 MS. GORDON: -- along with the shop?

18 MR. ELLIOTT: You know, the shop was still under
19 construction. I just pinned it up on the bulletin
20 board. I didn't look at it. I just quit looking
21 after -- at them after 25, 30 years. I just pinned
22 it up. The inspector's the one that figured it out.

23 HEARING OFFICER: Yes, Ms. Ward?

24 MS. WARD: Since you didn't receive it, why
25 didn't you call the board and ask them about it? Or

1 did you?

2 MR. ELLIOTT: Like I just said, I didn't look at
3 it. I just pulled it out of the envelope and pinned
4 it up.

5 MS. WARD: But you didn't --

6 MR. ELLIOTT: As soon as I found out I didn't
7 have it, I went straight down within 30 minutes, and
8 paid my fees.

9 MS. PICKERING: When -- you went down and paid
10 it -- the shop license and then they sent you your
11 shop license and because of your -- you've gotten
12 your shop license? But then when you didn't get your
13 cosmetology license, didn't you wonder about that and
14 call?

15 MR. ELLIOTT: No. I wasn't paying any attention
16 to that. I just pinned it up, like I've done for 29
17 years. It's usually pretty cut and dried.

18 MS. PICKERING: But you said you pinned it up.
19 What did you pin up? What did you think you were
20 pinning up?

21 MR. ELLIOTT: My shop license and personal
22 license, I thought.

23 MS. PICKERING: Well, where -- okay. When you
24 got your --

25 MR. ELLIOTT: In the mail.

1 MS. PICKERING: -- transfer of location, that's
2 what you thought was both of them?

3 MR. ELLIOTT: Uh-huh.

4 MS. PICKERING: You just opened that and pinned
5 them up on the bulletin board? Okay.

6 HEARING OFFICER: Are there any further
7 questions?

8 (NO RESPONSE.)

9 HEARING OFFICER: If there are no further
10 questions, we'll move to closing statements.

11 MR. JOCHUMS: I'll waive closing.

12 HEARING OFFICER: Mr. Elliott, would you like to
13 say anything in closing?

14 MR. ELLIOTT: Nothing else.

15 HEARING OFFICER: That will close this portion
16 of the hearing. We'll go off the record for the
17 board to deliberate and come back on record with a
18 motion.

19 (WHEREUPON, discussion and deliberations were
20 had by the board, after which proceedings resumed as
21 follows, to-wit:)

22 HEARING OFFICER: We're back on the record for
23 the board's decision.

24 MS. POWELL: Do I hear a motion?

25 MS. TURMAN: I find that the -- that the fine

1 stands, \$121. I make a motion that we fine him \$121.

2 MS. POWELL: I have a motion --

3 MR. JOCHUMS: Do you want to use the motion
4 form?

5 MS. TURMAN: I'm just making my motion like
6 that.

7 MR. JOCHUMS: You're giving him 30 days to pay,
8 --

9 MS. TURMAN: Yes, uh-huh.

10 MR. JOCHUMS: -- and -- okay.

11 MS. TURMAN: I was told it was sufficient to do
12 it that way.

13 MR. KEENE: I'll second the motion.

14 MS. POWELL: I have a motion and a second. Is
15 there any discussion?

16 (No response.)

17 MS. POWELL: All those in favor, raise your
18 right hand.

19 (Show of hands.)

20 MS. POWELL: All those opposed?

21 (Show of hands.)

22 MS. POWELL: Motion carries.

23 HEARING OFFICER: Motion of the board did pass.
24 It will reduced to writing and will be sent to the
25 respondent, Mr. Elliott. If you wish to take an

1 appeal, it may be taken under the Administrative
2 Procedures Act 25-15-201.

3 If there are no other questions or comments
4 pertaining to this hearing, the record will be
5 closed.

6 MR. ELLIOTT: I have one more comment. There
7 are so many clerical errors. You guys can't even get
8 your addresses straight in your stuff. I think you
9 need to work on that. You say your staff has a
10 problem? I say they have a problem, they don't
11 understand. They can't even get the address change
12 right on here.

13 (Pause.)

14 HEARING OFFICER: Are there any other comments?

15 (No response.)

16 HEARING OFFICER: Hearing none, the record is
17 now closed. Thank you, Mr. Elliott.

18 (Respondent exits room.)

19 **LEGISLATIVE COMMITTEE UPDATE: REGIONAL MEETINGS**

20 MS. POWELL: At this time, I'm going to ask Kent
21 Walker to come up and give an update on our
22 legislative regional committee meetings.

23 MR. WALKER: Good morning, every one.

24 BOARD MEMBERS: (In unison) Good morning.

25 MR. WALKER: I'm here this morning to give you

1 an update of what transpired at the four meetings we
2 had statewide, in dealing with both the revision of
3 the code and for -- possibly, for rules and regs.

4 All that being stated, I wanted to give a quick
5 synopsis of the subject areas we went through. And
6 then maybe, take any questions up to that point.

7 There's been nothing concrete developed in terms
8 of what we will put forth before the board, to try to
9 say, let's look at these areas in particular, and
10 let's make these suggestions, and I think that in
11 January we should pass this. I don't think we're at
12 that stage yet. I think every one on the board has
13 received a synopsis of both the meetings and a
14 summary of the topics in particular about what was
15 brought up -- or the topics that we brought forth to
16 the various sites across the state.

17 We started here, in Little Rock, went to West
18 Memphis, Fayetteville, and Texarkana -- is how we
19 ended those meetings. And I think in the course of
20 those meetings, we were able to solicit a varied, of
21 course geographical viewpoints, of people across the
22 state. I think in particular from both school owners
23 and practitioners, as well. And from what I have
24 seen and what I have witnessed, I believe we've
25 gotten a very good idea of the areas in which both

1 practitioners and also, again, the schools are
2 looking to have revisions, and looking to the board
3 to make those changes.

4 And I'll have to think back, but I believe every
5 one of the board attended at least one meeting, which
6 I thought was very positive. And every one has some
7 first-hand experience of what was going on at these
8 various meetings statewide.

9 So at this point, I'll just open it up to any
10 questions that the board may have on the way it
11 works, and how we're going to proceed at this point.

12 MS. POWELL: Ms. Turman.

13 MS. TURMAN: Madam President, I would like to
14 say thank you. I think it's been very important to
15 have gotten the feedback that we have for the board
16 members, and Kent, and Jane and the people that
17 served on this committee, I think they've been
18 outstanding. And I just wanted to say thank you for
19 all the hard work that everybody's done on this. I
20 think it's been wonderful.

21 MR. WALKER: Thank you.

22 MS. POWELL: Mr. Keene?

23 MR. KEENE: When might we expect a more formal
24 kind of synopsis of what occurred in the meetings?
25 And what I'm asking for is the ideas that were

1 brought up at the meetings -- maybe, I know that some
2 of the same issues were talked about at all the
3 meetings and some were different.

4 MR. WALKER: Correct.

5 MR. KEENE: I'm curious to know, since I only
6 attended one meeting here in Little Rock, what all
7 came up in the other meetings around the state, and
8 more of a grouping?

9 MR. WALKER: Right. I believe Ms. Wittum and I
10 are working on a synopsis of that. I think due to
11 unforeseen circumstances in her family this week, it
12 would have been presented to you today. I can tell
13 you I know we're going to work on it this week, so it
14 should be with you this week. And the reason we
15 don't have a more formal, I think, presentation, now,
16 too, is because is I think the board members should
17 have had the opportunity to digest the synopsis that
18 you so envision. I think when everyone is on the
19 same page, in terms of discussion that was had, ideas
20 that were brought forth, then I think everyone can
21 make more of a valid decision about what the
22 practitioners and school owners are thinking. Does
23 that make sense? I hope I answered your question,
24 but it should be very soon.

25 MR. KEENE: Okay. Thank you.

1 MS. PICKERING: I want to comment. May I
2 comment?

3 MR. WALKER: Yes.

4 MS. PICKERING: I'm one of the members of that
5 particular board. I attended all four meetings, and
6 we did have a lot of the same input in every meeting.
7 I thought all four meetings went well. I think we
8 were received very well. The questions were
9 wonderful. I mean, we had a form that we handed out
10 and we stuck pretty close to that. Then after we got
11 through with what was on our agenda, Kent opened it
12 up to the floor. So I think all four meetings went
13 very, very well.

14 MR. WALKER: I think if anyone has had any
15 issue, whether it's on the agenda or otherwise, there
16 was opportunity for them to bring it forward. I
17 wanted to get some kind of open feedback. I think it
18 worked. I appreciate that. Did you want to comment
19 on the synopsis? I didn't mean to put words in your
20 mouth.

21 MS. WITTUM: No. You didn't. You took care of
22 it.

23 MR. WALKER: Okay.

24 MS. WITTUM: One thing that probably will happen
25 next is the legislative committee will meet to kind

1 of put together what they want to put to the board
2 for recommendations. So the legislative committee
3 will probably be meeting in the very near future to
4 do that.

5 MR. WALKER: Are there any other questions?

6 (No response.)

7 MS. WITTUM: That was easy.

8 MR. WALKER: I wish I had some cases that were
9 like this.

10 (Chorus of laughter.)

11 MR. WALKER: I will look forward to see you-all
12 again soon. And again, feel free to contact me if
13 you have any questions about how we're proceeding. I
14 mean, obviously this -- the whole point of doing this
15 was to create open dialogue with the board and the
16 state and maintain that as we go along. And
17 hopefully, as we bring forth these revisions,
18 everyone, I hope, will participate actively.

19 Thank you-all.

20 MS. POWELL: Thank you, Mr. Walker. At this
21 time, I think we're going to take about a 15 minute
22 break.

23 HEARING OFFICER: Ceceila Vaughn will the next
24 hearing up when we return from break.

25 (WHEREUPON, short break was taken, after which

1 the proceedings resumed as follows, to-wit:)

2 **HEARING ORDER NO. 07-073: CECELIA VAUGHN**

3 **AND**

4 **HEARING ORDER NO. 07-075: RHONDA BRASSART**

5 MS. POWELL: I'll call the meeting back to
6 order.

7 HEARING OFFICER: The matter now before us is
8 07-073, Cecelia Vaughn and a related matter 07-075,
9 Rhonda Brassart. Are the respondents present?
10 Please identify yourself for the record.

11 MS. VAUGHN: Cecelia Vaughn.

12 MS. BRASSART: And Rhonda Brassart.

13 HEARING OFFICER: And the counsel for the board?

14 MR. JOCHUMS: My name is Arnold Jochums. I will
15 be presenting this matter to the board.

16 HEARING OFFICER: Everybody has been sworn in.
17 Are there any preliminary matters, Mr. Jochums?

18 MR. JOCHUMS: Yes. In 07-073, Cecelia Vaughn, I
19 want to make a bulk exhibit, Board's Exhibit 1, the
20 conveyance letter, the notice of hearing, and the
21 inspection report by Ms. Caudle.

22 HEARING OFFICER: That will be admitted.

23 (WHEREUPON, Board's Exhibit No. 1 to HO#07-073
24 having been identified, was admitted into evidence
25 and marked to append.)

1 MR. JOCHUMS: I also want to incorporate by
2 reference the board's regulations.

3 HEARING OFFICER: Those will also be admitted.
4 (WHEREUPON, Board's Exhibit No. 2 to HO#07-073
5 having been identified for the record as the statues
6 and rules of the board governing the hearing, were
7 incorporated into the record and made a part hereof
8 by reference.)

9 MR. JOCHUMS: I need to make a motion with
10 regard to 07-073, Ceceila Vaughn, and that is to
11 amend by interlineation on paragraph five. It now
12 reads "\$300 for Rule 4.25(A)." I believe that's a
13 typo. It should read, "4.2(A)."

14 HEARING OFFICER: If there are no objections to
15 that motion --

16 (No response.)

17 HEARING OFFICER: -- it will be granted.

18 MR. JOCHUMS: And in regard to Rhonda Brassart,
19 Matter 07-075, I'd also like to amend by
20 interlineation paragraph one, which now reads,
21 "Respondent is licensed by the Arkansas State Board
22 of Cosmetology as a cosmetologist in Benton, AR."
23 That should read, "as a manicurist in Benton, AR."

24 So I'd make that amendment. And we'd also make
25 the same change in the violation section in paragraph

1 five, replacing "4.25(A)." with "4.2(A)."

2 HEARING OFFICER: If there are no objections,
3 those will be granted and that would amend 07-073,
4 paragraph five. It will now read "\$300 for Rule
5 4.2(A)." And in 07-075, paragraph one, instead of a
6 "licensed cosmetologist", that should be
7 "manicurist". And in paragraph five of the same
8 complaint, "\$300 for Rule 4.2(A)." Done by
9 interlinearly motion.

10 MR. JOCHUMS: Madam Hearing Officer, I don't
11 believe I asked to make Board Exhibit 1 in 075, the
12 conveyance letter, notice of hearing, and inspection
13 report. In fact, this is actually the same
14 inspection report in 073.

15 HEARING OFFICER: Those will be admitted as
16 exhibits.

17 (WHEREUPON, Board's Exhibit No. 1 to HO#07-075
18 having been identified, was admitted into evidence
19 and marked to append.)

20 MR. JOCHUMS: And in 07-075, I'd incorporate by
21 reference the regulations of the board.

22 HEARING OFFICER: And that, too, will be
23 admitted.

24 (WHEREUPON, Board's Exhibit No. 2 to HO#07-075
25 having been identified for the record as the statues

1 and rules of the board governing the hearing, were
2 incorporated into the record and made a part hereof
3 by reference.)

4 HEARING OFFICER: Anything further?

5 MR. JOCHUMS: No.

6 HEARING OFFICER: Anything you'd like to
7 introduce as exhibits, either of you, Ms. Vaughn or
8 Ms. Brassart?

9 MS. BRASSART: I do. I have my State Board of
10 Massage Therapy License and my daughter's birth
11 certificate.

12 HEARING OFFICER: Those will be admitted if
13 there are no objections from the board?

14 MR. JOCHUMS: No.

15 (WHEREUPON, Respondent's Exhibit No. 1 to HO#07-
16 075 having been identified for the record was
17 admitted into evidence and marked to append.)

18 HEARING OFFICER: Opening statements?

19 MR. JOCHUMS: May it please the board, in this
20 case we would present testimony from the inspector
21 that she visited Pure Bliss Day Spa and Salon in late
22 May of this year. There she observed Rhonda
23 Brassart, who is a manicurist, performing
24 cosmetological services. And that's how the two
25 cases are related. Cecelia Vaughn, shop owner, and

1 the person who was doing -- according to the
2 allegations, work outside the scope of her license.
3 And Cecelia is charged with allowing her to do that
4 work outside the scope of her license. These are
5 health and safety violation allegations. Thank you.

6 HEARING OFFICER: Would either of you like to
7 make a statement -- or both of you, if you wish.

8 MS. VAUGHN: Well, this is my daughter. And she
9 was pulling hair through a cap on her daughter's
10 hair. She was not being paid. I don't see the
11 problem there.

12 HEARING OFFICER: Ms. Brassart, would you like
13 to make an opening statement?

14 MS. BRASSART: Uhm -- well. It's the same
15 thing. I mean, she was my daughter, and I do lots of
16 things to her. The other allegations about me doing
17 facials, I have my massage license. And I am
18 regulated through the Massage Board.

19 HEARING OFFICER: Okay. Mr. Jochums, you may
20 call your first witness.

21 MR. JOCHUMS: I call Inspector Caudle.

22 MS. CAUDLE: Yes, sir.

23 **THEREUPON,**

24 **TESTIMONY AND EVIDENCE**

25 **GIVEN ON BEHALF OF THE STATE BY**

Teresa Iden, CCR
(501) 261-1106

1 the product that was set up, there was a complete line;
2 implements. And then on the appointment book, Rhonda had
3 facials listed: Tuesday, March 4, at 9:15; and on Wednesday,
4 May 31, at 5:00; and then one on the 4th that says "massage and
5 facial"; and one on the 31st, which was the day I was there.
6 It said facial-manicure. Several appointments did not list
7 what the services were that were being provided, and also there
8 was a health and safety thing to post the health and safety
9 poster in the reception area, and place used implements in
10 labeled containers.

11 Q Have you visited this facility before?

12 A I have.

13 Q Okay. And how many stations are there?

14 A Stations?

15 Q Maybe that's the wrong term?

16 A I don't know how many is set up. I'll have to sit here
17 and try to visualize the salon in my mind, but --

18 Q More than five?

19 A One, two -- counting the manicure station, I think there
20 is five.

21 Q And did you look for a health and safety poster?

22 A Yes, I did.

23 Q And you didn't see one?

24 A I didn't see one.

25 Q Okay. Now, what -- what was in the prepared --

1 A Used implements, brushes, combs -- that had not yet been
2 disinfected. They were laying on the station. And some
3 manicuring implements, as well.

4 Q And had you visited this salon before?

5 A Yes, sir.

6 Q About when, do you remember?

7 A It was too long ago.

8 Q Okay.

9 MR. JOCHUMS: I have no other questions.

10 BY MR. JOCHUMS:

11 Q Well, let me ask. Were either of the respondents there
12 that day?

13 A Both of them.

14 Q Both of them were?

15 A Yes, sir.

16 HEARING OFFICER: Ms. Vaughn or Ms. Brassart, do
17 you have any questions for the inspector?

18 MS. VAUGHN: Well, I don't have a question. We
19 do not have a microderm abrasion machine.

20 HEARING OFFICER: Okay.

21 MS. VAUGHN: It is a facial machine, but it does
22 not do --

23 HEARING OFFICER: We'll give you a chance to
24 give your side on that in just a minute. Right now,
25 do you have any questions for her?

1 MS. VAUGHN: Well, but that's not what it does.

2 MS. BRASSART: Well, I've got -- the reason I
3 brought my daughter's birth certificate, was I got
4 the feeling that she didn't believe that she was my
5 daughter.

6 HEARING OFFICER: But do you have a question for
7 her?

8 MS. BRASSART: Did you -- did you believe that
9 she was my daughter?

10 MS. CAUDLE: That's what I wrote here. I mean,
11 I'm not there to question you. I'm just there to
12 write down what I see.

13 MS. BRASSART: Well, that's just the feeling I
14 got, that you didn't believe me.

15 MS. CAUDLE: That's why I wrote it down on here
16 that she was. You said it was your daughter.

17 HEARING OFFICER: Does the board have any
18 questions for this witness?

19 (No response.)

20 HEARING OFFICER: There being no questions, you
21 may call your next witness.

22 MR. JOCHUMS: I want to call Kathy Wittum.

23 **THEREUPON,**

24 **TESTIMONY AND EVIDENCE**

25 **GIVEN ON BEHALF OF THE STATE BY**

Teresa Iden, CCR
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KATHY WITTUM,

having been called for and on behalf of the State, and having been first duly sworn to tell the truth, testified on her oath as follows, to-wit:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q With regard to each -- let's take them one at a time. As to Cecelia Vaughn, what is the recommended penalty?

A The recommended penalty is \$325, \$300 applied to practicing outside the scope and \$25 for the health and safety issue of failing to place instruments in labeled containers.

Q And then the recommended penalty with regard to Rhonda Brassart?

A The recommended penalty for Rhonda is \$300 for practicing outside the scope.

Q Okay.

MR. JOCHUMS: I have no other questions of the board, and no other witnesses.

HEARING OFFICER: Ms. Vaughn or Ms. Brassart, would you like to ask Ms. Wittum any questions at this time?

MS. VAUGHN: Uhm --

MR. JOCHUMS: Well, let me go ahead and ask another question.

MS. VAUGHN: Uh.

1 MR. JOCHUMS: Ms. Wittum, you're the executive
2 director?

3 MS. WITTUM: Yes.

4 MR. JOCHUMS: And have been for some time. One
5 of the issues here has to do with the allegations
6 that the manicurist was doing hair work when the
7 inspector walked in. And she said it was her
8 daughter, does that matter if it was her daughter?
9 Can you address that?

10 MS. WITTUM: It's my --

11 MR. JOCHUMS: As you understand how the board
12 has dealt with that previously?

13 MS. WITTUM: It's my understanding that it does
14 not matter if it's done inside a licensed
15 establishment. Only a licensed cosmetologist can do
16 hair in an establishment.

17 MS. VAUGHN: What about right here? Rule No. 2,
18 Practitioner, "No person shall practice any phase of
19 cosmetology and its related occupations with the
20 intent of receiving compensation"?

21 MS. WITTUM: It's my understanding from the
22 board, that they have not allowed anyone to work
23 inside a licensed establishment, regardless of
24 whether they're paid.

25 MS. VAUGHN: I don't understand that.

1 MR. JOCHUMS: I have no further questions.

2 HEARING OFFICER: Do you have any further
3 questions from Ms. Wittum?

4 MS. BRASSART: Well, if someone was to dry their
5 own hair, is that against the law? I mean, if --

6 MS. WITTUM: You're --

7 MS. BRASSART: -- or comb their own hair in our
8 salon or anything?

9 MS. WITTUM: That would probably be better
10 addressed to the board, since it's their
11 interpretation that we are operating under.

12 MS. BRASSART: Okay.

13 HEARING OFFICER: Any further questions for this
14 witness?

15 MR. JOCHUMS: I pass the witness.

16 HEARING OFFICER: Does the board have any
17 questions of this witness?

18 (No response.)

19 HEARING OFFICER: Are there any more witnesses?

20 MR. JOCHUMS: No more witnesses.

21 HEARING OFFICER: Would you like to call any
22 witnesses, Ms. Vaughn or Ms. Brassart?

23 MS. BRASSART: Well, hmm --

24 HEARING OFFICER: Or would either of you --

25 MS. BRASSART: Do I have anything to say?

1 MS. ELLIOTT: Well, I would like to say that I
2 usually --

3 HEARING OFFICER: Wait, wait. Wait just a
4 minute. Are they going to call you as a witness?

5 MS. VAUGHN: Yes.

6 HEARING OFFICER: Okay. Please identify
7 yourself for the record.

8 MS. ELLIOTT: My name is Sheila Elliott, and I
9 work in the salon. And I use that room with the
10 facial machine. Microderm abrasion has never been
11 done in that salon. That is not a microderm abrasion
12 machine. We do not have products in there to do
13 microderm abrasion with. We do facials using
14 Provonias products. And we were -- Cecelia was asked,
15 I work right beside her, who used the microderm
16 abrasion machine. And she said, none of us. We
17 don't have that. So that's what the deal was on the
18 microderm abrasion machine. There's current on that
19 machine. There's a steamer on that machine. There's
20 a brush attachment on that machine, but we don't do
21 microderm abrasion. I mean, we have a license to do
22 it, but we don't do it in that shop.

23 HEARING OFFICER: Do you have any questions that
24 you would like to ask her, either of you?

25 MS. ELLIOTT: No, I don't have a question. I

1 just --

2 HEARING OFFICER: I mean, do Ms. Vaughn or Ms.
3 Brassart have a question. That's what I meant.

4 MS. ELLIOTT: Oh.

5 HEARING OFFICER: Mr. Jochums, would you like to
6 ask her any questions?

7 MR. JOCHUMS: No.

8 HEARING OFFICER: Would the board like to?

9 (No response.)

10 HEARING OFFICER: Okay.

11 MS. PICKERING: I have a --

12 HEARING OFFICER: Oh, wait.

13 MS. PICKERING: Now, it's for this witness?

14 HEARING OFFICER: Yes, ma'am.

15 MS. PICKERING: Could you explain -- well, I
16 really have two questions. Can you explain how you
17 have a license for microderm, who gives that to you,
18 for microderm abrasion?

