

**Arkansas Department of Health  
Cosmetology Technical Advisory Committee**

May 21, 2012

9 a.m.

Freeway Medical Building  
5800 W. 10<sup>th</sup> Street, Ste. 801, Little Rock, AR

**Cosmetology Technical Advisory Members:**

*Present:*

Roger Barnes	Jacqueline Reynolds
Sandy Davis	
Andrea Fuentes	

*Not Present:*

Rebecca Arguello Jeannie Bonds Kimberly Ford
--

**ADH – Cosmetology Staff Members:**

*Present:*

**Kelli Kersey, Cosmetology Section Chief**  
**Rick Hogan, ADH Attorney**  
**Rose Horner, Cosmetology Inspector**  
**Lavonne Lester Cosmetology Inspector**  
**Pat Jackson, Cosmetology Inspector**

**Kenneth Roberts, Inspector Supervisor**  
**Michelle Rudolph, Bus. Oper. Spec.**  
**Brenda Morgan, Cosmetology Inspector**  
**Vera Wood, Cosmetology Inspector**  
**Renee Mallory, Branch Chief, Lic. & Reg.**

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**Proceedings:**

- *Meeting called to order* at 9:04 a.m.
  
- *Meeting Minutes* – A motion was made and seconded to accept the March 19, 2012 meeting minutes. Motion approved.
  
- *Paid Violations* – A motion was made and seconded to approve the listing of paid violations. Motion approved. (See attached list)
  
- *Program Updates*
  - *New Staff Member* –Kelli Kersey introduced Kenneth Roberts as the new Inspector Supervisor.
  - *Renewal Fees* – Kelli Kersey discussed the decrease in renewal fees
  - *Hearings* begin at 9:30 and the transcript of the hearings are in a separate attachment and will be made available for review at the next official meeting, or at the Office of Cosmetology in the Arkansas Department of Health.
  
- *Public Comments* – (none contributed)
  
- A motion was made and seconded to adjourn until the July 23, 2012 meeting.
  
- Minutes submitted by Administrative Specialist, Teri Preachers.

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1 ARKANSAS DEPARTMENT OF HEALTH  
2 COSMETOLOGY SECTION  
3 COSMETOLOGY TECHNICAL ADVISORY COMMITTEE  
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9 BE IT REMEMBERED that on Monday the 21st day of  
10 May, 2012, the meeting of the Arkansas Department of  
11 Health, Cosmetology Section, Cosmetology Technical  
12 Advisory Committee was held, at 9:00 a.m., at the  
13 Arkansas Department of Health, Freeway Medical  
14 Building, Suite 801, Little Rock, Pulaski County,  
15 Arkansas.

16 \_\_\_\_\_

17  
18 TECHNICAL ADVISORY COMMITTEE:  
19 (Present)

20  
21 JACQUELYN REYNOLDS  
22 ANDREA FUENTES  
23 ROGERS BARNES  
24 SANDY DAVIS

25  
0002

1 APPEARANCES

2  
3 ON BEHALF OF THE COMMITTEE:

4 RICK HOGAN, ESQUIRE

5 HEARING OFFICER:

6 KENDRA AKIN-JONES, ESQUIRE

7 Office of the Attorney General

8 323 Center Street, Suite 200

9 Little Rock, Arkansas 72201

10  
11  
12 Staff Members Present:  
13  
14 KELLI KERSEY - Section Chief  
15 MICHELLE RUDOLPH - Administrative Assistant

16  
17  
18 Inspectors Present:

19  
20 ROSE HORNER  
21 PAT BLAND JACKSON  
22 BRENDA MORGAN  
23 VERA WOOD

24  
25  
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1 IN THE MATTER OF: License No. 41828  
2 ARKANSAS DEPARTMENT OF HEALTH                      PETITIONER  
3 v.  
4 STUDIO JONATHAN KENT  
5 OWNER, JONATHAN SWAIM                                      RESPONDENT

6

7                      PROCEEDINGS

8                      HEARING OFFICER AKIN-JONES: My name is  
9 Kendra Akin Jones, and I'm a hearing officer  
10 today in the matter of the Arkansas  
11 Department of Health Cosmetology Technical  
12 Advisory Committee versus Studio Jonathan  
13 Kent, Owner, Jonathan Swaim, as well as  
14 Arkansas Department of Health Cosmetology  
15 Technical Advisory versus Jonathan Swaim.  
16 We're going to do these two together just for  
17 expediency for everybody. Today is May 21,  
18 2012. We're located in Suite 801 of the  
19 Freeway Medical Building. If the respondent  
20 would please identify yourself for the  
21 record?