19 MS. ELLIOTT: Well, aestheticians -- can
20 aestheticians not do microderm abrasion?

21 MS. PICKERING: Okay.

22 MS. ELLIOTT: But we don't do microderm
23 abrasion, so it really is not -- it has, you know,
24 that's not what the machine is. Undoubtedly, there
25 was a misunderstanding about the machine.

1 MS. PICKERING: Can you tell the attributes of
2 your machine as opposed to a micro -- what's the
3 difference?

4 MS. ELLIOTT: I don't use a microderm abrasion
5 machine, so I don't know anything about one.

6 MS. PICKERING: But yours is used in facials?

7 MS. ELLIOTT: Yes. It's a facial machine. It
8 has a steamer. It has a Wood's Lamp, where you can
9 look at the skin and assess it. It has a current
10 that you can use to help the product penetrate deeper
11 into the skin. And that's basically what the machine
12 has. It doesn't have anything else. And the
13 products that are back there are for different, you
14 know, skin types, or masks for cleansing the skin,
15 but -- but we don't have a microderm abrasion
16 machine. So when she answered our inspector, she was
17 answering her honestly because she asked us who used
18 the microderm abrasion machine, and we don't have
19 one. Nobody uses it, because it's not there.

20 MS. PICKERING: Okay. Did you-all buy -- did
21 you-all purchase the machine, so that you could bring
22 like the instruction sheet for it, or whatever?

23 MS. ELLIOTT: It's been there since the shop's
24 been there.

25 MS. PICKERING: Okay. So it's not a new thing?

1 MS. ELLIOTT: No.

2 MS. PICKERING: Okay.

3 HEARING OFFICER: Are there any other questions
4 for this witness?

5 MS. POWELL: I'd like to ask something. Who all
6 uses that machine.

7 MR. JOCHUMS: Let me -- we're a little out of
8 order here, but let me have Kathy to explain this
9 first or maybe clarify this for us. It may make this
10 easier.

11 MS. WITTUM: Two things. One, a cosmetologist
12 can do microderm abrasion, as well as, a licensed
13 aesthetician.

14 MS. CAUDLE: Right. I see.

15 MS. WITTUM: Number two, the machine in the
16 salon is not an issue. It's not an issue. They have
17 licensed cosmetologists in the salon who can use that
18 machine, whether it's labeled as a microderm abrasion
19 machine or not.

20 MS. CAUDLE: Right.

21 MS. WITTUM: So the machine is not an issue.

22 MS. ELLIOTT: Well, then why was it an issue on
23 the sheet?

24 MS. WITTUM: The machine -- the outside of the
25 scope deals with Rhonda. It does not deal with the

1 cosmetologists in the salon.

2 HEARING OFFICER: Okay. With that clarification
3 from Ms. Wittum, are there any other questions for
4 this witness?

5 (No response.)

6 HEARING OFFICER: If not, Ms. Brassart, Ms.
7 Vaughn, is there any other witness you would like to
8 call for the scope of cosmetology?

9 (Witness for the respondents gives non-verbal
10 response.)

11 HEARING OFFICER: Yes, ma'am. Please state your
12 name for the record.

13 MS. NELSON: Deborah Nelson. I --

14 HEARING OFFICER: Okay. What are your questions
15 for Ms. Nelson?

16 MS. VAUGHN: Practicing. We don't understand
17 that law.

18 MS. NELSON: It says here, no person shall
19 practice cosmetology and its related occupations with
20 the intent of receiving compensation. I mean, if you
21 can't have a little perk of doing your own child's
22 hair in a beauty shop, which you're obviously not
23 going to get paid for -- yeah. I think it's a little
24 stiff to fine somebody \$300 for doing -- doing
25 something to your own child.

1 HEARING OFFICER: Let's kind of keep this in
2 check, here. Are you testifying that -- I'm not sure
3 what your question was from either of the respondents
4 to get to where we are to talking about this rule and
5 what you think the application should be. Do you see
6 what I'm saying?

7 MS. NELSON: Well, you're charging her for doing
8 hair, when here it says, with the intent of
9 compensation. She had no intention of getting paid
10 or being compensated, other than her daughter's love,
11 for doing her hair. You know, it -- I just think
12 it's a little ridiculous that you impose these fines,
13 but you're not giving anybody a chance to rectify
14 anything. Any court of law gives most people a
15 break, you know. You've got a three-strike rule.
16 You're not -- you're not even doing that. This is a
17 one-strike rule, and y'all are done. That's --
18 that's just all I've got to say about it.

19 HEARING OFFICER: Okay. Do you have any further
20 questions for this witness? Would the board, or Mr.
21 Jochums, either one, like to ask this witness any
22 questions.

23 MR. JOCHUMS: No.

24 HEARING OFFICER: Board members?

25 (No response.)

1 HEARING OFFICER: There being none, do you have
2 any other witnesses you would like to call, ma'am?

3 MS. BRASSART: No.

4 HEARING OFFICER: Okay. Closing statements from
5 the board?

6 MR. JOCHUMS: I'll waive closing statements.

7 HEARING OFFICER: Would either of the two of you
8 like to testify on your own behalf or make any
9 closing statements?

10 MS. VAUGHN: I think it's all been said.

11 HEARING OFFICER: Does the board have any
12 questions that they would like to ask either Ms.
13 Vaughn or Ms. Brassart?

14 MS. POWELL: I'd like to ask Ms. Brassart one.
15 I understand that you have a massage license?

16 MS. BRASSART: Yes, ma'am.

17 MS. POWELL: And what does that scope of
18 practice allow you to do?

19 MS. BRASSART: It's allows -- it utilizes hands-
20 on or mechanical manipulation of any soft tissue on
21 the body. So I can do facials, full body -- full
22 body facials, scrubs, masks, hair, face, you know,
23 anything -- of course, not everything, but you know,
24 I can massage any soft tissue.

25 MS. POWELL: So as far as massaging, does that

1 include cleansing and exfoliating in your scope of
2 practice.

3 MS. BRASSART: Uh-huh. Uh-huh. I've even got
4 my CEUs that I've taken for -- to learn to do
5 facials.

6 MS. POWELL: Well, I just wanted -- I just
7 wasn't aware of what the Massage Board --

8 MS. BRASSART: We -- we can --

9 MS. POWELL: I thought it was for massage. I
10 didn't know that it was for facials.

11 MS. BRASSART: Right. We can use creams,
12 cleansers, masks, scrubs, uhm -- what else? I mean,
13 you know.

14 MS. POWELL: Okay. Thank you.

15 MS. CAUDLE: Anything but make-up.

16 MS. BRASSART: Yeah, right. Anything but make-
17 up.

18 HEARING OFFICER: Any other questions for either
19 of the respondents?

20 (No response.)

21 HEARING OFFICER: If there are none, we'll go
22 off the record at this time for the board to
23 deliberate. We'll come back on the record when a
24 decision is reached for motions to be made.

25 (WHEREUPON, discussion and deliberations were

1 had by the board, after which proceedings resumed as
2 follows, to-wit:)

3 HEARING OFFICER: At this time we'll go back on
4 the record.

5 MS. POWELL: Do I have a motion?

6 MS. PICKERING: They need to be individual -- do
7 I make a motion for --

8 HEARING OFFICER: Please make them separately.

9 MS. WEST: Finding the allegations being true, I
10 move to order the respondent to pay a fine in the
11 amount of \$100 payable within 30 days of receipt of
12 the board's order. Further the respondent is ordered
13 to cease and desist practicing cosmetological
14 services until such time as the respondent is
15 properly licensed.

16 Is that the right one?

17 MS. POWELL: Number two, yes.

18 (Multiple conversations taking place at once.)

19 MS. TURMAN: Finding the allegations being true,
20 I move to order the respondent to pay a fine in the
21 amount of \$100 payable within 30 days of receipt of
22 the board's order. And that is for Ceceila Vaughn,
23 07-073.

24 MR. KEENE: Second.

25 MS. POWELL: I have a motion and a second to

1 find the respondent \$100. Is there any discussion?

2 (No response.)

3 MS. POWELL: Okay. All those in favor, raise
4 your right hand.

5 (Show of hands.)

6 MS. POWELL: All those opposed?

7 (Show of hands.)

8 MS. POWELL: Motion carries. Now, do we have a
9 motion for 07-075?

10 MS. WEST: I have one. Finding the allegations
11 being true, I move to order the respondent to pay a
12 fine in the amount of \$100 payable within 30 days of
13 receipt of the board's order. And this is for Rhonda
14 Brassart, 07-075.

15 MR. KEENE: Second.

16 MS. POWELL: I have a motion and a second to
17 fine Ms. Brassart \$100. Is there any discussion?

18 (No response.)

19 MS. POWELL: All those in favor, raise your
20 right hand.

21 (Show of hands.)

22 MS. POWELL: All those opposed?

23 (Show of hands.)

24 MS. POWELL: Motion carries.

25 HEARING OFFICER: The motion to fine the

1 respondent \$100 was made and passed in the
2 proceedings of 07-073, Cecelia Vaughn and in 07-075,
3 Rhonda Brassart. The decisions will be reduced to
4 writing and service will be made on the respondents.
5 If either you wish to take an appeal, you may do so
6 under the Administrative Procedures Act 25-15-201.

7 If there are no other questions or comments,
8 these two hearings will be closed.

9 (Pause.)

10 HEARING OFFICER: Hearing none, these hearings
11 are concluded and the record is closed.

12 MS. VAUGHN: Thank you.

13 **HEARING ORDER NO. 07-087: KITTY GRAY**

14 HEARING OFFICER: The matter before us now is
15 07-087, Kitty Gray. This is a hearing before the
16 Arkansas State Board of Cosmetology in the Main
17 Street Mall Conference Room. Is the respondent
18 present?

19 MS. GRAY: Yes.

20 HEARING OFFICER: Would you introduce yourself
21 for the record?

22 MS. GRAY: My name is Kitty Gray.

23 HEARING OFFICER: Do you have counsel here with
24 you today?

25 MS. GRAY: No.

1 HEARING OFFICER: Would counsel for the State
2 introduce yourself, please?

3 MR. JOCHUMS: My name is Arnold Jochums and I'll
4 be presenting the board's case.

5 HEARING OFFICER: Are there any preliminary
6 matters to take up?

7 MR. JOCHUMS: I want to make Board's Exhibit No.
8 1, the letter of conveyance to Kitty Gray, along with
9 the order and notice of hearing, and the inspection
10 report as a bulk exhibit for the board.

11 HEARING OFFICER: Those will be admitted as
12 Exhibit No. 1.

13 (WHEREUPON, Board's Exhibit No. 1 to HO#07-087
14 having been identified for the record, was admitted
15 into evidence and marked to append.)

16 HEARING OFFICER: Anything further?

17 MR. JOCHUMS: And I want to incorporate by
18 reference the board's regulations.

19 HEARING OFFICER: Those will be admitted.

20 (WHEREUPON, Board's Exhibit No. 2 to HO#07-087
21 having been identified for the record as the statutes
22 and rules of the board governing the hearing, were
23 incorporated into the record and made a part hereof
24 by reference.)

25 HEARING OFFICER: Is there anything that you'd

1 like to introduce, Ms. Gray?

2 MS. GRAY: I have some photographs that I've
3 taken.

4 HEARING OFFICER: Those can be admitted. If
5 you'll bring them up so the board members can take a
6 look at them.

7 (WHEREUPON, Respondent's Exhibit No. 1 to HO#07-
8 087 having been identified for the record, was
9 admitted into evidence and marked to append.)

10 HEARING OFFICER: When were these photos taken?

11 MS. GRAY: They were taken the next weekend
12 after the inspector was there.

13 HEARING OFFICER: Are there any opening
14 statements for the board?

15 MR. JOCHUMS: Yes. May it please the board,
16 notice of hearing was issued after the inspection
17 report containing an alleged number of health and
18 safety violations. We'll hear testimony about these
19 during the course of this presentation.

20 HEARING OFFICER: Ms. Gray, do you have any
21 opening statements that you wish to make at this
22 time?

23 MS. GRAY: Yes, I do. I'd like to explain the
24 photographs, if I may.

25 HEARING OFFICER: Well, do you have -- we can

1 get to that later. Do you have any opening
2 statements that you wish to make at this time, just
3 kind of an overview of what you think your case is
4 about?

5 MS. GRAY: Yes, I do. The violations that were
6 made on the salon -- there were two or three. This
7 issue of files and buffers to be disposed of that
8 can't be disinfected -- and all of our manicure items
9 that are disposable get disposed of. If they aren't
10 disposable they get disinfected. They were in a
11 glass container at the time of the inspection. The
12 manicurist that was working that day had a towel
13 draped over the container she used to disinfect with.
14 And the inspector didn't ask about that.

15 The only thing that was talked about was the
16 weather and a license that was on the mirror of a co-
17 worker that had passed away. And we left it there in
18 memory of her. I was asked to take it down, which I
19 did -- with emotion.

20 And then there were brushes that were stored --
21 I just said stored, but not stored, but stacked on
22 the back bar, which I have pictures of. They were
23 actually clean brushes that were drying. That's not
24 where we store our clean brushes, but it's where we
25 put them to dry before we put them in the drawers,

1 the closed storage.

2 I guess the only thing that I can clearly see
3 that I'm guilty of is, that I didn't have my drawers
4 labeled, or my Barbicide labeled. So after I read
5 the report, I immediately went out and bought a
6 labeler and labeled the drawers. So you can see that
7 on the drawers in the pictures, and see that I've
8 clearly rectified that issue.

9 I just felt that it was a bit harsh. I feel I
10 should have been given an opportunity to rectify a
11 violation before I was given an order to come before
12 the board on a violation. If they would -- maybe
13 give a warning instead of a violation. But it's just
14 a violation. That's all I have to say for now.

15 HEARING OFFICER: Mr. Jochums, you may call your
16 first witness now.

17 MR. JOCHUMS: I call Inspector Caudle.

18 **THEREUPON,**

19 **TESTIMONY AND EVIDENCE**

20 **GIVEN ON BEHALF OF THE STATE BY**

21 **INSPECTOR SHEILA CAUDLE,**

22 having been called for and on behalf of the
23 State, and having been first duly sworn to tell the
24 truth, testified on her oath as follows, to-wit:

25 **DIRECT EXAMINATION**

1 BY MR. JOCHUMS:

2 Q Ms. Caudle, you're a board inspector?

3 A I am.

4 Q Did you visit That Certain Look Beauty Salon in May of
5 this year?

6 A Yes, sir. On May 24th.

7 Q Would you tell the board about your observations and what
8 you wrote up in your report?

9 A Yes, sir. Files and buffers that can't be disinfected
10 must be -- there were some of the red felt buffers right there,
11 that cannot be disinfected that this is referring to that must
12 be discarded after each use. Then there's implements that must
13 be disinfected before they're used on a client. They're
14 supposed to be washed with soap and water, and then disinfected
15 by total immersion for 10 minutes in and EPA-registered
16 disinfectant. They have to be totally immersed in EPA-
17 registered disinfectant for it to be disinfected before use on
18 a client. Place implements in labeled containers -- this lets
19 a client know that they've not been used. Next they must be
20 disinfected and placed in a labeled container so that any
21 inspector that walks in their salon will know whether it's used
22 or disinfected. And place disinfected implements in clean
23 covered place and this also includes brushes stacked on the
24 back bar. There was more than just brushes on that back bar.
25 And the drawers where the clean implements were being stored --

1 it was dirty inside the drawers. They're to be stored in a
2 clean, covered place.

3 Q Have you visited this location previously?

4 A It's been several years since I've been in that area, in
5 Van Buren County, but this was my first time to visit this
6 salon.

7 Q How large a salon is it?

8 A It's a nice-sized salon. I can't tell you how many
9 stations it has, because I've only been there once. It's a
10 very nice place situated in a mall.

11 MR. JOCHUMS: I have no other questions for this
12 witness.

13 HEARING OFFICER: Ms. Gray, do you have any
14 questions you'd like to ask Inspector Caudle?

15 MS. GRAY: I'd like to know why you didn't ask
16 someone about the brushes we had stacked on the back
17 bar.

18 MS. CAUDLE: I just didn't, but I didn't think
19 they should be stacked there and the drawer. And you
20 had a client. I'm not going to interrupt you. You
21 were very busy.

22 MS. GRAY: I did not have time to give you a
23 tour, but -- well, I really felt that it was a lack
24 of communication between the inspector and myself on
25 what the inspector wrote us up for and what we

1 could've explained if we'd been asked about it.

2 HEARING OFFICER: But do you have any questions
3 for the inspector?

4 MS. GRAY: No.

5 HEARING OFFICER: Does the board have any
6 questions for the inspector?

7 MS. PICKERING: I do. You said that --
8 referring to the brushes, you specifically wrote, or
9 you said that -- you said that she had the clean
10 brushes laid out, but there were other things around
11 them. What did she have, other than brushes on the
12 back bar?

13 MS. CAUDLE: -- brushes plus other things on her
14 -- on her work station, --

15 MS. PICKERING: So, they were not --

16 MS. CAUDLE: The brushes on the back bar --

17 MS. PICKERING: -- on the back bar, then?

18 MS. CAUDLE: No.

19 MS. PICKERING: Okay.

20 HEARING OFFICER: You may call your next
21 witness.

22 MR. JOCHUMS: I call Kathy Wittum.

23 **THEREUPON,**

24 **TESTIMONY AND EVIDENCE**

25 **GIVEN ON BEHALF OF THE STATE BY**

Teresa Iden, CCR
(501) 261-1106

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KATHY WITTUM,

having been called for and on behalf of the State, and having been first duly sworn to tell the truth, testified on her oath as follows, to-wit:

DIRECT EXAMINATION

BY MR. JOCHUMS:

Q Kathy, you are the executive director?

A Yes.

Q And you prepared the notice of hearing that we're here on this morning?

A Yes.

Q Can you explain the penalty that's been recommended?

A The recommended penalty is \$220, that total is taken from each of the infractions using the fee schedule that the board typically uses.

MR. JOCHUMS: I have no other questions.

HEARING OFFICER: Would you like to ask Ms. Wittum any questions, Ms. Gray?

MS. GRAY: No, ma'am.

MR. JOCHUMS: I have no other witnesses.

HEARING OFFICER: Or do you have witnesses you'd like to call?

MS. GRAY: I'd like to call Heath Nicholson.

HEARING OFFICER: Please state your name for the record.

1 MR. NICHOLSON: I'm Heath Nicholson. I work
2 with Ms. Gray.

3 HEARING OFFICER: Were you sworn in earlier in
4 the day?

5 MR. NICHOLSON: I'm sorry. Yes, ma'am.

6 HEARING OFFICER: Ms. Gray, you may proceed to
7 question your witness.

8 MS. GRAY: The issue that they found those
9 drawers were dirty?

10 MR. NICHOLSON: No, they're not. If I may make
11 a comment, the inspector stated earlier that the
12 drawers were dirty. My working area is separated
13 from where Kitty and the other cosmetologists
14 stations are. She looked at my license and verified
15 who I was, but she didn't look in any of my drawers
16 at all. She didn't open any drawers or anything.
17 She didn't even come far enough into my room to look
18 into the drawers, so I don't see how she could say
19 the drawers are dirty. And that also comes into my
20 mind, it shows a little inconsistency of how
21 inspections are carried out.

22 MS. GRAY: Also, could you explain to the board
23 why our brushes are stacked on the back bar on the
24 drying rack?

25 MR. NICHOLSON: In the rules and regulations

1 book there's plenty in there on how to sanitize and
2 clean implements. There's nothing stated in here
3 that makes it clear on how the board would like for
4 us to dry the implements. When placing these
5 implements, wet, into a container and closing the
6 lid, you're cutting off the air supply which
7 promotes growth of many types of bacteria. One of
8 the fastest to grow, pseudomonas aeruginosa, which is
9 an opportunistic bacteria that will attack an immune
10 system that is compromised. The area where we live
11 and work has a very aged population, who often have
12 compromised immune systems, so we air dry the brushes
13 before we put them in a closed container. So I think
14 it would be interesting for everybody here to find
15 out how the board would like for us to dry the
16 implements before we put them in a closed container.

17 MS. GRAY: What type of surface are the brushes
18 on when drying?

19 MR. NICHOLSON: It's sort of a shelf on the back
20 bar. It's sort of a ventilated type of shelf to
21 allow aeration so the brushes can dry out.

22 (Pause.)

23 HEARING OFFICER: Do you any other questions for
24 your witness?

25 (Pause.)

1 MS. GRAY: About the labeled drawers, I was
2 unaware I had to label my comb and brush drawers --

3 HEARING OFFICER: But -- do you have a question
4 for your witness?

5 MS. GRAY: I'm getting to that. Did I or did I
6 not label the drawers after she left?

7 MR. NICHOLSON: You immediately complied with
8 that.

9 MS. GRAY: That's all.

10 HEARING OFFICER: Mr. Jochums, do you have any
11 questions?

12 MR. JOCHUMS: No.

13 MS. WARD: You said she didn't inspect those
14 drawers any of the drawers?

15 MS. CAUDLE: I opened them.

16 MS. WARD: But did he infer that she didn't
17 inspect any of the drawers?

18 MS. GRAY: She didn't inspect his.

19 MS. POWELL: You said there were several who do
20 manicuring. The files that were dirty, or the
21 buffers, did you dispose of those or would --

22 MS. GRAY: I throw them out.

23 HEARING OFFICER: If there are no other
24 questions, Ms. Gray, would you like to make a
25 statement?

1 MS. GRAY: Yes, I would. She did not open any
2 drawers in that side of the salon either. And the
3 manicurist was in the process of a manicure, so I
4 can't say which files she had used and put in that
5 container before disposing of them. I just think
6 it's a little unclear about which files she was
7 referring to, because of all the ones that she used
8 during the manicure. I just feel unjust that this
9 violation was given instead of discussing it with me,
10 as far as talking -- it would have been during her
11 visit, and I think if, clearly if you go back and
12 look at the prior reports and inspection sheets that
13 have been written, it should speak for itself. MS.
14 WITTUM: I'd like to ask Ms. Gray a question.

15 HEARING OFFICER: Go ahead.

16 MS. WITTUM: The pictures that the board now
17 has, are those what you were saying that you labeled?

18 MS. GRAY: I labeled them after she left.
19 Unknowingly. In the beginning, they didn't have to
20 be labeled. She didn't ask where our Barbicide
21 submersion tank was at. She didn't mention anything
22 to me. If at the time, it was -- when she came in,
23 it was the time we'd just cleaned those brushes and
24 so the brushes were going through the drying process
25 before they were put into sanitized drawers. That's

1 what those pictures are of.

2 HEARING OFFICER: Does the board have any
3 questions that they would like to -- Mr. Jochums, do
4 you have any more questions?

5 MR. JOCHUMS: I have no other questions.

6 HEARING OFFICER: Does the board have any
7 questions they would like to ask Ms. Gray at this
8 time -- any further questions from the board?

9 (No response.)

10 HEARING OFFICER: The board has no further
11 questions, so we'll move to closing arguments. Mr.
12 Jochums?

13 MR. JOCHUMS: I'll waive closing arguments.

14 HEARING OFFICER: Okay. Anything from Ms. Gray
15 in the way of closing arguments?

16 MS. GRAY: I think I said it all.

17 HEARING OFFICER: Okay. We'll go off the record
18 now for the board to deliberate and make their
19 decision, at which time, we'll go back on the record
20 for a motion.

21 (WHEREUPON, discussion and deliberations were
22 had by the board, after which the proceedings were
23 resumed as follows, to-wit:)

24 HEARING OFFICER: We're back on the record for
25 the board's decision.

1 MS. POWELL: Do I have a motion?

2 MS. TURMAN: I'd like to make a motion. Finding
3 the allegations being true, I move to order the
4 respondent to pay a fine of \$220 payable within 30
5 days of receipt of the board's order. Failure to pay
6 the fine will result in a suspension of the
7 respondent's cosmetology license beginning 30 days
8 from receipt of the board's order and extending for a
9 period of 90 days from the date the respondent
10 relinquishes their license.

11 MS. TRAYLOR: I second that motion.

12 MS. POWELL: I have a motion and a second for
13 the respondent to pay a \$220 fine. Is there any
14 discussion?

15 (No response.)

16 MS. POWELL: All those in favor, raise your
17 right hand.

18 MR. JOCHUMS: Before you vote --

19 MS. POWELL: I'm sorry.

20 MR. JOCHUMS: Madam Hearing Officer, did you
21 tell the lady you'd let her say something?

22 HEARING OFFICER: Oh. Would you like to make
23 comment? I forgot what you said.

24 MS. GRAY: I was just concerned about the
25 inconsistencies of the inspections. And I just

1 didn't feel like they were consistent from the past
2 visits. I just wish that she would have communicated
3 with me during her visit about what she was worried
4 about or upset about. I think that could have
5 cleared up a lot of things while she was there.
6 That's all.

7 HEARING OFFICER: That will be noted on the
8 record.

9 MS. POWELL: Okay. All those in favor, raise
10 your right hand.

11 (Show of hands.)

12 MS. POWELL: All those opposed?

13 (Show of hands.)

14 MS. POWELL: Any abstentions?

15 MS. GORDON: I didn't vote. I'm sorry.

16 MS. POWELL: Okay. All those in favor, please
17 raise your right hand again.

18 (Show of hands.)

19 MS. POWELL: All those opposed?

20 (Show of hands.)

21 MS. POWELL: Motion carries.

22 HEARING OFFICER: In the matter of Kitty Gray,
23 07-087, a motion passed by majority vote of the
24 board. That motion will be reduced to writing and
25 served on the respondent. If the respondent cares to

1 appeal the decision, they may do so under the
2 Administrative Procedures Act 25-15-201.

3 Are there any other questions or comments at
4 this time?

5 (No response.)

6 HEARING OFFICER: There are none. This hearing
7 is concluded and the record is closed.

8 MS. WITTUM: Ms. Gray, do you want these
9 pictures back? If so, we can make copies and we'll
10 give you these originals back.

11 MR. NICHOLSON: May I ask something?

12 MS. WITTUM: Yes.

13 MR. NICHOLSON: It's been kind of interesting
14 observing all morning. And I have sort of formulated
15 many questions that I would like to have answered.
16 Is there a time that we, as cosmetologists, can come
17 and address the board and ask questions pertaining to
18 the rules and regulations?

19 MS. POWELL: Yes. At the end of the meeting, we
20 will have a comment session. You will be able to
21 address any concerns you have to the board. It's
22 open to the public.

23 MR. NICHOLSON: Okay. And that's consistent,
24 like every Monday or --

25 MS. POWELL: Well, no. We meet --

1 MS. WITTUM: At the end of each board meeting.

2 MR. NICHOLSON: We're in from out of town, so I
3 won't still be here at the end of the meeting.

4 MS. POWELL: Well, at the end of each board
5 meeting we have a public comment session.

6 MR. NICHOLSON: Okay.

7 MS. POWELL: And you would be able to bring up
8 any issues not discussed in the meeting at any time,
9 however, there is another opportunity, as well. If
10 you want to submit questions to the office, you could
11 do so, either by e-mail or by telephone.

12 MR. NICHOLSON: Okay.

13 MS. WITTUM: If you go to our web site, there's
14 an e-mail address on there.

15 MR. NICHOLSON: Okay.

16 MS. WITTUM: You're welcome to send any
17 questions that you have and we'll get them answered.

18 MR. NICHOLSON: Okay. That would be great.
19 Thank you.

20 **HEARING ORDER NO. 07-046: STEPHANIE GOINES**

21 HEARING OFFICER: The matter before us is 07-
22 046, Stephanie Goines. If the respondent is present,
23 would you please identify yourself for the record?

24 MS. GOINES: Stephanie Goines.

25 HEARING OFFICER: Counsel for the board?

1 MR. JOCHUMS: I'm Arnold Jochums. I'll make the
2 presentation to the board.

3 HEARING OFFICER: Are there any preliminary
4 matters to be taken up?

5 MR. JOCHUMS: Yes. I'd like to make a
6 compilation exhibit, Board's Exhibit No. 1, the
7 conveyance letter, the notice of hearing, and the
8 inspection report, as well as, incorporating by
9 reference the board's regulations.

10 HEARING OFFICER: They'll be admitted.

11 (WHEREUPON, Board's Exhibit No. 1 to HO#07-046
12 having been identified, was admitted into evidence
13 and marked to append; and also having been identified
14 as the regulations of the board, which were
15 incorporated herein by reference.)

16 HEARING OFFICER: Ms. Goines, do you have any
17 evidence to submit?

18 MS. GOINES: No, ma'am.

19 HEARING OFFICER: Any opening statements from
20 counsel for the State?

21 MR. JOCHUMS: Not at this time.

22 HEARING OFFICER: Do you want to make any
23 opening statement to the board, Ms. Goines?

24 MS. GOINES: I'd just like to inform the board
25 that I have a medical condition and therefore I've

1 not been doing nails over the summer.

2 HEARING OFFICER: Okay. The board may call its
3 first witness.

4 **THEREUPON,**

5 **TESTIMONY AND EVIDENCE**

6 **GIVEN ON BEHALF OF THE STATE BY**

7 **INSPECTOR SHEILA CAUDLE,**

8 having been called for and on behalf of the
9 State, and having been first duly sworn to tell the
10 truth, testified on her oath as follows, to-wit:

11 **DIRECT EXAMINATION**

12 BY MR. JOCHUMS:

13 Q Please state your name for the record.

14 A Sheila Caudle.

15 Q And in your role as an inspector, did you go to the Sun
16 Shack?

17 A I did.

18 Q And what kind of facility is it?

19 A It's a tanning salon, and Ms. Goines has a manicure room
20 set up there.

21 Q And she's licensed as a manicurist?

22 A Yes.

23 Q And on this particular -- obviously, they run a tanning
24 salon?

25 A Yes, they run a tanning salon.

1 Q Was she there on the day that you were there?

2 A No, she was not.

3 Q Tell us what you observed with regard to her part of the
4 business?

5 A When I went in there to do the inspection I observed the
6 violations I've listed here. First, the manicure table needs
7 to be cleaned before and after each use. The manicure table
8 was obviously dirty. Treatment tables are to be sanitized
9 before and after each use. All towels need to be discarded
10 after each use. There were dirty towels on the table. All
11 files and orange wood sticks that can't be disinfected need to
12 be discarded, not laying on top of the manicure table. Before
13 use on a client, all implements must be disinfected -- this
14 means files. Also all used implements must be placed in
15 labeled containers to disinfect them. And the clean,
16 disinfected ones are to be stored in a clean, covered place.
17 In fact, the manicure table had not been cleaned. There were
18 used towels on the table. There were used files on the table.
19 And there were used emery boards that had not been discarded.
20 Some of them were disinfected and some were not. And I
21 didn't see any -- it looked like they were being used, and I
22 didn't see any labeled containers.

23 Q Is this a locked room, or -- how did you get in?

24 A The last three times that I have been there, the last
25 three inspections, the owner has let me in.

1 Q And it looks like she still has a place set up there?

2 A Yes. It's still set up and everything.

3 Q Is there anything else that you'd like for the board to
4 know?

5 A No.

6 MR. JOCHUMS: I have no other questions for
7 this witness.

8 HEARING OFFICER: Does the board have any
9 questions they would like to ask of this witness?

10 MS. POWELL: Sheila, I'd like to ask one. It
11 says here on the June 14th, you noted discrepancies
12 here -- she said she doesn't work there or --

13 MS. CAUDLE: She said she didn't work there this
14 summer.

15 MS. POWELL: You said she wasn't there the last
16 three inspections?

17 MS. CAUDLE: She wasn't there the last three
18 times that I went and there's no appointment book in
19 there or anything, so you can't tell if she's been
20 working.

21 MS. POWELL: But with all these violations,
22 somebody has obviously been doing something in there.
23 And the three inspections you're talking about, those
24 would be prior to June of '06?

25 MS. CAUDLE: Yes, ma'am.

1 MS. POWELL: And you haven't been there since
2 June?

3 MS. CAUDLE: No, ma'am.

4 HEARING OFFICER: Does anyone else have
5 questions for this witness?

6 MS. PICKERING: Now, is that the from the first
7 time?

8 MS. CAUDLE: Yes, ma'am.

9 MS. PICKERING: But you didn't find her there.
10 How long from the first time you were there?

11 MS. CAUDLE: I don't know how many months
12 because I worked for several months last year in the
13 Cosmetology office and my schedule is off.

14 HEARING OFFICER: Ms. Goines, do you have any
15 questions for this witness?

16 MS. GOINES: Yes. So before when you were
17 there, apparently it was clean and not unsanitary
18 like it is now?

19 MS. CAUDLE: Yes, ma'am. I don't remember there
20 ever being any problems.

21 MS. GOINES: So there weren't problems before
22 this?

23 MS. CAUDLE: I can't say for sure since I don't
24 have that before me, but I don't remember there being
25 any problems.

1 HEARING OFFICER: If that is all the questions
2 for this witness, State you may call your next
3 witness.

4 **THEREUPON,**

5 **TESTIMONY AND EVIDENCE**

6 **GIVEN ON BEHALF OF THE STATE BY**

7 **KATHY WITTUM,**

8 having been called for and on behalf of the
9 State, and having been first duly sworn to tell the
10 truth, testified on her oath as follows, to-wit:

11 **DIRECT EXAMINATION**

12 BY MR. JOCHUMS:

13 Q Please state your name.

14 A Kathy Wittum.

15 Q And you are the director and you sent out the letter of
16 notice and hearing?

17 A Yes.

18 Q I notice in paragraph three that you recommend a penalty
19 of \$275.

20 A Yes.

21 Q Basically, that's one of \$150 and several others at \$25
22 each, is that correct?

23 A Yes.

24 Q How did you come to those numbers?

25 A That's based on the fee schedule the board has typically

1 used in the past.

2 Q I don't have any other questions, -- well, have their been
3 violations with regard to this salon previously?

4 MS. WITTUM: According to the file that we have
5 on the establishment, on the inspection prior to this
6 that occurred on June 22nd of '05, there was -- one,
7 two, three -- three violations noted. The violations
8 being that the floor mat needed to be cleaned and
9 repaired, the treatment tables needed to be
10 sanitized, and the towels needed to be discarded
11 after each use. There is no indication that there
12 was ever any action taken against the salon on those
13 inspection findings. The inspection prior to that
14 was January 5, of '05 and there were no violations
15 noted. And the one prior to that was August 11, of
16 '04 and there were no violations noted in that one.

17 MR. JOCHUMS: Thank you. I have no further
18 questions.

19 HEARING OFFICER: Ms. Goines, do you have any
20 questions for this witness?

21 MS. GOINES: No.

22 HEARING OFFICER: Do any of the board members
23 have questions they'd like to ask?

24 MS. GORDON: You said that before on June 22nd
25 of '05 there were three violations found?

1 MS. WITTUM: There were three found. The floor
2 mats needed to be cleaned and repaired. The
3 treatment tables needed to be sanitized. And the
4 towels needed to be discarded after each use.

5 MS. WEST: Ms. Wittum, is she responsible for
6 the salon?

7 MS. WITTUM: She is the establishment owner. As
8 the establishment owner she is responsible for the
9 salon.

10 MR. JOCHUMS: I have no other witnesses.

11 HEARING OFFICER: Do you have any witnesses to
12 call or would you like to make a statement on your
13 own behalf?

14 MS. GOINES: Yes. The other infractions -- the
15 floor did not need to be repaired. There were just
16 nails on the floor that needed to be swept up and
17 discarded. We have seven other people that work
18 there at the front desk and they have the tendency,
19 on occasion, to pick up a towel and lay it on that
20 table. They have to use clean towels to clean the
21 tanning beds and they'll come in there and get one
22 out of the cabinet and then get busy and leave it
23 laying on that table. They also have, on occasion,
24 come in there and gotten a file to file their own
25 nails with, and not put it in the container for dirty

1 files. I do have those there. I took the whole
2 summer off because I've been diagnosed with
3 rheumatoid arthritis. I have limited motion in my
4 wrists, which obviously you need to do nails with.
5 That's all I have to say.

6 HEARING OFFICER: Mr. Jochums, would you like to
7 ask any questions?

8 MR. JOCHUMS: No.

9 HEARING OFFICER: If there are no questions from
10 the State, would the board members like to ask any
11 questions?

12 MS. WARD: Have you made them aware that they
13 aren't supposed to lay the towels on the treatment
14 tables?

15 MS. GOINES: Yes, ma'am. I've told them. But
16 usually, it's an accident. I mean, they're going to
17 get a towel and the phone rings, and they lay it down
18 to go answer it. Despite me telling them, it
19 happens. I mean, it's crazy. We have 18 tanning
20 beds and when one person is working it just gets like
21 that.

22 MS. WARD: Thank you.

23 (Pause.)

24 HEARING OFFICER: If there are no other
25 questions, we'll move to closing arguments. State,

1 do you have any closing?

2 MR. JOCHUMS: No.

3 HEARING OFFICER: Would you like to state
4 anything in closing?

5 MS. GOINES: Do what you feel is necessary, I
6 guess.

7 HEARING OFFICER: Then this hearing is complete,
8 except for the board's decision. We'll now go off
9 the record for the board to deliberate and come back
10 on for the motion of the board.

11 (WHEREUPON, discussion and deliberations were
12 had by the board, after which proceedings resumed as
13 follows, to-wit:)

14 HEARING OFFICER: At this time, we'll go back on
15 the record for a motion.

16 MS. TURMAN: Finding the allegations being true,
17 I move to order the respondent to pay a fine in the
18 amount of \$275 payable within 30 days of the receipt
19 of the board's order.

20 MS. TRAYLOR: I second that motion.

21 MS. POWELL: I have a motion and a second for
22 the respondent to pay a \$275 penalty. Is there any
23 discussion?

24 (No response.)

25 MS. POWELL: All those in favor, raise your

1 right hand.

2 (Show of hands.)

3 MS. POWELL: All those opposed?

4 (Show of hands.)

5 MS. POWELL: Two opposed, motion carries. Thank
6 you.

7 HEARING OFFICER: At this time there the board
8 has made a motion on the hearing in the matter of
9 Stephanie Goines, 07-046. That decision will be
10 reduced to writing and service will be made upon the
11 respondent. If you care to appeal this decision to
12 the circuit court, you may under the Administrative
13 Procedure Act 25-15-201. If there are no further
14 questions or comments, the hearing will be closed at
15 this time.

16 (No response.)

17 HEARING OFFICER: There are none. This
18 concludes the record and it is closed.

19 MS. POWELL: At this time, we will take a lunch
20 break.

21 (WHEREUPON, a break was taken for lunch, after
22 which the proceedings resumed as follows, to-wit:)

23 MS. POWELL: The meeting will come to order.

24 **HEARING ORDER NO. 07-064: FRANCES PRIMEAUX**

25 HEARING OFFICER: The matter currently before

1 the Arkansas Cosmetology Board is Frances Primeaux,
2 07-064. Today is September 18, 2006 and we're in the
3 Main Street Mall Conference Room. Would the
4 respondent please identify themselves for the record?

5 MS. PRIMEAUX: My name is Elaine Primeaux. I go
6 by Elaine -- Frances Elaine, I go by Elaine.
7 Jennifer Tyree is a stylist in the salon. And
8 Valerie Sunberg.

9 HEARING OFFICER: Okay. Thank you. And counsel
10 for the board today?

11 MR. JOCHUMS: My name is Arnold Jochums, and I
12 will be presenting this case before the board today.

13 HEARING OFFICER: Okay. Did you hear when I
14 explained everything earlier, and you-all were sworn
15 in at that time?

16 MS. PRIMEAUX: Yes.

17 HEARING OFFICER: Okay. Are there any
18 preliminary matters we should take up?

19 MR. JOCHUMS: Yes. I'd like to have made Board
20 Exhibit 1, the letter that went to the owner, along
21 with the order and notice of hearing, and the
22 inspection report. I'd like those all entered as
23 Exhibit 1.

24 HEARING OFFICER: That will be admitted as
25 Exhibit 1.

1 (WHEREUPON, Board's Exhibit No. 1 to HO#07-064,
2 having been identified for the record, was admitted
3 into evidence and marked to append.)

4 MR. JOCHUMS: And I would also ask that we make
5 the board regulations, in particular, those
6 pertaining to health and safety rules be incorporated
7 by reference.

8 (WHEREUPON, Board's Exhibit No. 2 to HO#07-064
9 having been identified for the record as the statues
10 and rules of the board governing the hearing, were
11 incorporated into the record and made a part hereof
12 by reference.)

13 HEARING OFFICER: And that will be noted, as
14 well. Ms. Primeaux, do you have any exhibits you'd
15 like to enter at this time?

16 MS. PRIMEAUX: Well, I did bring photos of the
17 salon and of all our health and safety -- clean and
18 dirty containers, Barbicide -- whatever. Also I
19 brought letters of reference in accordance to our
20 honesty, our character -- kind of some character
21 letters. Since no one here, except Pat, I mean,
22 knows our salon or anything about us, so.

23 HEARING OFFICER: If there are no objections
24 from the board, those will be admitted.

25 MR. JOCHUMS: I have no objection to the photos.

1 And these are two or three character reference
2 letters?

3 MS. PRIMEAUX: Yes. And a -- from the girl that
4 cleans our salon every week.

5 MR. JOCHUMS: Oh. The person who does the
6 ordinary cleaning in your salon?

7 MS. PRIMEAUX: Yes. We do have someone that
8 cleans the salon every week.

9 MR. JOCHUMS: No objection to any of these. Can
10 we let the board members look at them as we go?

11 (WHEREUPON, Respondent's Exhibit No. 1 to HO#07-
12 064 having been identified, was admitted into
13 evidence and marked to append.)

14 HEARING OFFICER: Yes. That would be fine.
15 Let's move to opening statements.

16 MR. JOCHUMS: This matter -- we're going to hear
17 some testimony from the inspector that it involves a
18 number of health and safety violations that she noted
19 on this visit on June 2 of this year.

20 HEARING OFFICER: Ms. Primeaux, would you like
21 to make a statement?

22 MS. PRIMEAUX: Okay. Well, I'm not sure what's
23 considered a statement and what gets into the gist of
24 the -- what's going on. First of all, all four of
25 the stylists in the salon are 100 percent booth

1 rental, all the way down to retail. They are their
2 own little entity in the salon. We like Pat. We
3 have no problem with her. This is not anything
4 against her honesty or her dishonesty or anything
5 like that. We just need some things clarified. All
6 the girls do booth rental. Some of the girls were
7 not present that day, as well as myself. I'm pretty
8 much semi-retired, one day a week or one day every
9 now and then. So I was not there, but I have a
10 concern about the stylist -- no Sanex strip. The
11 girls use towels to do their draping with. And we
12 pin them in the front. Both girls said they had
13 draped their clients with towels. It was also the
14 end of the work week on a Friday, towards the end of
15 the day. One of the stylists did have clippings in
16 her drawer. We are a very, very busy salon. I don't
17 -- I'm assuming every one here has been a hairdresser
18 at some point in time. Hair is our business and it's
19 impossible to keep your salon free of hair, short of
20 not cutting any hair in your salon. I mean, hair
21 floats. It flies. That's just the way it is, and at
22 the end of the day it's just kind of everywhere.
23 There's no way to completely rid your salon of hair.
24 And depending on the day and how busy you are, you
25 get to sweeping and dusting -- and that actually

1 makes it worse. All of the stylists in our salon
2 have clean and dirty containers and they are all
3 labeled. And, too, on one of the fines, Rule
4 4.2(22) (a) and (c) -- we were not clear, or the girls
5 were not clear, about what that was for. They did
6 not remember Pat addressing that, as far as,
7 unsanitized implements. So we weren't even aware of
8 that. And I wasn't there. I can't say, but the
9 girls did not remember her addressing dirty
10 implements.

11 HEARING OFFICER: Thank you. The board may call
12 their first witness.

13 MR. JOCHUMS: Inspector.

14 **THEREUPON,**

15 **TESTIMONY AND EVIDENCE**

16 **GIVEN ON BEHALF OF THE STATE BY**

17 **INSPECTOR PAT JACKSON,**

18 having been called for and on behalf of the
19 State, and having been first duly sworn to tell the
20 truth, testified on her oath as follows, to-wit:

21 **DIRECT EXAMINATION**

22 BY MR. JOCHUMS:

23 Q Please state your name.

24 A Pat Bland Jackson.

25 Q I called you Bland.

1 A That's okay. Pat Bland Jackson -- Jackson Bland, same
2 thing.

3 Q Ms. Jackson, did you visit A Cut Above in Hope, Arkansas?

4 A I did.

5 Q And was this in June of this year?

6 A Yes, it was.

7 Q I know that you filled out the inspection report from that
8 time, and it's in the board's file that we admitted into
9 evidence. I see you wrote down a number of names on the back
10 of the inspection report. Are those the names that were on the
11 wall?

12 A Oh. Since I do not have my inspection report -- I'll
13 borrow Elaine's.

14 MS. PRIMEAUX: I have mine.

15 BY THE WITNESS:

16 A Thank you, sweetheart.

17 HEARING OFFICER: First, does the board have
18 copies of the inspection report?

19 MS. POWELL: Whoever has that telephone, would
20 you please turn that off?

21 MS. TURMAN: It's in somebody's bag.

22 MS. POWELL: Whoever has phones, make sure
23 they're turned off.

24 HEARING OFFICER: Could we get copies of the
25 inspection report for the board members to have for

1 the duration of this hearing? Thank you.

2 BY MR. JOCHUMS:

3 Q Well, let me back up a bit. When you go, what's your
4 standard protocol? Tell us what you do when you make an
5 inspection.

6 A For an inspection?

7 Q Yes.

8 A The first thing I do is I go in and I look for a salon
9 license. I look for a current salon license, whatever year
10 that might be. Then I go to the stations, and I look for the
11 stylists' current practitioner licenses, and I list those. We
12 list the -- the -- the license on the front of the inspection
13 form with the ID number, and the date, and the address. And
14 then on the back of the inspection form we list all of the
15 stylists there and their ID no., along with the year that that
16 license has on it, which should be the current year. And then
17 after --

18 Q And do you write down, even, the names of people that
19 aren't there?

20 A Absolutely. If they have a current, valid Arkansas -- or
21 whatever. It doesn't even have to be current. If they have a
22 license posted, that name goes on our inspection report, right.
23 And then after that, I do my inspection.

24 Q All right. Tell us about this salon. What kind of
25 building is it in?

1 A Ms. Primeaux's building is a pretty nice building. Her and
2 her husband have a business together. He's a chiropractor and
3 he's in one part of the front of it. And she's in the back.
4 It's a very nice salon.

5 Q And -- I mean, when you were there, -- tell us some of the
6 things you noticed.

7 A When I go into any salon, I look to see that the stylists
8 are not reusing brushes and combs, that they properly put these
9 implements -- used implements, in a labeled container. I look
10 to see that they have their EPA-registered disinfectant mixed
11 up and covered up at all times. I look to see if they have
12 containers for used implements. All these things are supposed
13 to be labeled. I look to see if they have a closed towel
14 hamper. I look to see if they have a trash can with a lid on
15 it. I look to see if their -- you know, they have hot and cold
16 water, the things that are standard on our form.

17 Q And in --

18 A Health and safety rules posted.

19 Q Okay. Thank you. And on this particular visit, what did
20 you note --

21 (PHONE RINGING.)

22 BY THE WITNESS:

23 A I'm sorry. That is mine. I thought it was off. I
24 apologize. At this particular visit -- and let me state this,
25 past directives have been that if we go into a salon and they

1 are not using towels or neck strips, that we were allowed to
2 say, be sure to use towels and neck strips. Is that not
3 correct?

4 MS. PRIMEAUX: Uh-huh.

5 BY THE WITNESS:

6 A If they had not put their implements in a dirty labeled
7 container, we were allowed to say, girls, guys, whatever,
8 please be sure and put your instruments in a labeled container.
9 Or label this container, if this is dirty implements. New
10 directives state that we do not do this, that we write the
11 incident up. So that's exactly what happened at this
12 particular visit to Ms. Primeaux's. I wrote the incident up.
13 No neck strips and implements --

14 Q With regard to the neck strips, was there someone, a
15 customer being serviced?

16 A I did not write that down, Mr. Jochums. I don't normally
17 write that violation down if a client is not there. I wouldn't
18 have any, you know, any reason to write that. Now, I also --
19 you know, if they're using a towel and it's under a cape, I
20 don't go around and lift up everybody's cape to see if there is
21 a towel under it. If I don't see it, their neck is not being
22 protected. You know, that is supposed to be around their neck
23 to protect the client from the cape that may have been used on
24 a client previous to the one they have now. So if it's not
25 visible to me, I really don't see a need to go and look under

1 it to see if there's one there because it's over their
2 shoulders. It's not protecting their client, so sometimes that
3 is the case. I have had -- I've had stylists that had a towel
4 around their client's neck but it would not be visible so I
5 couldn't -- you know, I would put that down as no towel or neck
6 strip being used.

7 Q Okay. Continue with what you observed.

8 A And the other thing was the container marked "clean". The
9 container that did have "clean" labeled on it, appeared to have
10 dirty -- dirty brushes in it, brushes that had hair in them.
11 So -- there again, I've had someone say, you know, I've got
12 these little -- we used to use those little capsule things, you
13 know, that would disinfect the brushes. But if the hair is in
14 them, they're not clean. And if they're in a cleaned
15 container, a container marked "clean", and they have hair in
16 them, they're not clean.

17 Q Okay. Moving on, you told us about the drawer situation.

18 A That was in June, and I'm just going to go from my
19 reading. Evidently, I had opened a drawer and there was --
20 there were hair clippings in it. If that drawer is supposed to
21 be a clean area, which that -- there again, that's the only
22 time I would write a violation. If that drawer said "dirty"
23 and there was hair in it, I wouldn't have a need to write that
24 violation down. But if that's a clean area and I open it and
25 there's hair in that area, then that's a contaminated area.

1 That's no longer a clean area.

2 Q Okay.

3 A A clean area states that it must be kept closed at all
4 times.

5 Q Were there some items that were unmarked?

6 A No, I don't --

7 Q I guess what I'm asking about is number 25(c), what is
8 that?

9 A All used instruments are placed in labeled containers. I
10 think that this referred to, Mr. Jochums, the used instruments
11 were in a clean container. So I believe that's what I was
12 referring to on that, because all used instruments are placed
13 in labeled containers. They were in a clean labeled container,
14 so I believe that's what my reference to that was.

15 Q I believe that 25(a) is the one that usually has a big
16 fine, isn't it?

17 A I don't know.

18 Q What --

19 A The board determines that.

20 Q What does that have to do with?

21 A Before use on a client all non-electrical instruments --
22 brushes and combs, have to be washed with soap and water and
23 immersed for ten minutes in a EPA-registered disinfectant. So
24 there again, that was referring to the dirty brushes being in a
25 clean area. It would appear, that being the case, that those

1 instruments might be being reused.

2 Q I see.

3 A Instead of being washed with soap and water first, and
4 then immersed for ten minutes, before reuse. So that's what
5 that references to.

6 Q Is there anything else that you'd like to tell the board
7 about your inspections?

8 A No. Elaine's salon is absolutely a top-of-the-line salon.
9 They were very busy that day, and it was the end of the day.

10 Q Okay.

11 MR. JOCHUMS: I have no further questions for
12 Ms. Jackson.

13 HEARING OFFICER: Ms. Primeaux, would you like
14 to ask this witness any questions?

15 MS. PRIMEAUX: Yes.

16 HEARING OFFICER: Go right ahead.

17 MS. PRIMEAUX: Okay. I was not there, and I
18 don't have a crystal ball. So the girls say they had
19 a towel clipped around their tops on top of their
20 cape, as well, and it clipped. So do you not
21 remember seeing the towel that was draped on top of
22 them --

23 MS. JACKSON: I do not, Elaine.

24 MS. PRIMEAUX: -- and clipped.

25 MS. JACKSON: And I would not -- if that was the

1 case, knowing my experience, I don't write things
2 like that up, because that would be protection. If
3 it was on top of the cape, I would absolutely see
4 that. And one may have had that and another may not
5 have, I don't -- like I said, I actually don't recall
6 who was in the salon that day.

7 MS. PRIMEAUX: Right.

8 MS. JACKSON: But I know, my experience of
9 writing this down, is that evidently someone had a
10 cape on that did not have a visible towel or neck
11 strip under it. Now, if the towel was draped over
12 the client, I would consider that a protection, also.
13 But I didn't -- evidently, didn't see that.

14 MS. PRIMEAUX: Well, -- and so if I wasn't
15 there, I can only go by what they say and then what's
16 written on this piece of paper. And I, you know,
17 when we first opened the salon, you were very
18 helpful. You expressed to us that we needed to have
19 the clients protected at all times -- yada, yada,
20 yada. And we had salon meetings about every month or
21 two months to go over certain things. And so the
22 girls had said -- because one of them was doing a
23 chemical, she recalled that she had a towel under and
24 over. And the other girl said she had hers under,
25 but you know, we mostly use towels.

1 MS. JACKSON: Uh-huh.

2 MS. PRIMEAUX: They can be laundered. We use a
3 thicker towel. The Sanex strips are thin. If they
4 get wet, they tear. And that's what we use. And she
5 said she had one on. You know, I -- I don't know.

6 And also, what implements? Was it just the
7 brushes, or was there an implement, because it says
8 used implements or instruments.

9 MS. JACKSON: Right. Are in a container marked
10 "clean", that was -- and I specifically remember
11 that. Opening a drawer of the container that had
12 "clean" on it, but the brushes in it had hair in
13 them. So that would not be a clean area any longer.
14 That would be a contaminated area. And it also means
15 -- and I know y'all do have labeled containers.

16 MS. PRIMEAUX: We do. We do.

17 MS. JACKSON: But if --

18 MS. PRIMEAUX: And we try to use them.

19 MS. JACKSON: But if they're not put in there,
20 then -- you know, if you have -- now, this is the
21 experience of 40 years. If I had my brushes in the
22 drawer and they have hair in them, and my client
23 doesn't know or whatever, and I reach in there and
24 get one. My client does not know whether it was
25 clean or dirty. And I'm not trying to indicate that

1 your stylists do that. I'm saying the appearance
2 could be --

3 MS. PRIMEAUX: Right.

4 MS. JACKSON: The appearance could be that those
5 brushes are being used more than one time. And
6 anymore we can't even go by multiple hair color,
7 because everyone has multiple hair color now.

8 MS. PRIMEAUX: That's true.

9 MS. JACKSON: So, you know, I couldn't say that
10 they were, but that is just an indication to me.

11 MS. PRIMEAUX: Okay. So -- now, my girls
12 understood that when you have a drawer that you use,
13 and I don't know about any salon other than my own,
14 but we have drawers that we put our brushes

15 HEARING OFFICER: Let's try to keep this on
16 track by asking a question, --

17 MS. PRIMEAUX: Okay.

18 HEARING OFFICER: -- please. We'll give you a
19 chance to give your information to us, as well.

20 MS. PRIMEAUX: That -- all right. This is. I'm
21 sorry. And I'm going around Laura's house, but I'm
22 trying to get there.

23 HEARING OFFICER: Okay.

24 MS. PRIMEAUX: Okay. They use their drawers and
25 they have their "clean" and "dirty". But they have a

1 drawer, and they understood it was okay to have their
2 clean brushes in drawers -- clean brushes and combs
3 in that drawer, and then they open it. They get them
4 out, and -- yada, yada, yada.

5 MS. JACKSON: Okay.

6 MS. PRIMEAUX: Well, when you're opening those
7 drawers, is it not possible that hair can just fall
8 in? I mean, you know what I'm saying? Hair is a
9 hairy business. It's just everywhere. It's end of a
10 Friday. It was a busy day. And -- do you understand
11 what I'm saying?

12 MS. JACKSON: I do.

13 MS. PRIMEAUX: It's just possible that the hair
14 just kind of like flew up and --

15 MS. JACKSON: I do. And believe me, there
16 again, my experience -- I would not write a violation
17 up for a few slivers of hair. Evidently there was
18 visible, multiple clippings in there for me to even
19 write that down. And like I said, I know I -- you
20 know, you've got a top-of-the-line salon. I've been
21 in there in the past and said, girls, be sure and do
22 this. And girls, be sure and do that. So I know
23 that y'all do normally follow the rules, but I would
24 not have written it down had it not been multiple.

25 MS. PRIMEAUX: Okay. Well, we're fined for hair

1 clippings as one fine. And then we're fined for
2 implements. And on page 12, it talks about
3 sterilization of non-electrical instruments with
4 sharp point or edge that may on occasion pierce the
5 skin and draw blood.

6 Now, that -- that is not a brush or a comb. So,
7 in what area were we at fault when it came to
8 instruments? I mean, you know what I'm saying?
9 Forget the hair was in the brush and you don't
10 remember the towel, but how about that -- those sharp
11 instruments? Where were we at fault there?

12 MS. JACKSON: Which one are you reading?

13 (Ms. Primeaux shows document to Ms. Jackson.)

14 MS. JACKSON: Sterilization of -- okay. That
15 doesn't necessarily mean that all instruments are
16 sharp. It just means, as it reads, that it does
17 include sharp instruments. If you will go on and
18 read down here, it also says -- as well as all non-
19 electrical instruments without sharp points. If
20 you'll go ahead and read the whole thing, without
21 sharp points or edges: combs, brushes, blowers, and
22 all instruments and accessories used in all branches
23 of cosmetology including manicuring shall be
24 disinfected. That also includes brushes and combs in
25 there, too, if you go ahead and read that.

1 MS. PRIMEAUX: But we're fined \$150 for that
2 one, and then we're fined \$25 for the brushes.

3 MS. JACKSON: That's up to the board, not me.

4 MS. PRIMEAUX: I don't -- I mean, I don't quite
5 understand that. How can you be fined twice for the
6 same thing? Because it sounds like the same thing,
7 do you understand what I'm saying?

8 And I guess it comes down to, you know, are we
9 just sitting here all day and -- you know, I'm not
10 saying you're telling a lie. Please don't think
11 that. And I'm not accusing my girls I've worked with
12 for five years of telling a lie. But, you know, they
13 say they had towel wrapped -- draped around the
14 client. Well, it all boils down to --

15 HEARING OFFICER: Ms. Primeaux, if we could keep
16 it just to questions right now.

17 MS. PRIMEAUX: Okay.

18 HEARING OFFICER: I'll let you have your say,
19 but to keep things flowing let's get back to the
20 questions, okay?

21 MS. PRIMEAUX: Okay.

22 HEARING OFFICER: Does the board -- do you have
23 any further questions for this witness?

24 MS. PRIMEAUX: No, I do not.

25 HEARING OFFICER: Does the board have any

1 questions for this witness?

2 (No response.)

3 HEARING OFFICER: The board has no questions.

4 Mr. Jochums, you may call your next witness.

5 MR. JOCHUMS: Yes. I'm going to call Kathy

6 Wittum.

7 **THEREUPON,**

8 **TESTIMONY AND EVIDENCE**

9 **GIVEN ON BEHALF OF THE STATE BY**

10 **KATHY WITTUM,**

11 having been called for and on behalf of the
12 State, and having been first duly sworn to tell the
13 truth, testified on her oath as follows, to-wit:

14 **DIRECT EXAMINATION**

15 BY MR. JOCHUMS:

16 Q Kathy, you're the executive and you issued the notice of
17 hearing in this case?

18 A Yes.

19 Q I see in paragraph three that you recommended a civil
20 penalty of \$200?

21 A Yes.

22 Q And would you elaborate on how you came to recommend that?

23 A The \$200 is broken up between the three infractions that
24 were found by Inspector Jackson with \$25 for the neck strips or
25 towels not being properly used, \$150 for the non-electrical

1 instruments not being properly disinfected, and \$25 for the
2 failure to place used instruments in a labeled container.
3 These individual penalties are what the board has typically
4 used in the past on their fee schedule.

5 MR. JOCHUMS: I have no other questions of this
6 witness.

7 HEARING OFFICER: Ms. Primeaux, would you like
8 to ask this witness any questions?

9 MS. PRIMEAUX: As far as Pat?

10 HEARING OFFICER: No, this witness, Ms. Wittum.

11 MS. PRIMEAUX: Oh. No.

12 HEARING OFFICER: Okay.

13 MR. JOCHUMS: I have no additional witnesses at
14 this time.

15 HEARING OFFICER: Ms. Primeaux, you may call
16 your first witness.

17 MS. PRIMEAUX: Okay. Jennifer, I believe was
18 one of the stylists that was --

19 HEARING OFFICER: Okay. Please state your name
20 for the record.

21 MS. TYREE: Jennifer Tyree.

22 HEARING OFFICER: Proceed --

23 MS. PRIMEAUX: Oh. And ask --

24 HEARING OFFICER: -- with your questions.

25 MS. PRIMEAUX: Oh, okay. All right. Jennifer,

1 did you use -- was their a towel draped around your
2 client's neck and clipped in the front?

3 MS. TYREE: To my knowledge -- I'm really busy
4 all day long. I mean, I don't even take a break to
5 eat lunch. And clients are coming in and out, and I
6 can't pinpoint exactly what client I was working on
7 at the time. When Ms. Pat came in, at the time, you
8 know, I mean, I could be putting a client in the
9 chair and hadn't put a towel on her yet, you know,
10 but I do eventually get a towel around my client's
11 neck. But it could be in between taking a cape off,
12 putting it on, loosening it up or something, and
13 taking off -- you know, putting a towel on -- you
14 know, taking one everything off one client and
15 putting it all on a new client. So, yes, I do use a
16 towel.

17 MS. PRIMEAUX: And do you use your "clean" and
18 "dirty" boxes in your drawer correctly?

19 MS. TYREE: Yes. I have one drawer. That's all
20 I have to work out of. I have a "clean" box and a
21 "dirty" box, and so I do use them correctly. And
22 then, I mean, that's my one drawer. So that's what I
23 have "clean" -- labeled, you know, "clean" labeled,
24 "dirty" labeled. So, like we were talking about the
25 hair flying. I mean, I'm opening my drawer I don't

1 know how many times a day. I can't keep up with
2 that. And so I don't know, you know, hair could fly
3 in, you know, when I open it. So that's about as
4 black and white as I can get.

5 MS. PRIMEAUX: Okay. And do we have a
6 sanitation system in the back, --

7 MS. TYREE: Yes.

8 MS. PRIMEAUX: -- as far as, cleaning your
9 brushes, washing them, and then our container?

10 MS. TYREE: Yes. We do.

11 MS. PRIMEAUX: And it is -- is it clearly
12 labeled?

13 MS. TYREE: Uh-huh.

14 MS. PRIMEAUX: And we do that at the end of --

15 MS. TYREE: The day.

16 MS. PRIMEAUX: Okay.

17 MS. TYREE: Or it's, even in the day, when our
18 "dirty" box gets full. You know, take them and go
19 wash them, you know. I mean, that's how I do it.
20 I'm an individual, so that's how I do it. And that's
21 how most of the girls do it at our salon. As soon as
22 that "dirty" box gets full, you go and clean it. So.

23 MS. PRIMEAUX: And then, Valerie was the only
24 other stylist in the salon --

25 HEARING OFFICER: Okay. Are you going to ask

1 her more questions?

2 MS. PRIMEAUX: No more questions.

3 HEARING OFFICER: Okay.

4 MS. PRIMEAUX: All right.

5 HEARING OFFICER: Mr. Jochums, questions for
6 this witness?

7 MR. JOCHUMS: Who -- who actually was there when
8 the inspector came?

9 MS. TYREE: I was.

10 MR. JOCHUMS: It was just the two of you?

11 MS. TYREE: I think so. I don't know if Kayla -

12 -

13 MS. SUNBERG: Kayla was there.

14 MS. TYREE: -- was there.

15 MS. SUNBERG: -- but she wasn't working.

16 MS. PRIMEAUX: They had to go pick up children.

17 We live two hours away.

18 MR. JOCHUMS: Okay. That's -- I understood that
19 you have some other ladies here that were at the
20 salon during the inspection.

21 MS. PRIMEAUX: Right.

22 MR. JOCHUMS: And how long have you been
23 practicing cosmetology?

24 MS. TYREE: Five years.

25 MR. JOCHUMS: No more questions.

1 HEARING OFFICER: Does the board have any
2 questions they would like to ask this witness?

3 (No response.)

4 HEARING OFFICER: The board has no questions.
5 You may call your next witness.

6 MS. PRIMEAUX: Valerie Sunberg, she was also
7 working that day.

8 HEARING OFFICER: Please state your name for the
9 record, please.

10 MS. SUNBERG: Valerie Sunberg.

11 HEARING OFFICER: You may ask your questions.

12 MS. PRIMEAUX: Oh. Okay. Valerie, do you
13 remember that day, having your client draped with a
14 towel?

15 MS. SUNBERG: Yes, I do. Only because it was a
16 mutual friend that Pat's, so I do happen to remember
17 who I had in my chair at the time, just because of
18 that. And yes, I did.

19 MS. PRIMEAUX: And do you have a "clean" and
20 "dirty" containers, clearly labeled at your station?

21 MS. SUNBERG: Yes, I do. I have one drawer, as
22 well. And I actually use my drawer as my "clean"
23 space, and my "dirty" box is on top of my counter,
24 closed. So that's how I keep mine separated.

25 MS. PRIMEAUX: Okay.

1 HEARING OFFICER: Mr. Jochums, do you have any
2 questions for this witness?

3 MR. JOCHUMS: No.

4 HEARING OFFICER: Would the board like to ask
5 this witness any questions?

6 (No response.)

7 HEARING OFFICER: If there are no questions, you
8 may call your next witness.

9 MS. PRIMEAUX: That's it.

10 HEARING OFFICER: Would you like to make a
11 statement on your own behalf. Is there anything you
12 want to tell the board?

13 MS. PRIMEAUX: Yes, I do. Oh, okay. We all are
14 -- we're all hairdressers, and we're in the hair
15 industry. I respect your positions. Your positions
16 is to protect us, and ultimately, our clients who
17 come in. I mean, I realize that they're your top
18 priority. When you're busy, things do happen. We
19 try to the best of our ability to go by all the rules
20 and we want to protect our clients. We want to stay
21 in business. And above all, we want to be considered
22 professionals, because we know that that is a
23 possibility for us at any time, to not be
24 professionals. Without the board, we probably would
25 not be considered professionals. So, you know, we do

1 have monthly meetings. I stress to the girls -- we
2 have someone that comes in and cleans. And to the
3 best of our ability, we do try to follow the rules
4 and regulations. The end of a Friday, and things
5 were hectic, and people are tired, is it possible?
6 Well, sure it's possible. We're busy, and it
7 happens. Well, it was a mistake, but it happened.
8 But it did not happen because we were not trying to
9 the best of our ability to follow the rules and
10 regulations.

11 HEARING OFFICER: Mr. Jochums, do you have --

12 MS. PRIMEAUX: Oh --

13 HEARING OFFICER: Wait. I'm sorry. Please
14 finish.

15 MS. PRIMEAUX: Oh, okay. And also, since I do
16 booth rental, each girl does -- has her own station.
17 They're supposed to be taking care of their own.
18 They're their own little entity. On -- when they're
19 written up, if I don't know who, because they are
20 usually told by Ms. Pat, everything looks good.
21 Great. We'll see you next time. But unless I know
22 specifically who is at fault and in what area, then
23 there's no way for me to go and say, okay. It's --
24 let's up-it-up. Let's up the sanitation. Let's do
25 whatever. So it's a little difficult to know which

1 girl to point the finger at and say, hey, you were
2 out of line. Let's do a better job. Now, I'm
3 through.

4 MR. JOCHUMS: Let me ask you this. Are you also
5 a licensed hairdresser?

6 MS. PRIMEAUX: Yes. I'm a licensed hairdresser
7 and instructor.

8 MR. JOCHUMS: All right. But you're not
9 currently working in the salon --

10 MS. PRIMEAUX: One day a week.

11 MS. JACKSON: And also, there's an asterisk on
12 the inspection report that shows which stylists were
13 in -- violation.

14 MS. POWELL: I'm sorry. I didn't hear that.
15 There's an asterisk on their --

16 MS. JACKSON: Uh-huh. One by Kayla and
17 Jennifer. Is there not a little star on you-all's --

18 MS. WITTUM: Yes.

19 MS. JACKSON: -- report? Okay. That normally
20 is -- I do that for the salon owner, especially when
21 they are not there, so that they will know where the
22 violation occurred.

23 MS. PRIMEAUX: Kayla was not working. She said
24 she didn't even have a client that day, so in what
25 area --

1 MS. JACKSON: I couldn't tell you, I just -- I
2 put that there for that purpose. It could have been
3 her drawer that had the dirty instruments. I don't
4 recall that. I'm just saying that was the stations I
5 was at that had the violations were those two.

6 MR. JOCHUMS: I don't have any questions.

7 HEARING OFFICER: Does the board have any
8 questions they would like to ask this witness?

9 (No response.)

10 HEARING OFFICER: If there are no questions,
11 we'll move to closing arguments.

12 MR. JOCHUMS: I -- we have a question here for
13 the board to determine that the facts from the
14 evidence that's been given. That's your call.

15 HEARING OFFICER: Ms. Primeaux, closing
16 arguments? Is there anything else you'd like to tell
17 the board before they make their decision?

18 MS. PRIMEAUX: Well, -- no, not concerning
19 what's here. I think we've pretty well said it all.
20 And really, you know, when we come to these meetings,
21 what do we have as our defense? I mean, you've got
22 character letters saying you're honest and that that
23 you try to run your business according to law. You
24 bring pictures of your salon on the dirtiest day. I
25 mean, other than that, it's just your word. That's

1 all you have.

2 HEARING OFFICER: If there's nothing further at
3 this time, the record will be closed and complete for
4 the evidentiary portion. The board will now
5 deliberate and we will go back on the record to make
6 a motion.

7 (WHEREUPON, discussion and deliberations were
8 had by the board, after which proceedings resumed as
9 follows, to-wit:)

10 HEARING OFFICER: We are back on the record and
11 the board will now make a motion.

12 State your motion, Ms. West.

13 MS. WEST: I make a motion concerning this case.
14 Finding the allegations being true, I move to order
15 the respondent to pay a fine in the amount of \$100
16 payable within 30 days of receipt of the board's
17 order. Further the respondent is ordered to cease
18 and desist from practicing cosmetology and/or
19 operating a cosmetology establishment until such time
20 as the respondent is properly licensed by the board.

21 That's not the right one.

22 MS. TRAYLOR: No.

23 MS. WEST: Finding the allegations being true --

24 MS. POWELL: That was the one you just read,
25 right?

1 MS. WEST: Right.

2 MS. POWELL: I have a motion, do I have a
3 second.

4 MS. PICKERING: Second.

5 MS. POWELL: I have a second. Is there any
6 discussion?

7 (No response.)

8 MS. POWELL: All those in favor of the
9 respondent to pay a fine in the amount of \$100, raise
10 your right hand.

11 (Show of hands.)

12 MS. POWELL: All those opposed?

13 (Show of hands.)

14 MS. POWELL: Motion carries. Respondent is to
15 pay a fine of \$100.

16 HEARING OFFICER: A motion has passed in the
17 matter of 07-064. The board's decision will be
18 reduced to writing and it will be served upon the
19 respondent. If you wish to take appeal, that is
20 available under the Administrative Procedures Act 25-
21 15-201.

22 If there are no other questions and comments at
23 this time?

24 (No response.)

25 HEARING OFFICER: -- okay. The hearing is

1 concluded, and the record is closed. Thank you.

2 **HEARING ORDER NO. 07-063: PHUONG TRAN**

3 HEARING OFFICER: Phuong Tran, 07-063.

4 (Respondent comes forward.)

5 HEARING OFFICER: The matter currently before
6 the Arkansas State Cosmetology Board on September 18,
7 2006 is a Mr. Phuong Tran. And it is No. 07-063.
8 Would the respondent please state your full name for
9 the record, sir?

10 MR. TRAN: Phuong Tran.

11 HEARING OFFICER: And would the court reporter
12 like that spelled?

13 COURT REPORTER: No.

14 HEARING OFFICER: And for the State, counsel?

15 MR. JOCHUMS: My name is Arnold Jochums. I'll
16 be presenting this case to the board.

17 HEARING OFFICER: Sir, were you here earlier to
18 be sworn in as a witness?

19 MR. TRAN: No.

20 HEARING OFFICER: If you will, raise your right
21 hand. The court reporter will swear you in.

22 (WITNESS SWORN.)

23 HEARING OFFICER: Thank you. Are there any
24 preliminary matters at this time?

25 MR. JOCHUMS: Yes, Madam Hearing Officer, I ask

1 to make Board's Exhibit 1, the conveyance letter, the
2 notice of hearing, and also the inspection report
3 made on Magic Nail.

4 HEARING OFFICER: That packet of information
5 will be introduced and admitted as Exhibit 1.

6 (WHEREUPON, Board's Exhibit No. 1 to HO#07-063,
7 having been identified for the record, was admitted
8 into evidence and marked to append.)

9 MR. JOCHUMS: I also ask that we incorporate the
10 board regulations, statutes, and rules into the
11 record by reference.

12 HEARING OFFICER: That will be done.

13 (WHEREUPON, Board's Exhibit No. 2 to HO#07-063
14 having been identified for the record as the statutes
15 and rules of the board governing the hearing, were
16 incorporated into the record and made a part hereof
17 by reference.)

18 HEARING OFFICER: Mr. Tran, do you have any
19 documents you would like to introduce as exhibits for
20 the board to look at today?

21 MR. TRAN: Yes, ma'am. I just -- I don't have
22 nothing, but I just wanted to -- I had couple of
23 violen [phonetic], but I don't think that's right.

24 HEARING OFFICER: Okay, Mr. Tran. We'll get to
25 that in just a minute. You'll get to make your

1 statement, but do you have any documents that you
2 wish to present to the board?

3 MR. TRAN: No, ma'am.

4 HEARING OFFICER: Okay. That's fine. Mr.
5 Jochums, you may call your first witness.

6 MR. JOCHUMS: Inspector Caudle.

7 MS. CAUDLE: Yes, sir.

8 **THEREUPON,**

9 **TESTIMONY AND EVIDENCE**
10 **GIVEN ON BEHALF OF THE STATE BY**
11 **INSPECTOR SHEILA CAUDLE,**

12 having been called for and on behalf of the
13 State, and having been first duly sworn to tell the
14 truth, testified on her oath as follows, to-wit:

15 **DIRECT EXAMINATION**

16 BY MR. JOCHUMS:

17 Q You are an inspector for this board?

18 A I am.

19 Q Are you here with the Magic Nail establishment in
20 Russellville?

21 A Yes, sir.

22 Q And do you know the respondent here today?

23 A Do I know him?

24 Q Meaning have you had prior contact with him before today?

25 A Yes. Because he's in a salon, yes, sir.

1 Q And did you go to that salon in May of this year?

2 A Yes, sir.

3 Q And did you discover a number of violations?

4 A Yes, sir. I have some health and safety violations there.
5 When I done my inspection on May 17th, the front door was open.
6 It has no screen covering whatsoever on it. It was just
7 standing open. There was used buffers and nail files at
8 several of the stations. It has several stations set up in the
9 salon. You could tell that they were being repeatedly used
10 without being disinfected between each client. Especially the
11 buffers, because most of the grit was gone from the buffers.
12 And all the used implements were not being placed in a labeled
13 container, and the disinfected ones were not being stored in a
14 clean, covered place. Also, I had him to remove the screens on
15 the pedicure chairs. And they were very dirty and clogged with
16 products through the pedicure cloth.

17 Q Was the gentleman that's here today, present when you were
18 there?

19 A Yes, sir.

20 Q Okay. I notice there's five names listed on the
21 inspection report.

22 A There were three people there that day.

23 Q Okay. There were actually two of these present?

24 A Yes, sir.

25 Q One of these violations has to do with devices or tools

1 that don't have motors or non-electrical items are to be
2 disinfected by a wash for a certain amount of time?

3 A Yes, sir.

4 Q Could you tell us about this --

5 A That is they have to be disinfected for ten minutes in an
6 EPA-registered disinfectant before use on a client.

7 Q And you've got that marked no on this inspection report?

8 A Yes, sir.

9 Q What led you to that conclusion? Did you not see anything
10 --

11 A Well, just like I just testified, that it's that they
12 weren't disinfecting. They were reusing on clients.

13 MR. JOCHUMS: I have no other questions of the
14 inspector.

15 HEARING OFFICER: Mr. Tran, would you like to
16 ask the inspector any questions?

17 MR. TRAN: Uh, --

18 HEARING OFFICER: Any questions you might have
19 for her?

20 MR. TRAN: Yes, ma'am. First thing, just the
21 front door. I just leave open for fifteen minute,
22 let it air-freshen.

23 HEARING OFFICER: Right. But -

24 MR. TRAN: Just fifteen.

25 HEARING OFFICER: -- do you have any questions?

1 MS. CAUDLE: Questions for me.

2 HEARING OFFICER: Is there anything you want to
3 ask her?

4 MR. TRAN: That's what I wanted to ask her.

5 HEARING OFFICER: Okay.

6 MS. CAUDLE: It was open when I came in.

7 MR. TRAN: Yes, ma'am. Just when you come in, I
8 just open it. And then just let the air freshen
9 fifteen, and then I start closing.

10 MS. CAUDLE: Okay.

11 MR. TRAN: So that's why. And when you walk in,
12 you write it down. And I got, you know, fined for
13 that door. And plus, the pedicurist chair, I bleach
14 every day.

15 MS. CAUDLE: But you have to clean those screens
16 off.

17 MR. TRAN: Yes, ma'am. But I wasn't know,
18 because once you -- the car's broke down, you don't
19 know what's wrong with that.

20 MS. CAUDLE: Right.

21 MR. TRAN: But you also do -- change the tires
22 every day, so you sanitize every day.

23 MS. CAUDLE: Uh-huh.

24 MR. TRAN: So you got that fine down, so that's
25 why I come up here to sit here to hearing for it.

1 MS. CAUDLE: Right.

2 MR. TRAN: Because I want to make sure, you
3 know, I learn my lesson that everything --

4 MS. CAUDLE: Phuong, that's not up to me.
5 That's up to them.

6 MR. TRAN: Right.

7 HEARING OFFICER: Do you have any questions
8 relating to the inspection that she did or the
9 information in her report that you want to ask her?

10 MR. TRAN: Uhm, that's --

11 HEARING OFFICER: I'll give you a chance to say
12 everything you want to in just a moment.

13 MS. CAUDLE: Do you have any problems with any
14 of this? Is any of this untrue?

15 MR. TRAN: No problem.

16 HEARING OFFICER: Okay. Does the board have any
17 questions for this witness?

18 (No response.)

19 HEARING OFFICER: There are none. Mr. Jochums,
20 you may call your next witness.

21 MR. JOCHUMS: Yes. I want to call Kathy Wittum.

22 **THEREUPON,**

23 **TESTIMONY AND EVIDENCE**

24 **GIVEN ON BEHALF OF THE STATE BY**

25 **KATHY WITTUM,**

1 having been called for and on behalf of the
2 State, and having been first duly sworn to tell the
3 truth, testified on her oath as follows, to-wit:

4 **DIRECT EXAMINATION**

5 BY MR. JOCHUMS:

6 Q Kathy, you're the executive director?

7 A Yes.

8 Q And you prepared the notice of hearing today, I see in
9 paragraph three the recommended civil penalty of \$250. What
10 was that recommendation based on?

11 A Those are based upon the infractions that were noted on
12 the inspection report, and the fees typically used by the
13 board's fee schedule were applied.

14 MR. JOCHUMS: I have no other questions for this
15 witness.

16 HEARING OFFICER: Does the board have any
17 questions?

18 (No response.)

19 HEARING OFFICER: Mr. Tran, do you have any
20 questions related to what Ms. Wittum just said?

21 MR. TRAN: I have no question.

22 MR. JOCHUMS: I have no further testimony to
23 present at this time.

24 HEARING OFFICER: Mr. Tran, go ahead and tell us
25 what you were -- or tell the board what you want them

1 to hear.

2 MR. TRAN: I just want to come here and talk
3 about I was violen [phonetic] for files and buffer.
4 That's the only thing I was violen [phonetic]. And
5 the screen, the front door, I don't think that's
6 really good idea to give me fine for it. Because
7 when you own the salon and you want have the fresh
8 air every time you open the business, morning. So
9 you just want to leave it open for a few minutes, let
10 the freshness in. That's the first thing, everybody
11 walk in to let open first. And then you stop cold,
12 because summer is supposed to be real hot. You don't
13 want to open the front doors all day long. So I just
14 -- we always do it that way. And I know that's the
15 rule, so I stopped doing that.

16 And about the pedicure, I was bleach every day
17 to sanitize. So I didn't realize not you got to
18 scoot the things off and just clean them up until she
19 told me. So now I start doing it every day. So
20 follow the rules.

21 That's the only thing I need to talk to you
22 guys, about what I need to do, what I need to learn.
23 Actually, you got to learn every day. So -- if
24 anyone you got to give a chance. So you cannot fine,
25 you know, that warning. Oh, you got to do this,

1 okay? We got no what we need to do. Every day you
2 got a new law, new rules, so --

3 (Pause.)

4 MR. TRAN: That's all I wanted to say.

5 HEARING OFFICER: Okay. Mr. Jochums, do you
6 have any questions for Mr. Tran?

7 MR. JOCHUMS: Well, -- back up to the rules.
8 Are you talking about some kind of buffer wheel --

9 MR. TRAN: No, no, no. That's the -- not the
10 buffer wheel. Just the buffer, when you using to
11 smooth them, the fingernail. It just the buffer.

12 MR. JOCHUMS: Maybe the other witness can tell
13 us what that is.

14 MS. CAUDLE: It's the pedicure/spa chair. It's
15 a chair with half the tub on it. There's a screen on
16 there, --

17 MR. TRAN: Yeah.

18 MS. CAUDLE: -- that you have to take that off.
19 It's like a screen that catches any debris to keep it
20 from going down. That has to be taken off at least -
21 - at least, at the minimal, once a week and cleaned
22 because all the lotions and oils that you use during
23 a pedicure collect on that. When you put the warm
24 water into that tub spa, that's where your bacteria
25 and things breed, because of the gunk on that screen

1 and the warm water mixed with it, breeds bacteria.

2 MR. TRAN: Right. That's what I bleached every
3 day, but I didn't know to get it open.

4 MR. JOCHUMS: But -- let me just see if I
5 understood you. Did you -- did you say that you
6 agreed that these other violations happened, other
7 than the screen-door?

8 MR. TRAN: Yes, sir.

9 MR. JOCHUMS: I have no further questions.

10 HEARING OFFICER: Would the board like to ask
11 Mr. Tran any questions?

12 MS. POWELL: I'd like to ask Mr. Tran one
13 question.

14 HEARING OFFICER: Okay.

15 MS. POWELL: Mr. Tran, what time was it when the
16 inspector came by?

17 MR. TRAN: I think it's around 9:30. Should be
18 around early morning.

19 MS. POWELL: Pardon me?

20 MR. TRAN: About 9:30, around there.

21 MS. POWELL: What time does your salon open?

22 MR. TRAN: It starts at 10:00.

23 MS. POWELL: So at 9:30?

24 MR. TRAN: Yes, ma'am.

25 MS. POWELL: And how long have you owned the spa

1 pedicure equipment?

2 MR. TRAN: About a year and half now.

3 MS. POWELL: One and a half years?

4 MR. TRAN: Yes, ma'am.

5 MS. POWELL: And did it come with instructions?

6 MR. TRAN: No, ma'am. All that does is just
7 send up the spa and we just put it up together.

8 MS. POWELL: Did you purchase that equipment
9 new?

10 MR. TRAN: Yes, ma'am.

11 MS. POWELL: Did you receive any type of product
12 information or anything?

13 MR. TRAN: No.

14 MS. CAUDLE: Some type of product manual or
15 anything?

16 MR. TRAN: No. But just --

17 (Multiple conversations taking place at once.)

18 MS. POWELL: Pardon me?

19 MR. TRAN: But I know you supposed to bleach
20 every day, so this is supposed to be sanitize. Kill
21 everything, as a bleach.

22 MS. POWELL: Are you in an establishment that is
23 free-standing, independent or you off in a group of
24 buildings or -- what is your set-up?

25 MR. TRAN: Uh, what you mean? I don't get it.

1 MS. POWELL: Is this a building with one
2 building, or is this a building that your business is
3 there, --

4 MR. TRAN: Oh, they got another --

5 MS. POWELL: Several businesses.

6 MR. TRAN: Yeah, several business, too.

7 MS. POWELL: Like a strip-mall or something?

8 MR. TRAN: It just -- kind of like a just a
9 building, but they got several.

10 MS. POWELL: Thank you.

11 MR. TRAN: It just like Mail Room and stuff like
12 that.

13 MS. POWELL: Do you have adequate heating and
14 air?

15 MR. TRAN: No.

16 MS. POWELL: You do not?

17 (No response.)

18 MS. CAUDLE: I don't think he understood that,
19 Ms. Powell.

20 MS. POWELL: Oh. Do you -- do you have air
21 conditioning and heating in your building?

22 MR. TRAN: Oh, yes, ma'am.

23 MS. POWELL: You do?

24 MR. TRAN: Uh-huh. We also had to exhaust
25 everything to get it.

1 MS. POWELL: You had a new exhaust system put
2 in?

3 MR. TRAN: Everything is in there.

4 MS. POWELL: Okay. Thank you.

5 MS. PICKERING: I think Jane asked about
6 everything, except for the tub -- except for that.
7 Did you buy this tub new? The --

8 MR. TRAN: Yes, ma'am.

9 MS. PICKERING: You bought it new?

10 MR. TRAN: They just send the whole box, new,
11 and we hooked up together.

12 MS. PICKERING: Okay. But -- and they did not
13 have instructions?

14 MR. TRAN: No, ma'am. They don't have no menus
15 for it.

16 MS. PICKERING: Or you didn't get any?

17 MR. TRAN: Correct.

18 (Pause.)

19 HEARING OFFICER: Are there any other questions
20 from the board members?

21 (No response.)

22 HEARING OFFICER: There are none. Mr. Jochums,
23 any closing arguments?

24 MR. JOCHUMS: No, I'll waive closing.

25 HEARING OFFICER: Mr. Tran, is there anything

1 else that you would like for the board to know before
2 they make a decision on this?

3 MR. TRAN: No, ma'am.

4 HEARING OFFICER: At this time, we'll go off the
5 record for the board to deliberate, and come back on
6 when they're ready to make a motion.

7 (WHEREUPON, discussion and deliberations were
8 had by the board, after which proceedings resumed as
9 follows, to-wit:)

10 HEARING OFFICER: We're back on the record to
11 take a motion to the board?

12 MS. TRAYLOR: Finding the allegations being
13 true, I move that we fine Mr. Phuong \$250 payable
14 within 30 days or a dismissal of his establishment
15 license.

16 HEARING OFFICER: Just a clarification. It's
17 Tran, not Phuong.

18 MS. POWELL: Okay. I have a motion.

19 MS. TURMAN: Second.

20 MS. POWELL: I have a second. The respondent is
21 ordered to pay a \$250 civil penalty.

22 (Pause.)

23 MS. POWELL: I have a motion and a second for
24 the respondent to pay a fine of \$250. Is there any
25 discussion?

1 (No response.)

2 MS. POWELL: All those in favor, raise your
3 right hand.

4 (Show of hands.)

5 MS. POWELL: It's unanimous. Motion carries.

6 HEARING OFFICER: Let the record reflect that
7 the decision of the board is unanimous. It will be
8 reduced to writing and sent to Mr. Tran, the
9 respondent. If you care to take an appeal of this
10 decision, you can do so under the Administrative
11 Procedures Act 25-15-201. Are there any other
12 questions or comments?

13 (No response.)

14 HEARING OFFICER: There being none, this hearing
15 is concluded and the record is closed.

16 MS. CAUDLE: Do you understand what she said?

17 MR. TRAN: Yeah. They're going to fine me.

18 HEARING OFFICER: Donna Rollins,

19 (Respondent comes forward.)

20 **HEARING ORDER NO. 07-088: DONNA ROLLINS**

21 HEARING OFFICER: The matter currently before
22 the Cosmetology Board is that of Donna Rollins, 07-
23 088. The date today is September 18, 2006, and we
24 are located in the Main Street Mall.

25 Would the respondent please state your name for

1 the record?

2 MS. ROLLINS: Donna Rollins.

3 HEARING OFFICER: And the board's counsel?

4 MR. JOCHUMS: Arnold Jochums, and I'll present
5 the case to the board.

6 HEARING OFFICER: Ms. Rollins, were you here
7 earlier to be sworn in?

8 MS. ROLLINS: No, I was not.

9 HEARING OFFICER: Please raise your right hand
10 and we'll have the court reporter swear you in at
11 this time, along with any witnesses that you may
12 call.

13 (Court reporter swears witnesses.)

14 HEARING OFFICER: Preliminary matters, Mr.
15 Jochums?

16 MR. JOCHUMS: Yes. I'd like to ask that the
17 group exhibit made up of a cover letter, the notice
18 of hearing, and the inspection report be admitted as
19 Board Exhibit 1.

20 HEARING OFFICER: That will be admitted as
21 Exhibit 1.

22 (WHEREUPON, Board's Exhibit No. 1 to HO#07-088,
23 having been identified for the record, was admitted
24 into evidence and marked to append.)

25 HEARING OFFICER: Anything further?

1 MR. JOCHUMS: I'd ask that the board's
2 regulations be incorporated into the record by
3 reference.

4 HEARING OFFICER: And they will be.

5 (WHEREUPON, Board's Exhibit No. 2 to HO#07-088
6 having been identified for the record as the statues
7 and rules of the board governing the hearing, were
8 incorporated into the record and made a part hereof
9 by reference.)

10 HEARING OFFICER: Is there any evidence that you
11 would like to have presented to the board, any
12 exhibits you'd like to make to the board?

13 MS. ROLLINS: Yes.

14 HEARING OFFICER: At this time, would you bring
15 those up to Mr. Jochums.

16 MS. ROLLINS: It's pertaining to a couple of
17 different things.

18 MR. JOCHUMS: I don't have any objections. She
19 can just tell us what they are.

20 HEARING OFFICER: Okay. We'll let you do that
21 as we go on, then.

22 (WHEREUPON, Respondent's Exhibit No. 1 to HO#07-
23 088 was received into evidence and marked to append.)

24 MS. ROLLINS: That'd be fine.

25 HEARING OFFICER: Opening statements, Mr.

1 Jochums?

2 MR. JOCHUMS: Yes. In this case, we have
3 alleged and you'll hear testimony to show that the
4 owner, Ms. Rollins, was operating an establishment
5 that didn't have the license, that all of the various
6 people that worked there had licenses that were not
7 all posted or current, and the business signs weren't
8 visibly displayed outside. We will have the
9 inspector and Ms. Wittum.

10 HEARING OFFICER: Would you like to make an
11 opening statement?

12 MS. ROLLINS: Yes. Actually, I was in the
13 process of getting it going. But there was not any
14 operators there. I didn't -- it was not officially
15 open. There was -- we were working on the building
16 and -- the one thing that I was -- I think that
17 should be redone, and I misunderstood was that I
18 thought on the letter to get the sign, that I had two
19 weeks before opening date. I've been doing hair for
20 20 years and I've tried to -- but even -- I thought
21 that I could not send this off until I was ready to
22 open and I only had two weeks to do so. And it says
23 to file this, you have two weeks before your opening
24 date. And as long as I've been doing hair -- well, I
25 went in and set up my things. So actually, I had my

1 things there. We're still remodeling the building.
2 There's another business inside the building that she
3 was a nutritionist -- a nutrition center that was
4 there. And she was -- I was not there. And another
5 girl, we had our stuff set up and everything. And I
6 had thought, I am not ready to open this. That lady
7 had her little part ready, but I wasn't ready. I
8 didn't send this in, because I didn't think I was
9 supposed to. For -- I thought I had only two weeks,
10 and I thought, there's no way I can get this building
11 completed. And so therefore, I didn't -- until she
12 brought it to my attention, said I needed to do this.
13 Actually, I wasn't officially open for business for
14 all. And the reason she showed up was, I believe,
15 just a personal vendetta from where I worked prior.
16 But for about three days, I finished the people that
17 were on my book and I did some family members. And I
18 wasn't there the day that she -- that day I wasn't
19 there. I wasn't officially open for business. I
20 finished up my appointment book from the last one. I
21 was there less than a week, I'd say three days max,
22 doing hair with no license. So that is true, but it
23 was from the misunderstanding of this (indicating).

24 HEARING OFFICER: Mr. Jochums, you may call your
25 first witness.

1 **THEREUPON,**

2 **TESTIMONY AND EVIDENCE**

3 **GIVEN ON BEHALF OF THE STATE BY**

4 **INSPECTOR LAVONNE LESTER,**

5 having been called for and on behalf of the
6 State, and having been first duly sworn to tell the
7 truth, testified on her oath as follows, to-wit:

8 **DIRECT EXAMINATION**

9 BY MR. JOCHUMS:

10 Q Ma'am, can you state your name, please?

11 A LaVonne Lester.

12 Q Ms. Lester, are you a board inspector?

13 A Yes, I am.

14 Q And did you have occasion to go to Harrison Street Salon &
15 Spa in Harrison, Arkansas on June 2?

16 A In Batesville.

17 Q In Batesville?

18 A Uh-huh, yes. Yes. June 2nd, I was there.

19 Q And --

20 A I would like to say that the reason that I went to this
21 location was because of a -- someone asking me had I been to
22 that salon, that new salon that's down the street. And I said,
23 well, no. I didn't know there was one there. And so they told
24 me where it was, and I went there, so.

25 Q Okay. And what -- what did you observe when you went to

1 the salon?

2 A I guess my first observation would have been that there
3 was no sign or anything on the -- it was like an old house.
4 And there was no signs out or anything like that. I did go --
5 go to the door, and went in. As you enter the salon, there's a
6 large room with a reception desk. And there was a receptionist
7 there, and I spoke with her and introduced myself. I told her
8 that I was there to inspect the salon. And I could see that
9 there was a salon set up. And so she just let me go ahead and
10 look around, and it appeared to me that someone had been
11 working there. And there were two stations set up in the first
12 room. And then I found that there was another room behind
13 there that had another station set up back there. And they had
14 shampoo bowls, supply cabinets, plenty of supplies. There were
15 dirty towels in the towel hamper. There was trash in the trash
16 can. And it appeared to me that someone had been working
17 there.

18 Q Okay. I notice on your inspection report, you have two
19 names written down on the second page?

20 A Yes. This is Donna Rollins. That's one of them. She
21 worked in the back area. That was her area.

22 Q Was she the one that was called down?

23 A No, but she did speak with me.

24 MS. ROLLINS: On the phone, yeah.

25 BY THE WITNESS:

1 A Yes.

2 BY MR. JOCHUMS:

3 Q And the other name is Kirby?

4 A Kirby Ann Chisam. The receptionist called her. She -- no
5 one was -- no operators were there when I entered, but the
6 receptionist called her and she came down. And during the time
7 I was there doing my inspection, she was -- she started --
8 proceeded to do a haircut.

9 Q A client came in?

10 A And -- yes. And when I asked her for her license, the
11 only thing she could find was her little purse license and
12 that's what she showed me.

13 MS. ROLLINS: She is a licensed cosmetologist.

14 And her license, in trying to move and set up, it was
15 in the box right beside her.

16 HEARING OFFICER: Wait. We want to try to keep
17 this focused on questions for the witness.

18 BY MR. JOCHUMS:

19 Q I'll go on. Did -- were either of these two people's
20 licenses posted?

21 A Yes. Donna's was posted.

22 Q Donna's license was posted.

23 A Uh-huh. Uh-huh.

24 Q But the other one wasn't -- but Kirby's wasn't?

25 A Kirby's was not.

1 Q You've already told us that there was no sign on the
2 outside --

3 A No sign.

4 Q -- that you saw?

5 A Huh-uh.

6 Q Did you say whether there was a shop license posted?

7 A No. There was no salon license.

8 Q Okay. Right. And in fact the shop license had not been
9 issued?

10 A No, huh-uh.

11 Q All right. And you described at least two stations, was
12 that all there was?

13 A There were two stations in the first room.

14 Q Okay.

15 A And then there was another room that had another station
16 in it.

17 Q Oh. So a total of three stations.

18 A Uh-huh.

19 Q And did it appear that any of the three stations were
20 being used or could be used to provide cosmetology services?

21 A Yes, definitely.

22 Q One of them, two of them, three of them?

23 A At least two.

24 Q At least two.

25 A Uh-huh.

1 Q Now did you note also some health and safety violations?

2 A Uhm -- I don't happen to see that. (Leafing through
3 documents.) No. Huh-uh. Yeah, but the other thing I do note
4 here is that the appointment book that I checked, had
5 appointments all the way back to January. And so that
6 confirmed to me that, you know, someone had indeed been working
7 there. I didn't, at that time, know for how long.

8 MR. JOCHUMS: I don't think I have any other
9 questions for this witness at this time.

10 HEARING OFFICER: Ms. Rollins, would you like to
11 ask the inspector any questions?

12 MS. ROLLINS: When you got there, were there any
13 stylists at all there?

14 MS. LESTER: Huh-uh. No.

15 MS. ROLLINS: They came after they were called?

16 MS. LESTER: Uh-huh.

17 MS. ROLLINS: Was the other business --

18 HEARING OFFICER: Would you please speak up so
19 that everyone can hear you?

20 MS. ROLLINS: Oh, I'm sorry. Would the business
21 -- the other business being in there, my
22 understanding was that it was this lady's customers,
23 a little boy or something that wanted a haircut. And
24 she asked Kirby if she would do a haircut, and she
25 proceeded to do so.

1 MS. LESTER: I mean, I don't --

2 MS. ROLLINS: Are the --

3 MS. LESTER: -- I don't remember that, but.

4 MS. ROLLINS: Did she come rolling in ready to
5 work or did she come in because she was called?

6 MS. LESTER: I believe she came down because the
7 receptionist had called her, but I don't know if the
8 receptionist called her to come do the haircut or to
9 some see me. I didn't really know which.

10 MS. ROLLINS: Okay. I don't know of any other
11 questions to ask her.

12 HEARING OFFICER: Okay. Does the board have any
13 questions they would like to ask this witness?

14 (No response.)

15 MS. WARD: I have a quick question of LaVonne.

16 HEARING OFFICER: Okay.

17 MS. WARD: LaVonne, on this inspection report
18 that you have here on June 2, '06. Kirby Chisam
19 signed this as a salon -- she signed as owner, is
20 that what that is?

21 MS. LESTER: She's -- yeah. Kirby Chisam signed
22 it because she was the only one there to sign it at
23 that time.

24 MS. POWELL: So this -- the -- these two ladies
25 here, were not there?

1 MS. LESTER: No.

2 MS. ROLLINS: I wasn't ready to open yet, that's
3 why.

4 HEARING OFFICER: Let's hear -- keep with the
5 questions. You'll have some time, I promise you, to
6 make your statement.

7 Any further questions for this witness?

8 (Pause.)

9 HEARING OFFICER: If there are no further
10 questions --

11 MS. PICKERING: I need to -- I need LaVonne to
12 explain. There were three stations in this building,
13 but there was no license for her to operate --

14 MS. LESTER: Huh-uh.

15 MS. PICKERING: -- at either station?

16 MS. LESTER: Right. Her personal license were
17 posted at her sation.

18 MS. PICKERING: Okay. Just her personal
19 license, but no --

20 MS. LESTER: No salon license.

21 MS. PICKERING: But yet, you said --

22 MS. LESTER: Donna. It's wrong.

23 MS. PICKERING: Okay.

24 MS. LESTER: It's wrong.

25 MS. PICKERING: Okay. You said that there was

1 one salon owner, a lady that did haircuts, so why was
2 she doing a haircut if you do not have your shop
3 license?

4 MS. ROLLINS: Because. --

5 HEARING OFFICER: Wait, wait. If that question
6 is for Ms. Rollins, let's wait. I'll limit it
7 because she's not the witness -- yet. Okay? Just
8 trying to keep it all clear.

9 So, are there any questions for Ms. Lester to
10 the board.

11 (No response.)

12 HEARING OFFICER: If there are none, Mr.
13 Jochums, you may call your next witness. This is
14 Kathy Wittum.

15 **THEREUPON,**

16 **TESTIMONY AND EVIDENCE**

17 **GIVEN ON BEHALF OF THE STATE BY**

18 **KATHY WITTUM,**

19 having been called for and on behalf of the
20 State, and having been first duly sworn to tell the
21 truth, testified on her oath as follows, to-wit:

22 **DIRECT EXAMINATION**

23 BY MR. JOCHUMS:

24 Q Ms. Wittum, you are the executive director, and did you
25 prepare the notice of hearing in this case?

1 A yes.

2 Q And I see in paragraph four, that you have -- well, I
3 actually see in paragraph three that the respondent has become
4 licensed since the inspector's visit?

5 A Yes.

6 Q And in paragraph four, you make a recommendation for civil
7 penalty in the amount of \$210. Could you share with the board,
8 share with us, the rationale for that type of fine?

9 A Those are based upon the infractions noted in Ms. Lester's
10 inspection report. Each one of those are pertaining to the fee
11 schedule that the board has typically used in the past.

12 MR. JOCHUMS: Thank you. I have no other
13 questions of this witness.

14 HEARING OFFICER: Ms. Rollins, do you have any
15 questions that you would like to ask this witness?

16 MS. ROLLINS: No. I've got some things to
17 verify some things that she --

18 MR. JOCHUMS: I'm going to -- I have no
19 additional witnesses for the State.

20 HEARING OFFICER: Okay. Does the board have any
21 questions of Ms. Wittum?

22 (No response.)

23 HEARING OFFICER: Okay. Ms. Rollins, call your
24 first witness.

25 (Pause.)

1 HEARING OFFICER: Are you going to have a
2 witness?

3 MS. ROLLINS: I can ask her questions, can't I?

4 HEARING OFFICER: Yes.

5 MS. ROLLINS: Okay. The reason she's here is
6 that, on one of the violations, that I was said to be
7 violating. There -- the book was backed up until
8 January. And she called me in October to be my
9 assistant. And she did not put her office, I
10 believe, July. And she called me in May to make sure
11 that it was --

12 HEARING OFFICER: Where's the question?

13 MS. ROLLINS: The question is to make sure that
14 I -- she could still be my assistant.

15 HEARING OFFICER: But what question are you
16 going to ask?

17 MS. ROLLINS: I was not at this establishment
18 since January. I'm trying to prove that I was not
19 there, so -- Danielle, you called me in October of
20 '05, wanting to be my assistant at the place I was
21 previously working at, which was G's Salon. And when
22 did you call me to -- again, to make sure that you
23 still would be my assistant?

24 MS. BURMAN: It started in May when I was
25 getting ready to graduate, and she was still at G's.

1 And I was calling to see if I was still going to be
2 her assistant and still working there at G's. She
3 still had a spot there.

4 MS. ROLLINS: And where was -- what was -- where
5 is G's?

6 MS. BURMAN: G's is own Harrison Street.

7 MS. ROLLINS: Is that the old salon or the new
8 one?

9 MS. BURMAN: Yeah, the old salon.

10 MS. ROLLINS: So I was still at the old salon at
11 G's, when you called me to verify your job?

12 MS. BURMAN: Yes.

13 MS. ROLLINS: Okay. And -- I've just got to
14 show I was not there, so -- January. And I do have
15 pictures. And I also have some billing statements
16 that go to that address, with the dates on them.

17 HEARING OFFICER: Do you have any more questions
18 for this witness?

19 MS. ROLLINS: No.

20 HEARING OFFICER: Mr. Jochums, would you like to
21 ask this witness some questions?

22 MR. JOCHUMS: Where -- where did you intend to
23 be working when you called?

24 MS. BURMAN: Where do I attend?

25 MR. JOCHUMS: Where did you plan on working when

1 --

2 MS. ROLLINS: When you first --

3 MS. BURMAN: Oh, at G's, the old salon, up from
4 the new salon.

5 MR. JOCHUMS: And you say in June, you talked to
6 her at the old salon?

7 MS. BURMAN: Yes. In May -- I talked to her.

8 MR. JOCHUMS: In May, I'm sorry. And did --
9 what did she say about being in the new salon then?

10 MS. BURMAN: She didn't say anything about the
11 new salon. She said yeah, I still have a spot and
12 just to come on down when I get my license.

13 MR. JOCHUMS: Okay. I have no other questions.

14 HEARING OFFICER: Would the board like to ask
15 this witness any questions?

16 (No response.)

17 HEARING OFFICER: There being none, Ms. Rollins,
18 go ahead and you can present and say whatever you
19 want to the board at this time.

20 MS. ROLLINS: Okay. I just have evidence
21 showing that I was not there since January, --

22 HEARING OFFICER: And would you bring that up so
23 we can let the board members see it?

24 MS. ROLLINS: Sure. And also with a book --
25 this is our open house, which has Kirby and I in it.

1 And then these are pictures of us working on the
2 building that I am at now. And on the back it says,
3 Oh, so long.

4 Oh. Here's a picture, also, at the old salon --
5 those are pictures of us working on the neutron.

6 That's -- this is about the sign situation. We
7 haven't got there yet.

8 HEARING OFFICER: If you've got other things --

9 MS. ROLLINS: Okay. The other thing --

10 HEARING OFFICER: -- you need to go ahead and
11 present what you want presented either way.

12 MS. ROLLINS: Okay. Well, one of the pictures
13 shows that I was at the former salon, which I believe
14 was in April -- it's got the date -- is printed on
15 the photo when it was taken. And then the other
16 pictures has the date on it, in May, where we are
17 working on the building. Just to show that I have
18 not been there since January. And then we were
19 having an open house at the old salon that I worked
20 at, and my picture's in there. And then I've got
21 statements where I ordered products at the old salon,
22 and the address on there.

23 And I also, when you look you might take into
24 note, some salons have one huge appointment book.
25 And some all have their individual. They make their

1 own appointments. When she looked at the appointment
2 book, I couldn't worked ten different places in
3 January. If you have established clients and
4 customers, they can follow you anywhere. So it was -
5 - you know, every year we'd all get a book in
6 January, but it doesn't really say where you work at.
7 So, you know, it could've been numerous places. So
8 on that, you know, that's -- I just want to say that
9 I am not guilty of that at all. I've not been there
10 since January.

11 And the other is that I think that, personally,
12 that should be reworded. Just my total
13 misunderstanding --

14 HEARING OFFICER: Just clarify what you mean by
15 that, just so the board knows what you're talking
16 about.

17 MS. ROLLINS: The new establishment
18 registration. It's fine what it says, but I do think
19 it should be added, because my understand -- it says
20 right at the beginning, that this form and a \$50
21 registration fee is to be filed approximately two
22 weeks before your opening date. And the opening date
23 is what got me, is what made me stall and not fill it
24 out. Because I'm like, I'm not going to be ready to
25 open in two weeks. There is no way I can get this

1 building ready to go, so that is the only reason.
2 When it said two weeks before your opening date, I
3 thought, okay, I'm going to try to figure out about
4 when I think I can open this up for the public. And
5 then I've got -- then I'll send it off. I will --
6 should be added, also in there, I do think. And like
7 I said, I've been doing hair for 20 years, and that
8 even that go me, that this should be sent off
9 immediately if you're going to open a salon. And
10 you've got to make sure that you definitely have this
11 license within two weeks. You know, give us two
12 weeks. But when it said before your -- two weeks
13 before your opening date, that's the way I took it.
14 I had two weeks before my opening date. And that's
15 why I did not have a salon license.

16 And -- I can't think of her name. I want to say
17 Keneshia, --

18 MS. LESTER: Shaunta?

19 MS. ROLLINS: Shaunta sent me a thing, and she
20 said, you know, you're good to go with this. And --
21 but, I totally thought, you know, I've got to be
22 ready in two weeks of when I get this. So I think
23 there should be added a little bit more to that, on
24 the registration form because I am definitely guilty
25 of not having my salon license for those few days,

1 but I wasn't ready to open. So I didn't send it in,
2 because I thought I couldn't -- I had to be ready
3 within two weeks was my total understanding on that.
4 So that is definitely a deal.

5 And the other is I am also written up for not
6 having my sign posted. And I do have photos where it
7 was this invoice, and you guys may keep this. It
8 will be fine. It was painted and brought to be
9 installed, and they could not install it because of
10 Frito-Lay guy hit our pole. That's just kind of my
11 luck.

12 HEARING OFFICER: Does the board have any
13 questions?

14 MS. ROLLINS: And our signs were on the side, so
15 I'm not guilty of that either, along with the January
16 thing.

17 You know, this -- you'll see poles behind this
18 photo. That is not on my property. This
19 (indicating) is on the property. And then they
20 brought it and we were dragging it in and out,
21 because my husband said, someone is going to steal
22 your sign. So every day -- this is a piece of --
23 this is a four by six, and it's heavy. And we were
24 dragging it in and out, and people go, no one can
25 read your sign in front of -- you know, in front of

1 those shrubberies. And well, you know, we can't put
2 it up right now. So I'm like -- so what I did do is
3 drag it in and out. But the day you came, I don't
4 know if you looked at the -- it's like not even
5 there. But the -- that's when I was not there. And
6 those, where they're up against. You can see they're
7 up against the building, but of course you didn't see
8 them. But that day, I drag it and that big -- there
9 is another big, blue -- I call it the green room.
10 And I drag it out there and put it in front of the
11 parking area, leaned up against the shrubberies. But
12 that day, I wasn't there. And the girls just left
13 them -- faced to the side of the house, the
14 receptionist and the lady who owns the nutrition
15 center. They didn't know any differently. The
16 receptionist has no knowledge of hair, at all
17 whatsoever.

18 HEARING OFFICER: Is that all you'd like to say?

19 MS. ROLLINS: I'd like to say that I think that
20 LaVonne did an excellent job on her inspection, and
21 she's very thorough by the looks of the papers, and I
22 did meet her the second time. And she explained a
23 lot of things to me that I did not understand. And I
24 just -- I just think that maybe clarifying on that
25 new salon thing, new shop license, might help, --

1 because I just didn't know.

2 But the old shop is called G's Salon. And it
3 will be on the statement. And the new one is called
4 Harrison Street Salon & Spa. And I have, actually,
5 eight stations. And I bought this equipment and set
6 them all up. And I had built myself customized
7 stations. And then I had somebody make a model of
8 all of these for some one day I get it all filled up.
9 And they're all color-coded. So they were there and
10 set up. And the dryers I bought, but it wasn't -- no
11 one even works in that one room. So it looks like
12 we're all, you know, it's set up for all these
13 employees to be there, but not operational, yet -- at
14 this moment.

15 HEARING OFFICER: Mr. Jochums, do you have any
16 questions for Ms. Rollins?

17 MR. JOCHUMS: Yes. I have a couple of them.
18 One of the pictures of the same salon on the back is
19 of a gentleman and young woman?

20 MS. ROLLINS: Yes?

21 MR. JOCHUMS: What is that supposed to show?

22 MS. ROLLINS: That is the shop, the old shop.

23 MR. JOCHUMS: Then that's not you, then, in the
24 picture?

25 MS. ROLLINS: No.

1 MR. JOCHUMS: Okay. You just --

2 MS. ROLLINS: That's not my --

3 MR. JOCHUMS: -- this is a picture of people you
4 just -- what's the significance of this picture?

5 MS. ROLLINS: The significance of that picture
6 is to show that I was at the old salon in April, and
7 then I was not -- I've not been at this new
8 establishment since January. That's the only purpose
9 of that picture.

10 MR. JOCHUMS: Now, how far apart are the two
11 establishments?

12 MS. ROLLINS: Harrison Street is the main street
13 in Batesville. Let's see.

14 MR. JOCHUMS: One of the is at 2265 and the
15 other one is --

16 MS. ROLLINS: Uh-huh. That's the same street.

17 MS. CAUDLE: They're not that far apart.

18 MS. ROLLINS: Wal-Mart. You've got to go
19 through the -- I don't know.

20 MR. JOCHUMS: What's the new address?

21 MS. ROLLINS: It's 616 Harrison Street. Here's
22 a major shop right in Batesville, the main one, was
23 the big three story bank. You probably know what I'm
24 talking about.

25 MR. JOCHUMS: I'm just --

1 MS. ROLLINS: Okay. You've got to go on
2 through.

3 MR. JOCHUMS: None of us live in Batesville.

4 MS. ROLLINS: Okay. Well, Harrison Street is --
5 well, I don't know.

6 MR. JOCHUMS: A mile away?

7 MS. BURMAN: A half a mile.

8 MS. ROLLINS: Yeah, maybe more.

9 MS. CAUDLE: It's not a mile.

10 MS. ROLLINS: No, I don't think it is.

11 MS. CAUDLE: You can go all the way across
12 Batesville in a mile.

13 MS. ROLLINS: About four stop lights away. I
14 don't know.

15 MR. JOCHUMS: Okay. And --

16 MS. ROLLINS: That's hard for me to say. I
17 don't know.

18 MR. JOCHUMS: Okay. At any rate, --

19 MS. ROLLINS: It's the --

20 MR. JOCHUMS: But is that you are still doing --
21 you were a cosmetologist still doing hair at G's in
22 June?

23 MS. ROLLINS: In May and the first --

24 MR. JOCHUMS: When was the inspector there?

25 MS. CAUDLE: June 6th.

1 MS. ROLLINS: No. Until the month of May, June
2 -- until the end of June.

3 MR. JOCHUMS: Well, would there have been
4 anything to prevent you from working in both places?

5 MS. ROLLINS: Yes.

6 MR. JOCHUMS: What?

7 MS. ROLLINS: I'm just -- I'm not a floating
8 cosmetologist, and I wanted to open a salon that had
9 more -- that had everything.

10 MR. JOCHUMS: All right. And let me ask, also -
11 - I didn't quite understand about the appointment
12 book. The appointment book the inspector saw
13 included the work you did in June?

14 MS. ROLLINS: Yes. It was the whole --

15 MR. JOCHUMS: Just for you, for a year? It
16 didn't have anybody else in it?

17 MS. ROLLINS: No. We all had our separate
18 appointment books.

19 MR. JOCHUMS: Okay.

20 MS. ROLLINS: And I just carried that with me.
21 That really doesn't say, you know, where I'm at.

22 MR. JOCHUMS: Right. Okay. I understand that.
23 The other thing I want to ask is when did you open
24 the new facility?

25 MS. ROLLINS: I don't know the exact date.

1 MR. JOCHUMS: You were still at an open house at
2 the other one on May 5, weren't you?

3 MS. ROLLINS: Yes. I was still at the old
4 salon.

5 MR. JOCHUMS: So would some time in June or July
6 when it opened, had your grand opening?

7 MS. ROLLINS: I haven't even had a grand
8 opening.

9 MR. JOCHUMS: You haven't had one of those at
10 the new salon. Okay. Well, have you started taking
11 customers?

12 MS. ROLLINS: Oh, yes. What did you say her
13 name was again?

14 MS. BURMAN: Oh, Shaunta?

15 MS. ROLLINS: Shaunta faxed me a thing, and she
16 said you put that up and you're good until your
17 license --

18 MS. LESTER:

19 MS. ROLLINS: That's when I started taking
20 clients.

21 MR. JOCHUMS: So about a week after the
22 inspector came to your salon?

23 MS. LESTER: Uh-huh.

24 MS. ROLLINS: Uh --

25 MR. JOCHUMS: According to the notice of hearing

1 --

2 MS. ROLLINS: Yes, but I want to say --

3 MR. JOCHUMS: -- you submitted your new shop
4 application June 8th.

5 MS. ROLLINS: I don't know exactly the date, but
6 when I found out, yes.

7 MR. JOCHUMS: Well, when did you, and I don't
8 really care whether you technically hire or they can
9 rent the space, when did you line up the people who
10 were going to work in the new salon?

11 MS. ROLLINS: I didn't. There was just one girl
12 from the other one that came with me. And it was
13 just her and me.

14 MR. JOCHUMS: Okay.

15 MS. ROLLINS: And she was hired as my assistant
16 at the old place, and then I moved to this place and
17 opened in myself. And she was hired as my assistant,
18 but now she's just on her own as a cosmetologist and
19 still assists me.

20 MR. JOCHUMS: What -- one thing I'm wondering
21 about is if you were still remodeling and getting the
22 place ready to go, why did you have a receptionist
23 there?

24 MS. ROLLINS: I was trying to -- she had a
25 regular job and she has three little children. And I

1 was trying to show her what I would need her to do.
2 How to do it, she didn't know anything about how long
3 a hair cut, a perm, a style or anything was. So she
4 was basically setting her little things up to get
5 ready, and putting her personal stuff up. And like I
6 said, there was not any operators or stylists in
7 there at all. The receptionist was there, but also
8 she come in to help the lady with the nutrition
9 center answer her phone. Basically just taking calls
10 if someone called, but no operators -- was even there
11 at all. I officially was not open.

12 MR. JOCHUMS: Let me ask another one. You
13 described the sign.

14 MS. ROLLINS: On the side.

15 MR. JOCHUMS: Did you take this picture after
16 the inspector was there?

17 MS. ROLLINS: After she left, yeah.

18 MR. JOCHUMS: That would've been June?

19 MS. ROLLINS: Because I wasn't there when she
20 got there. But we -- it's up now. I didn't think to
21 take a picture, but it's up and it's -- it's up on
22 our highway. But the fellow -- there's a dumpster,
23 and they cut through and there's a little mall. And
24 the guy, I think, was just looking at dumpster and
25 looking at poles and -- smack. And no pole.

1 MR. JOCHUMS: I have no other questions.

2 HEARING OFFICER: Are there questions from the
3 board?

4 MS. POWELL: I'd like to ask Ms. Rollins one.
5 You said you're unclear of when you had a license to
6 this building to operate out of?

7 MS. ROLLINS: When Shaunta -- yeah. I --

8 MS. POWELL: Yes.

9 MS. ROLLINS: -- the official one or the
10 authorization to go -- go for it?

11 MS. POWELL: Your authorization that says you're
12 eligible to operate that facility.

13 MS. ROLLINS: I don't know the exact date.

14 MS. POWELL: So then, I assume it was probably
15 after June 2nd?

16 MS. POWELL: And then -- June the 8th -- You
17 said that at this new facility, you had a reception
18 hired that was getting her stuff set up, right? And
19 that you were currently working in another salon --
20 in G's; correct?

21 MS. ROLLINS: For like a day or two.

22 MS. POWELL: Before -- before your salon was
23 open, you were working at another salon called G's;
24 is that right?

25 MS. ROLLINS: Yes. Yes.

1 MS. POWELL: And you had a reception that was
2 over here in your new salon, getting set up, right?

3 (No audible response given.)

4 MS. POWELL: You said that you had to carry this
5 sign in, in and out all the time, because the pole
6 had been knocked down, right?

7 (No audible response given.)

8 MS. POWELL: Why would you be carrying a sign in
9 and out if you're not there?

10 MS. ROLLINS: Because the other lady that has
11 the business. I knew I was going to be opening, but
12 I didn't have it open right yet. And so the people
13 that was working on my sign got it done a lot quicker
14 than I thought they would. But the pole was gone.
15 This lady needed her sign up, also. So I had my
16 signs drug in. And they would drag it, just in and
17 out.

18 MS. POWELL: Even though you weren't open, you
19 weren't even there?

20 MS. ROLLINS: Even though it wasn't officially
21 open.

22 MS. POWELL: Well, our problem with the sign, is
23 it a pink sign that I just saw?

24 MS. ROLLINS: It's pink. And then there's one,
25 you see the corner of the other sign, but it's a

1 high-energy -- I don't know if --

2 MS. POWELL: It's your -- is it your sign that
3 you're carrying in and out, or is it a sign for more
4 than one business?

5 MS. ROLLINS: More than one business.

6 MS. POWELL: Well, maybe I need to see that sign
7 again, because I didn't see that.

8 MS. ROLLINS: You see a little bit of it.

9 MR. JOCHUMS: Move to the pink sign.

10 MS. POWELL: Is there a pink sign on there?

11 MS. ROLLINS: There's a sign in the corner.

12 MS. POWELL: It's looks like a little guy -- a
13 little man, a little old fat man standing there.

14 MR. ROLLINS: It's just as big as mine, but it's
15 wider. And it's metal and it's heavier.

16 MS. POWELL: But what are you carrying in and
17 out, your pink sign or someone else's sign?

18 MS. ROLLINS: Both of them.

19 MS. POWELL: They're attached?

20 MS. ROLLINS: No. But they would drag them in
21 and out, whether I was even -- even when I was there
22 or not, the people that were in there, none of the
23 people -- the nutrition lady -- the nutrition was,
24 the receptionist, and people that was just helping me
25 remodel and painting and getting ready, they -- none

1 of them, have any idea about hair, nothing. And they
2 dragged the signs. They just drug it in, drug it
3 out. And a lot of times I didn't even know -- or
4 like I said, I didn't know it was on the side of the
5 building until I see that on the side. And this a
6 1926 home. It's a two-story.

7 MS. POWELL: But it appears that someone knows
8 how to advertise your facility for business by this
9 sign.

10 MS. ROLLINS: Yes.

11 (Pause.)

12 HEARING OFFICER: Are there any more questions
13 from the board for this witness?

14 MS. ROLLINS: The sign, though, was not
15 officially put up until way before opening date. I
16 do want to state that. And the sign -- I'd probably
17 had the sign up outside, maybe, a couple of weeks.

18 HEARING OFFICER: Okay. Ms. Turman?

19 MS. TURMAN: Did you admit earlier that you
20 actually were practicing without your shop -- your
21 license in there?

22 MS. ROLLINS: No, no, no. I've always had my
23 license.

24 MS. TURMAN: Okay. Excuse me, but I mean, I
25 thought you said that you clearly did -- were in

1 there practicing as a cosmetologist before your
2 license arrived?

3 MS. ROLLINS: My shop license.

4 MS. TURMAN: You already had your personal
5 license, but your shop license had not arrived?

6 MS. ROLLINS: Because I misunderstood the
7 letter.

8 MS. TURMAN: But did you know that you shouldn't
9 be practicing --

10 MS. ROLLINS: No.

11 MS. TURMAN: -- without a license for your shop?

12 MS. ROLLINS: I thought I had -- I had my
13 personal license. I thought that would be fine until
14 I got my building completed. And I was -- did hair
15 for probably about three days. Then I basically was
16 doing some paneling and finished up a few customers,
17 because on -- that's what I was saying that I think
18 some things should be reworded on the registration.
19 Because I was -- by the looks of those pictures on
20 the remodeling, I was scared to turn that in because
21 I thought I had only two weeks before opening. So I
22 would not turn it in to get my shop license because I
23 was not going to be ready to open in two weeks.
24 There was no way I could have it ready, and I thought
25 -- I'm not going to take any appointments. I'm not

1 going to take anything. I'm just kind of training
2 the receptionist on what she would be doing. And
3 that's why none of the -- none of us operators, the
4 two of us, which was myself and the other girl was
5 not there.

6 MS. TURMAN: Did you also state that you thought
7 it was a vendetta against you that she had written
8 you up, or did I hear you correctly?

9 MS. ROLLINS: Oh, as a personal vendetta that
10 she showed up, but it's not from her.

11 MS. TURMAN: That's quite a --

12 MS. TRAYLOR: I don't understand.

13 MS. TURMAN: I don't understand that. I mean,
14 that's an accusation that I think maybe we should
15 clarify?

16 MS. ROLLINS: I can.

17 MS. LESTER: What she is saying is --

18 MR. JOCHUMS: Let me ask you something.

19 MS. LESTER: Oh.

20 MR. JOCHUMS: When was your last day at G's?

21 MS. ROLLINS: I can't remember.

22 HEARING OFFICER: Ms. Lester, you had something
23 to say?

24 MS. LESTER: Yes. She doesn't mean a personal
25 vendetta toward me.

1 MS. WEST: Okay.

2 MS. ROLLINS: No.

3 MS. TRAYLOR: Oh, I thought that's what she was
4 saying.

5 MS. ROLLINS: No.

6 MS. LESTER: No.

7 MS. TURMAN: And if you did, I wanted it
8 clarified.

9 MS. LESTER: No.

10 MS. ROLLINS: Huh-uh.

11 MS. TURMAN: Okay. I understand. I'm sorry. I
12 misunderstood, too. Thank you.

13 HEARING OFFICER: Ms. Gordon?

14 MS. GORDON: I think I have two questions. Now,
15 the people that was working on the salon, that you
16 were getting ready to open, they were the ones that
17 was dragging the sign in and out?

18 MS. ROLLINS: Different ones would drag it in
19 and out, just thinking that's what they were supposed
20 to do because the other lady -- she was already, the
21 high-energy lady -- when they drug her sign out,
22 they'd drag mine out, too. There are two different
23 businesses.

24 MS. GORDON: Okay. I understand that. I'm
25 saying the people that was remodeling would do that?

1 MS. ROLLINS: Painting and getting things ready
2 to make it into a salon.

3 MS. GORDON: I mean moving the sign out so they
4 could have room to work; is that what you stated?

5 MS. ROLLINS: Well, they had moved it out
6 because they thought they were supposed to. But I
7 wasn't open for business yet. So the sign -- had the
8 sign, they had it delivered sooner than I thought.
9 But I wasn't ready to hang that sign up, because I
10 wasn't ready to open.

11 MS. GORDON: Did I hear you say that three days
12 before you actually had got your license to open, or
13 your permit to open, that you were in the salon doing
14 hair?

15 MS. ROLLINS: Yes, I was.

16 MS. GORDON: And someone else had also been in
17 there cutting hair before?

18 MS. ROLLINS: Just -- both of us about the same
19 amount of time.

20 MS. GORDON: Okay. You'd sent in for your
21 license, but you'd not gotten them yet? **:

22 MS. ROLLINS: Yes, it was a misunderstanding.

23 MS. GORDON: Thank you.

24 HEARING OFFICER: Does the board have any other
25 questions?

1 (No response.)

2 HEARING OFFICER: The board has no further
3 questions, Mr. Jochums, would you like to make any
4 closing arguments?

5 MR. JOCHUMS: I want to ask to ask the other
6 witnesses some questions.

7 HEARING OFFICER: Okay. Go right ahead.

8 MR. JOCHUMS: Ma'am, you mentioned --

9 MS. LESTER: It's me now?

10 MR. JOCHUMS: Yes. You mentioned the
11 appointment books went back to January, --

12 MS. LESTER: Yes.

13 MR. JOCHUMS: -- in your report.

14 MS. LESTER: Yes, I did.

15 MR. JOCHUMS: Was there more than one
16 appointment book, or were others using it?

17 MS. LESTER: No. This was the only appointment
18 book that I saw, and it was on the reception desk.

19 MR. JOCHUMS: Did it appear to be her
20 appointment book?

21 MS. LESTER: Yes.

22 MR. JOCHUMS: Her, meaning Donna?

23 MS. LESTER: Yes. I was told it was Donna's.

24 MR. JOCHUMS: Okay. The other thing that still
25 concerns me, is the sign. The other thing was you

1 looked at a picture of a pink sign, but did you see
2 that sign?

3 MS. LESTER: No, I did not.

4 MR. JOCHUMS: No other questions.

5 HEARING OFFICER: Okay. If there are no other
6 questions, we will move on to closing arguments at
7 this time.

8 MR. JOCHUMS: I'm going to waive the closing
9 arguments.

10 MS. WARD: I have a question.

11 HEARING OFFICER: Okay. Who do you have a
12 question of?

13 MS. WARD: The inspector. When you saw the
14 appointment book, do you remember how recent the
15 latest appointments were? Were they just before you
16 were there or was there a gap in between there where
17 you didn't have any appointments? Did you --

18 MS. LESTER: No, there was no gap.

19 MS. WARD: So there was appointments --

20 MS. LESTER: Appointments just continued on all
21 the way through, so I'm going to say "yes".

22 MS. WARD: She had been working all the way
23 through, but --

24 MS. ROLLINS: But there were no appointments.
25 Since January.

1 MS. WARD: No, I'm not talking about is -- I
2 mean, let's say like in May, to June. Was there a
3 gap in between there? That's what I'm looking for,
4 because since you were working in that appointment
5 book, because otherwise if you wasn't taking
6 appointments -- there should be a couple of weeks
7 anyway, when you wouldn't have any appointments. And
8 there was no spaces in there.

9 MS. ROLLINS: I couldn't work too much, because
10 I don't reschedule my people.

11 HEARING OFFICER: Okay. Are there any other
12 questions?

13 MS. ROLLINS: I've got one. On that situation,
14 --

15 HEARING OFFICER: Wait. You really can't ask
16 the board questions right now.

17 MS. ROLLINS: Oh. I'm sorry. I'll just make a
18 comment.

19 HEARING OFFICER: You can go ahead and make any
20 closing statements, if you want to do that. Then
21 this is your time, go right ahead.

22 MS. ROLLINS: I did not know I was going to be
23 leaving my previous job, so therefore whatever
24 appointments I had was that was on my book, was on my
25 book would make the reason why it would look like it

1 did, even though most of those customers were called
2 and cancelled.

3 My closing statement is that I'm guilty of
4 working without a shop license -- unaware, you know,
5 didn't quire understand that, but I'm very guilty of
6 it. I'm not guilty of working there since January
7 and the sign situation, but you can clearly see why
8 the sign was not visible.

9 HEARING OFFICER: At this time we will go off
10 the record for the board to deliberate and go back on
11 record with a motion.

12 (WHEREUPON, discussion and deliberations were
13 had by the board, after which proceedings resumed as
14 follows, to-wit:)

15 HEARING OFFICER: We're back on the record to
16 take a motion to the board.

17 MS. POWELL: Do I have a motion?

18 MS. TURMAN: Finding the allegations being true,
19 I move to suspend -- wait, wait. I'm sorry.

20 Finding the allegations being true, I move to
21 order the respondent to pay a fine in the amount of
22 \$210 payable within 30 days of receipt of the board's
23 order. Failure to pay the fine as ordered will
24 result in a suspension of the respondent's salon
25 license beginning 30 days from receipt of the order

1 and extending for a period of 90 days from the date
2 the respondent relinquishes their license.

3 MS. TRAYLOR: I second that motion.

4 MS. POWELL: I have a motion and a second for
5 the respondent to pay a fine in the amount of \$210.
6 Is there any further discussion?

7 (No response.)

8 MS. POWELL: All those in favor, raise your
9 right hand.

10 (Show of hands.)

11 MS. POWELL: It's unanimous. Motion carries.

12 HEARING OFFICER: Let the record reflect that
13 the decision of the board was unanimous. That
14 decision of the board will be reduced to writing and
15 service made on this respondent. If you care to take
16 an appeal, one can be taken under the Administrative
17 Procedures Act 25-15-210.

18 Are there any other questions or comments at
19 this time?

20 (No Response.)

21 HEARING OFFICER: And there being none, this
22 hearing is concluded and the record is closed.

23 Thank you.

24 MS. WITTUM: Ms. Rollins, do you want any of
25 these back? If so, we can make copies.

1 MS. ROLLINS: I can look through them. And I
2 actually brought those for them to go into my file to
3 show that -- my innocence on the sign and the January
4 thing on the book.

5 MS. WITTUM: Okay.

6 MS. ROLLINS: Because the other --

7 MS. WITTUM: These are our copies?

8 MS. ROLLINS: Yeah. Let me -- let me show you.

9 MS. POWELL: We're going to take a short recess.
10 We'll be back at 3:00.

11 (WHEREUPON, a short break was taken, after which
12 proceedings resumed as follows, to-wit:)

13 MS. POWELL: The meeting will come back to
14 order.

15 **HEARING ORDER NO. 07-007: RUBEN MEDINA**

16 HEARING OFFICER: There's one more matter before
17 us. It's Ruben Medina, 07-007. Mr. Medina is not
18 here, but he has sent a letter that we'll receive
19 into evidence as Board's Exhibit No. 1, along with
20 the cover letter and notice of hearing.

21 (WHEREUPON, Board's Exhibit No. 1 to HO#07-007
22 having been identified for the record, was received
23 into evidence and marked to append.)

24 HEARING OFFICER: And I propose that Ms. Wittum
25 read that letter to you now.

1 MS. WITTUM: The letter is addressed to me at
2 the State Board. And he says, "Thank you for your
3 recent correspondence regarding the compliance issue
4 related to the proper licensing of Studio M.
5 Unfortunately , I will be unable to attend the
6 hearing on September 18th. I will be out of state at
7 that time pursuing continuing education and I am
8 unable to reschedule. So, in my absence, I would
9 like the board to review the case while paying close
10 attention to my actions and those of your staff
11 members.

12 Please give careful consideration to my
13 situation. I do not wish to inconvenience the board
14 in any way by requesting this review. I simply feel
15 strongly that my situation merits a closer look. I
16 have always made every attempt to comply with the
17 rules set forth for the cosmetology industry in
18 Arkansas. Unfortunately, there seems to have been a
19 lack of clear communication between myself, your
20 staff and the board leadership in regard to this
21 matter. This continued communication problem seems
22 to have resulted in the delayed licensing of the
23 salon.

24 Previously, I faxed information containing a
25 time line that contained prior conversations with

1 staff members. Please examine this time line
2 carefully, as it will verify each attempt to properly
3 license the salon and the challenges I faced each
4 time I tried to do so. If, after review, I am still
5 considered as being in violation, I will quickly pay
6 any fees and/or fines that may be due. Thank you for
7 your time." And it's signed, "Sincerely, Ruben
8 Medina."

9 Mr. Medina did submit a time line that I've gone
10 through, and I've also spoken with Shaunta, who
11 handled this particular application when it came in
12 to relocate his salon. Typically, Cheryl is the one
13 who handled these. This application came in after
14 she left and Shaunta picked it up. I did let Mr.
15 Medina know that we acknowledge that Shaunta made
16 mistakes when she was taking care of the
17 establishment, however, what I told him is that in
18 reviewing the information those mistakes did not, in
19 any way, affect the fact that he did not submit the
20 new establishment for relocation information two
21 weeks prior to the opening of Studio M, which is his
22 new establishment. He submitted the original
23 establishment license for the IceHouse Salon, which
24 he had at 1512 South Arkansas in Russellville, and
25 then what he was hoping to do was change it to Studio

1 M and move the salon to 1715 South Arkansas in
2 Russellville. And he was planning to open that salon
3 on March 28, 2006.

4 According to Mr. Medina, he had a telephone
5 conversation with Shaunta concerning the process to
6 submit the relocation and change of name prior to the
7 submission of the form and the fees. He states, "The
8 conversation occurred on March 24th," which was four
9 days prior. Shaunta does not dispute this, but she
10 did not remember the exact day of that telephone
11 conversation. During that conversation with Shaunta,
12 the respondent states that he informed Shaunta of
13 their intent to open the new location on March 24th.
14 And according to the establishment form, the board
15 requires the application to be submitted within two
16 weeks prior to the opening date. And there is no
17 provision in the law or the rules stipulating a due
18 date for the relocation. However, the board's
19 procedures have always been that it be submitted
20 within the two weeks. There is also a -- I've made a
21 note that Rule 5.4(A) requires notification of the
22 name change to be submitted within 30 days of the
23 change. And the respondent was in compliance with
24 that particular request.

25 According to Mr. Medina, Shaunta gave him a

1 verbal -- or gave him verbal permission for the salon
2 to be operational as long as she received the check
3 and the relocation form, ASAP. Shaunta disputes
4 authorizing Mr. Medina to open prior to the
5 authorization letter being processed by the office,
6 and in addition, she would not have the authority to
7 do that anyway. And Mr. Medina was informed of that.
8

9 According to Mr. Medina, the establishment form
10 and a check for \$50 was sent on March 24th by
11 certified mail. And then he opened Studio M on March
12 28th at the new location. According to Mr. Medina,
13 the \$50 check that he submitted was returned to him
14 during the first week in May with a letter stating
15 that they needed to pay only \$7. Shaunta disputes
16 that the check and letter were returned in May,
17 although the letter is not dated, Shaunta maintains
18 that it was sent to him at the end of March.
19 According to Shaunta, she misunderstood the
20 establishment form and called to inquire about what
21 they were intending to do. She said that the salon
22 was answered as Studio M, which is the new
23 establishment, so she asked about changing the name
24 and was told that that was what they were doing.
25 This is why she told them that they only needed to

1 pay \$7, because that's the fee for changing the name.
2 According to our records, a check dated May 8th for
3 \$7 was processed on May 18th. This process consisted
4 of dual entries, \$5 for the change of the name and \$2
5 for a duplicate license to be issued.

6 On May 17th the salon was inspected and cited
7 for failure to have a current license or
8 authorization letter, as well as, for failure to post
9 the health and safety rules. According to Mr.
10 Medina, he had a telephone conversation with Shaunta
11 the following day, after the inspection. It appeared
12 from the information given by Mr. Medina and Shaunta
13 that the intent to both relocate and change the name
14 of the salon was made clear during that conversation.
15 Therefore, Shaunta informed Mr. Medina that the \$50
16 relocation fee would be required. According to our
17 records, we received that \$50 payment and a
18 transaction was made on June 1st to relocate the
19 salon and he received the letter of authorization on
20 June 1st, according to Mr. Medina. To date the
21 required fee for the relocation and change of name
22 have been received and processed.

23 In reviewing this information and in speaking
24 with Shaunta, there clearly had been some
25 miscommunication between Mr. Medina and the office

1 concerning his applications. The miscommunication
2 resulted in a simple process taking approximately
3 three to four months to complete, as well as
4 resulting in an inspection where the violation was
5 cited. However, the miscommunication and the staff's
6 mistakes do not negate the fact that he failed to
7 properly submit the notification to relocate and
8 change the name of the salon. The board's procedures
9 requires the fee and the form to be submitted two
10 weeks prior to the opening date and this information
11 is, in my opinion, clearly stated on the
12 establishment forms. Instead of following this
13 requirement, the respondent contacted the office by
14 telephone, four days prior to his intended opening
15 date, and then mailed the form and the fees. Mr.
16 Medina asked me to consider dismissing this penalty,
17 and after speaking with Mr. Jochums, without the
18 dates that whether or not they should play a part in
19 dismissing it, it was my opinion that they needed to
20 come here to the board for your review.

21 HEARING OFFICER: Okay. After that explanation
22 by Ms. Wittum, Mr. Jochums, is there anything you
23 would like to add to that?

24 MR. JOCHUMS: No.

25 HEARING OFFICER: Okay. Does the board have any

1 questions they would like to ask Ms. Wittum for
2 further explanation or clarification at this time?
3 Ms. Turman.

4 MS. TURMAN: Kathy, did you state that he didn't
5 have any safety rules posted either?

6 MS. WITTUM: Right.

7 MS. TURMAN: So what would that have to do with
8 miscommunication? You know?

9 MS. WITTUM: It would not. It would not. All
10 of the miscommunications that he's referring to are
11 dealing with the establishment form.

12 HEARING OFFICER: Ms. Traylor, do you have a
13 question?

14 MS. TRAYLOR: Well, I don't know if I don't
15 understand it or I'm confused. But he's got -- he's
16 got his license.

17 MS. WITTUM: He has the -- he does, now, for
18 Studio M. He did, then, for The Ice House. What he
19 was doing was dissolving The Ice House and changing
20 locations all at the same time.

21 MS. TRAYLOR: Okay. But that has been done.

22 MS. WITTUM: It has now.

23 MS. TRAYLOR: Well, what's he even calling
24 about?

25 MS. WITTUM: He was penalized for not submitting

1 his relocation --

2 MS. TRAYLOR: Well, then, that's tough. If he
3 didn't do, he didn't do it.

4 MS. WITTUM: Okay.

5 MS. GORDON: Did he make any other statements
6 around the 24th?

7 MS. WITTUM: That was when he called the office
8 to ask about what to do.

9 MS. POWELL: Called on the 24th, but he was
10 actually in there on the 28th. So if he got in there
11 four days before he got -- he called four days before
12 he got in there, but it would still not be sufficient
13 for the two weeks notification for the state by-laws.

14

15 MS. TRAYLOR: What was his penalty, Kathy?

16 MS. WITTUM: His penalty is \$70.

17 HEARING OFFICER: Are there any further
18 questions from any of the board members before --

19 MR. KEENE: Well, didn't you say that he did
20 submit a \$50 check and it was returned to him, he
21 said in May and Shaunta says the end of March?

22 MS. WITTUM: Yes.

23 MR. KEENE: Which is it? Was it --

24 MS. WITTUM: Well, Shaunta -- they clearly
25 dispute --

1 MR. KEENE: Well, then why did we send it back?

2 MS. WITTUM: It was sent back because Shaunta
3 did not understand that he was wanting to relocate.
4 She thought that they were just changing the name and
5 staying at the same location.

6 MR. KEENE: Got it.

7 MS. POWELL: And he did not send in the
8 application for a relocation. Shaunta thought he was
9 just doing a name change, --

10 MS. WITTUM: He did send in the form, but that
11 form was revised from the one they been using and
12 Shaunta did not understand what he had marked on the
13 new form.

14 MS. GORDON: Explain that again. Now, he did
15 send in a form, --

16 MS. WITTUM: He sent in the form --

17 MS. GORDON: He sent in the right form at the
18 first?

19 MS. WITTUM: Yes.

20 MS. GORDON: And it was returned to him?

21 MS. WITTUM: Yes. It was.

22 MS. GORDON: Because Shaunta didn't understand -

23 -

24 MS. WITTUM: Yes.

25 MS. GORDON: -- what he was trying to do.

1 MS. WITTUM: When he first tried to do it, she
2 received the form and didn't understand it, she
3 called him. And she asked them what they were
4 intending to do. They answered that call with Studio
5 M. She thought at that point they were just talking
6 about changing the name. She asked them if that was
7 what they were intending to do and they said yes.
8 Nothing during that conversation was said about
9 relocating, only changing the name. That's when she
10 told them it was only \$7 that was needed as opposed
11 to the \$50.

12 MS. POWELL: Which is what she originally
13 thought and is why she sent back the \$50, correct?

14 MS. WITTUM: Yes.

15 MS. TURMAN: Kathy, that really doesn't make any
16 difference because he only applied four days prior to
17 his opening when it should've been two weeks, is that
18 correct?

19 MS. WITTUM: Yes.

20 MS. GORDON: I have a question. When you sent
21 the \$50 he was not applying for the -- to open Studio
22 M at that time?

23 MS. WITTUM: He was applying for --

24 MS. GORDON: Okay. So when she said he only did
25 it four days before, he had actually done it earlier

1 than the four days before and it was returned to him.
2 Am I correct?

3 MS. WITTUM: No. He sent it --

4 MR. KEENE: -- on the 24th, to open on the 28th.
5 Then it was sent back.

6 MS. GORDON: But prior to that, what day did he
7 send the first form --

8 MS. WITTUM: He sent this form in and it's dated
9 March 24, '06.

10 MS. GORDON: And he opened when?

11 MS. WITTUM: The 28th. That's the first one
12 that Shaunta returned to him.

13 MS. GORDON: Okay.

14 HEARING OFFICER: Okay. Are there any further
15 questions?

16 (No response.)

17 HEARING OFFICER: If there are no further
18 questions, the board will deliberate and come back on
19 the record to make their motion.

20 (WHEREUPON, discussion and deliberations were
21 had by the board, after which proceedings resumed as
22 follows, to-wit:)

23 HEARING OFFICER: Okay. We're back on the
24 record for the board's motion.

25 MS. POWELL: Do I have a motion?

1 MS. TURMAN: Finding the allegations being true,
2 I move to order the respondent to pay a fine in the
3 amount of \$70 -- is that correct?

4 MS. WITTUM: Yes.

5 MS. TURMAN: Okay. Payable within thirty days
6 of receipt of the board's order.

7 MS. TRAYLOR: I second that motion.

8 MS. POWELL: I have a motion and a second that
9 the respondent pay a \$70 civil penalty. Is there any
10 discussion?

11 (No response.)

12 MS. POWELL: All those in favor, raise your
13 right hand.

14 (Show of hands.)

15 MS. POWELL: It's unanimous.

16 HEARING OFFICER: Please let the record reflect
17 that the decision of the board in this matter is
18 unanimous. It will be reduced to writing and service
19 will be made upon Mr. Medina. If he cares to, also
20 in that letter he will be made aware that, an appeal
21 may be taken under the Administrative Procedures Act
22 25-15-201. If there are no other questions or
23 comments, this hearing is concluded and the record is
24 closed.

25 **HEARING ORDER NO. 07-085: BETTY KIRSCH**

CONTINUED

1
2 HEARING OFFICER: In reference to the other
3 matters that were listed on the agenda today, 07-085,
4 Betty Kirsch, will be continued. They were here
5 earlier.

ADMINISTRATIVE HEARINGS RE:**RESPONDENTS FAILING TO APPEAR**

6
7
8 As for the following matters, there was no one
9 present to address the board and they made no attempt
10 to contact the staff prior to today: 07-003,
11 Reginald Hayes; 07-005, Linh Tuong Thi Nguyen; 07-
12 006, Angela Vaughn; 07-008, Dung Phuong Nguyen; 07-
13 010, Jennifer Coleman; 07-024, Charla Jackson; 07-
14 032, Mary Tran; 07-033, Stacy Armstrong; 07-044,
15 Brian Steed; 07-053, Melissa McClain; 07-058, Tiffany
16 Martin; 07-062, Thressia Taylor; 07-070, Fazliet Roy;
17 07-072, Betty Walker; 07-079, Khai Tran; 07-080,
18 Rashaad Gibson; and 07-090, Jonda Johnson.

19 None of those people were present at the hearing
20 today and to the best of our knowledge they had
21 received their order of hearing and notice. At this
22 time we'd look for a motion from the board regarding
23 respondents failing to appear.

24 MR. JOCHUMS: We need a motion to prove the
25 findings and allegations and civil penalties as Ms.

1 Wittum has found in each case.

2 HEARING OFFICER: Ms. Traylor, are you going to
3 make that motion?

4 MS. TRAYLOR: Yes.

5 HEARING OFFICER: Go right ahead.

6 MS. TRAYLOR: I move that the assessment of the
7 civil penalties listed on the list for each of these
8 be assessed for these people. And I'm going to add a
9 little something to that. No license can be renewed
10 until they have paid that penalty.

11 MR. KEENE: Second.

12 MS. POWELL: I have a motion and a second. Is
13 there any discussion?

14 (No response.)

15 MS. POWELL: Every one in favor, raise your
16 right hand.

17 (Show of hands.)

18 MS. POWELL: Motion is unanimous.

19 HEARING OFFICER: We have a motion of the board
20 that all those who were read and not present, that
21 the fine for the violations listed be what is found.
22 The decisions will be reduced to writing and served
23 upon each respondent. If there are no other
24 questions or comments, these hearings are closed and
25 the record is complete.

1 (Inaudible off-the-record conversation taking
2 place among board members and staff, with proceedings
3 resuming as follows, to-wit:)

4 **ADMINISTRATIVE HEARING ORDER NOS. RE:**
5 **RESPONDENTS WAIVING RIGHT TO HEARING - CIVIL PENALTY PAID**

6 MR. JOCHUMS: Madam Chairman, also on the agenda
7 is the -- a list of names under Respondents who have
8 waived their right to a hearing and have paid. We'll
9 need a motion approving that list. I want it
10 understood that we will add the names of some people
11 that paid today.

12 MS. POWELL: Do I have a motion?

13 MR. KEENE: I move that we accept the civil
14 penalties for the respondents that have paid their
15 penalties as they are listed in the agenda and that
16 we add the people that have paid today.

17 MS. GORDON: I second.

18 MS. POWELL: I have a motion and a second. Is
19 there any discussion?

20 (No response.)

21 MS. POWELL: All those in favor, raise your
22 right hand.

23 (Show of hands.)

24 MS. POWELL: The motion carries. It's
25 unanimous.

1 HEARING OFFICER: We have a motion of the board
2 carried that all those that were read and not
3 present, along with the corresponding fines and the
4 violations listed, stand as listed. The decision
5 will be reduced to writing and sent to them. And if
6 there are no other questions or comments, then the
7 record will be closed.

8 **PUBLIC COMMENT SESSION**

9 MS. POWELL: At this time we'll move into a
10 public comment session. I understand that we have
11 someone that would like to speak to the board. Do
12 you want to come up here, please? State your name.

13 MS. DRAKE: My name is Nancy Drake.

14 MS. POWELL: Nancy Gray?

15 MS. DRAKE: Drake, D-R-A-K-E.

16 MS. POWELL: Drake. I'm sorry.

17 MS. DRAKE: I'm down here from Mena, Arkansas.
18 I work for Bobby Penn. I've been living there for
19 about eight years. I originally came down from New
20 York, New Jersey, so I understand certain rules and
21 so forth.

22 My thing is I have an apron that I had made
23 specifically for some shears that I'd gotten when I
24 went to Tennessee and took a course for Helix. And
25 it takes six shears to do the haircuts on some of

1 them that I do, which is a lot of shears that I have
2 to work with. And they're not supposed to be opened
3 up by anybody else, because they work with your own
4 tension. So you have to return them to be sharpened
5 by the guy who originally made them and he's able to
6 sharpen them to your own tension, so you can't really
7 have the scissors shared with anybody. And I had a
8 problem when I had the scissors when I worked in
9 Hotchkins for a short while, where people were
10 curious and they kept taking my scissors. So I came
11 up with an idea for a pouch so I could keep them on
12 me and I wouldn't have to worry about them or
13 reaching in front of my customers every time I have
14 to use a different shear and risk dropping them. I
15 wanted to change the rule that I got written up for
16 having this apron, which I wasn't aware of. I wanted
17 to bring the apron in so I could show you. I
18 understand, you know, sanitation, and so forth. So
19 my scissors fit in here, with no pockets for hair to
20 collect. Everything goes through to keep them
21 sanitized, and they're covered. The shears -- I have
22 them with me. These shears are close to \$4,000 that
23 I've spent, which is expensive. And I use this to
24 protect them. And this is why I came up here today,
25 so I could bring this to your attention. I have a

1 friend of mine that I also made a pouch for, which
2 she started to use, so I called her up and told her
3 that I was going to see you, but I needed to talk to
4 you guys first before she should wear it again, so
5 she wouldn't get written up.

6 And that was my -- it's unusual, and I'm sorry.

7 MS. POWELL: All I can say, and I'm sorry,
8 because the board may have other comments, but I'll
9 just say that at this time, there are health and
10 safety regulations that would prevent you from
11 maintaining your shears on your person. They are to
12 be maintained in a closed receptacle when not in use.
13 And I think that goes to say, as well as, you know,
14 at one time we kept our shears on our stations on a
15 little hanger, you know, so although I understand
16 what you're saying about people getting into your
17 implements, as I know all hairdressers typically
18 spend, you know, hundreds of dollars for their
19 cutting shears, it's everyone's problem. But I think
20 we're -- at this point, we're dealing with a health
21 and safety issue, and it says in our rules that
22 instruments and supplies are to be sanitized and
23 stored in a sanitary container. It also says that
24 you're not supposed to carry implements in pockets, I
25 believe.

1 MS. DRAKE: Well, the -- yes.

2 MS. POWELL: Carrying implements or supplies in
3 your garment or uniform is prohibited.

4 MS. DRAKE: Well, that's why I'm here. If I
5 could somehow maybe change that to where I could wear
6 this -- so I could keep wearing tools with --

7 MS. TRAYLOR: If we let you, honey, everybody in
8 town would want to. We can't single out one person.

9 MS. POWELL: Well, we --

10 MS. DRAKE: I understand. I work with -- a
11 board, I was telling the gentleman, when I was up in
12 New York. We did work, you know, trying to better
13 the schools and regulations and so forth. And I did,
14 I carefully thought this thing through so that it
15 wouldn't be contaminating, so I could keep my
16 implements clean, and I wouldn't have the problem
17 with hair, because I do understand how hair can
18 collect and it would be sitting in it. But I made
19 sure that I wouldn't have anything like that.

20 MS. POWELL: So at this time, we're going
21 through the steps to make changes in the --

22 MS. WITTUM: Well, this is actually in the
23 rules, not the law that we're working on currently.
24 We just recently revised the rules themselves. We'll
25 do that again next year after the legislative session

1 and we bring the rules into compliance with any law
2 changes that are made during the session in January
3 of next year. So at that time, that would be the
4 proper forum for you to bring up suggestions to
5 change that in the rules themselves.

6 MS. DRAKE: Okay.

7 MS. WITTUM: You might just want to pay
8 attention to our website. We'll post any --

9 MS. DRAKE: I don't have a computer.

10 MS. WITTUM: Well, then what I'd do is suggest
11 that you contact the office maybe, towards maybe
12 April of next year, as soon as the legislative
13 session is over, we'll have to move into bringing the
14 rules into compliance with law changes. And that
15 could be a suggestion that you bring to the board.
16 At this time, we cannot just arbitrarily change --

17 MS. DRAKE: No, I understand. I'm just looking
18 at how I can protect, because you do have people that
19 will come up -- I've even had kids and if you're not
20 right there at your station, they will come over and
21 take your scissors and try to cut something with it.
22 And it's a big expense. And that's why I brought it
23 over, because people go over and pick up my shears,
24 because there's different kinds of shears -- and it
25 draws attention. And I have that problem. So it's

1 just like I've got to babysit and stay right there,
2 and if I'm busy someplace else, it's been a problem.
3 That's why I devised this, so I could protect it.

4 MS. POWELL: I understand.

5 MS. WITTUM: And I think the board consider your
6 suggestion, but then again we have to look at the
7 health and safety issues and that's something that
8 the board has felt that needed to be protected to the
9 point that it was put in the rules to prevent
10 practitioners from wearing their instruments on their
11 person. But again, this is something that you can
12 discuss when we get into the rule revisions next
13 year.

14 MS. DRAKE: Okay. I appreciate that.

15 MS. WITTUM: Thank you for coming.

16 **ACTION ON FINANCIAL REPORT**

17 MS. POWELL: At this time, I'd like to ask the
18 board -- I know you've been given a copy of the
19 financial report. I'd like to hear a motion on that.

20 MS. WEST: Madam President, I move that we
21 approve the financial report as submitted.

22 MS. GORDON: Second.

23 MS. POWELL: I have a motion and a second that
24 we approve the financial report as submitted. All
25 those in favor, raise your right hand.

1 (Show of hands.)

2 MS. POWELL: It's unanimous. Motion carries.
3 Thank you.

4 **ELECTION OF BOARD OFFICERS**

5 MS. POWELL: Our last item of business is the
6 election of officers. I'll turn that over to the
7 director at this time.

8 MS. TRAYLOR: You vacate the chair.

9 MS. POWELL: Okay.

10 MS. TRAYLOR: You vacate the chair and give it
11 to Kathy.

12 MS. POWELL: She can have it.

13 (Chorus of laughter.)

14 MS. WITTUM: First, -- well, do you want to do
15 ballots, or do you want to do a voice vote?

16 MS. TURMAN: I make a motion that we do voice.

17 MS. WITTUM: Okay. The first position is
18 president. Are there any nominations?

19 MS. TRAYLOR: I nominate Jane for another year.

20 MS. GORDON: I'll second that.

21 MS. WITTUM: Okay. Are there any other
22 nominations?

23 MS. WEST: I move that we accept Jane by
24 acclimation.

25 MS. WITTUM: Jane, will you do the honor of

1 serving for us again?

2 MS. TRAYLOR: You get up and make a speech now,
3 Jane.

4 (Chorus of laughter.)

5 MS. POWELL: You-all read my newsletter last
6 year. I know y'all know how I felt about this. It
7 was a challenge -- and trust me, after doing so, it
8 truly has been a challenge.

9 MS. TRAYLOR: All I know is it didn't win a
10 prize, though.

11 MS. POWELL: Well, it should have.

12 (Chorus of laughter.)

13 MS. POWELL: It should have.

14 MS. TURMAN: You'll have to do it again.

15 MS. POWELL: Well, it really should have. And
16 now that our director has managed to get some new
17 materials for the office, I think that y'all are
18 really going to appreciate the newsletters yet to
19 come.

20 MS. TRAYLOR: Well, we want to win next year.

21 MS. WITTUM: We won't submit one until we have a
22 killer one to submit.

23 MS. TRAYLOR: Oh, okay.

24 (Chorus of laughter.)

25 MS. WITTUM: But just wait for this next one.

1 MS. TRAYLOR: Okay. I'm waiting.

2 MS. POWELL: But just to answer your question, I
3 would be honored to serve my board again.

4 MS. WITTUM: Thank you, very much.

5 (Applause.)

6 MS. WITTUM: Okay. The next position is first
7 vice-president. Do I have any nominations?

8 MS. TURMAN: I nominate Veda Traylor.

9 MS. WEST: Second.

10 MS. WITTUM: Are there any other nominations?

11 MS. WEST: I move that we accept Veda by
12 acclimation.

13 MS. WITTUM: Veda, are you willing to serve in
14 that position?

15 MS. TRAYLOR: If Jane -- well, if Jane don't
16 just poop out on me, I will. I'd be glad to.

17 MS. WITTUM: Okay. Veda, we have you as first
18 vice-president. Okay. Nominations for second vice-
19 president?

20 MS. POWELL: Can I nominate?

21 MS. TRAYLOR: You can nominate.

22 MS. POWELL: Can I nominate?

23 MS. TRAYLOR: Yeah. You're --

24 MS. POWELL: I nominate Pat Turman.

25 MS. PICKERING: I'll second that.

1 MS. TRAYLOR: I move that the nominations cease
2 and Pat be the elected by acclimation -- majority
3 vote.

4 MS. WITTUM: Pat, are you willing to serve?

5 MS. TURMAN: Yes. Thank you. I think.

6 MS. WITTUM: Treasurer. Do I have any
7 nominations?

8 MS. POWELL: I'd like to nominate Ann Pickering.

9 MS. PICKERING: Oh, no. I have way too much.

10 (Chorus of laughter.)

11 MS. PICKERING: I have way too much, I do. I'm
12 on the city council. I'm involved in other areas of
13 the state.

14 MS. POWELL: Do you handle their money?

15 MS. PICKERING: No. I don't handle their money.
16 I can handle mine, but not yours. I would like to
17 not accept the nomination. I will decline on that.
18 Thank you. I do appreciate that. Thank you, but I
19 do have my hands full.

20 MS. TRAYLOR: Now, Ann, we all have our hands
21 full.

22 MS. PICKERING: I know, but I -- it's mind-
23 boggling.

24 MS. WITTUM: Are there any other nominations?

25 MS. WEST: I nominate Barbara Ward.

1 MS. WARD: What would I do?

2 MS. WEST: Can you handle money, Barbara?

3 MS. WITTUM: Barbara, are you willing to serve
4 as treasurer?

5 MS. WARD: Yes.

6 MS. TRAYLOR: And we're big financial people.

7 (Chorus of laughter.)

8 MS. WITTUM: Okay. Are there any nominations
9 for secretary?

10 MR. TURMAN: I nominate LaJoy.

11 MS. TRAYLOR: I second that.

12 MS. WITTUM: LaJoy, are you willing to serve?

13 MS. GORDON: Well, what would I have to do?

14 MS. WITTUM: You have to know how to keep
15 minutes and write letters.

16 MR. KEENE: And in the event that we don't have
17 a court reporter, you'll have to take this all down.

18 MS. GORDON: You mean, I'd have to do this?

19 MS. WITTUM: No. Teresa has us on her agenda.

20 MS. GORDON: Do you?

21 COURT REPORTER: You're on my calendar. I'll be
22 here, LaJoy.

23 MS. GORDON: Or if you're sick you'll send
24 somebody?

25 (Chorus of laughter.)

1 COURT REPORTER: If I'm sick, I'll send
2 somebody.

3 (Chorus of laughter.)

4 MS. GORDON: Okay. I will.

5 MS. WITTUM: Okay. Are we set with our new
6 officers? Jane, Veda, Pat, Barbara and LaJoy,
7 congratulations.

8 (WHEREUPON, the proceedings of the
9 administrative hearings and the business of the board
10 was concluded and done.)

11 * * * * *

12 OFF THE RECORD

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BOARD'S EXHIBIT NO. 1 TO HO#07-089
IN THE MATTER OF VERNELL BOOZER

(8 PAGES)

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RESPONDENT'S EXHIBIT NO. 1 TO HO#07-089
IN THE MATTER OF VERNELL BOOZER

(10 PAGES)

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BOARD'S EXHIBIT NO. 1 TO HO#07-021
IN THE MATTER OF JUDY IVIE

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BOARD'S EXHIBIT NO. 1 TO HO#07-380
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BOARD'S EXHIBIT NO. 1 TO HO#07-073
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IN THE MATTER OF RHONDA BRASSART

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RESPONDENT'S EXHIBIT NO. 1 TO HO#07-075
IN THE MATTER OF RHONDA BRASSART

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BOARD'S EXHIBIT NO. 1 TO HO#07-087
IN THE MATTER OF KITTY GRAY

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RESPONDENT'S EXHIBIT NO. 1 TO HO#07-087
IN THE MATTER OF KITTY GRAY

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BOARD'S EXHIBIT NO. 1 TO HO#07-046
IN THE MATTER OF STEPHANIE GOINES

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BOARD'S EXHIBIT NO. 1 TO HO#07-064
IN THE MATTER OF FRANCES PRIMEAUX

(6 PAGES)

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RESPONDENT'S EXHIBIT NO. 1 TO HO#07-064
IN THE MATTER OF FRANCES PRIMEAUX

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BOARD'S EXHIBIT NO. 1 TO HO#07-063
IN THE MATTER OF PHUONG TRAN

(7 PAGES)

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BOARD'S EXHIBIT NO. 1 TO HO#07-088
IN THE MATTER OF DONNA ROLLINS

(7 PAGES)

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RESPONDENT'S EXHIBIT NO. 1 TO HO#07-088
IN THE MATTER OF DONNA ROLLINS

(5 PAGES)

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BOARD'S EXHIBIT NO. 1 TO HO#07-007
IN THE MATTER OF RUBEN MEDINA

(7 PAGES)

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BEFORE THE ARKANSAS STATE BOARD OF COSMETOLOGY

I, **TERESA IDEN**, Certified Court Reporter in and for the State of Arkansas, Supreme Court Certificate No. 646, do hereby certify that I recorded the proceedings of the Arkansas State Board of Cosmetology board meeting and administrative hearings held on the 18th day of September, 2006; and that the foregoing transcript of the proceedings and the testimony of said proceedings was taken by me in stenovoice and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing pages numbered 1 through 252 constitute a true and accurate record of the proceedings held to the best of my understanding and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney,

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(501) 261-1106

or that requires me to provide and service not made available
to all parties to the action.

WITNESS MY HAND AND SEAL as such Court Reporter
on this the _____ day of _____, 2006.

TERESA IDEN, CCR
CERTIFIED COURT REPORTER
ARKANSAS SUPREME COURT CERTIFICATE NO. 646

EXPIRES: 12/31/2006