22                      THE WITNESS: Jonathan Kent Swaim.

23                      HEARING OFFICER AKIN-JONES: And Mr.  
24 Swaim, do you have counsel with you today?

25                      THE WITNESS: No.

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1                      HEARING OFFICER AKIN-JONES: Did you  
2 receive a copy of the order and notice of  
3 hearing?

4                      THE WITNESS: I'm sorry?

5 HEARING OFFICER AKIN-JONES: You received  
6 a copy of the order and notice of hearing for  
7 today?

8 THE WITNESS: Yes.

9 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
10 if you would, identify yourself for the  
11 record.

12 MR. HOGAN: I'm Rich Hogan. I'm general  
13 counsel for the health department and  
14 Arkansas Board of Health.

15 HEARING OFFICER AKIN-JONES: For the  
16 respondent's benefit and the benefit of  
17 anyone present today who may not have  
18 appeared in an administrative hearing, the  
19 board will base its decision solely on the  
20 evidence presented here today. This hearing  
21 is being held under the Administrative  
22 Procedures Act, which means strict rules of  
23 evidence do not apply. The board members  
24 know of the case only as it is set forth in  
25 the order and notice of hearing. Anything

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1 that you have in your possession that you  
2 want them to consider today will need to be  
3 presented as evidence today. This hearing is  
4 open to the public under the Freedom of  
5 Information Act and that does include the  
6 board's recess for deliberations. If you  
7 have any questions at any time, feel free to  
8 ask them. For those of you who are going to  
9 be witnesses in this hearing today, please  
10 raise your right hand to be sworn in.

11 (WHEREUPON, the witnesses were sworn by  
12 the Hearing Officer.)

13 HEARING OFFICER AKIN-JONES: Very well.  
14 Preliminary matters, Mr. Hogan?

15 MR. HOGAN: We'd ask that the committee  
16 be able to accept the rules and regulations  
17 of the Board of Health and the statutes that  
18 apply to cosmetology in Arkansas as judicial  
19 notice.

20 HEARING OFFICER AKIN-JONES: Those will  
21 be so noted.

22 MR. HOGAN: And we'd also -- we have 11  
23 pages. It's actually two separate documents  
24 and there's a repeat of the Studio of  
25 Jonathan Kent. As we said, there's two

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1 separate actions: One against the salon for  
2 not having a license and not having it posted  
3 and the other for the practitioner not having  
4 a license and posting it. Both documents  
5 total 11 pages in length and we'd ask that  
6 those be admitted as Exhibit 1 for the

7 committee to consider today.

8 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
9 do you want both of those packets as one  
10 compilation exhibit?

11 MR. HOGAN: If that's okay, we'd like  
12 that.

13 HEARING OFFICER AKIN-JONES: That will be  
14 fine. We'll enter the two packets as a  
15 compilation Exhibit 1 for the Department of  
16 Health.

17 (WHEREUPON, Committee's Exhibit No. 1 was  
18 received in evidence.)

19 HEARING OFFICER AKIN-JONES: Anything  
20 further?

21 MR. HOGAN: Nothing further in the  
22 preliminary lead.

23 HEARING OFFICER AKIN-JONES: Mr. Swaim,  
24 do you have anything here with you today that  
25 you want the board to look at?

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1 MR. SWAIM: Yes. I had sent in for my  
2 license everything, and we'd get a letter  
3 back.

4 HEARING OFFICER AKIN-JONES: Okay. I'm  
5 going to stop you right here just because --  
6 if you want, we can get copies made so the  
7 board can take a look at that. I'm going to  
8 give you a full chance to explain it all.  
9 I'm just trying to make sure if you have  
10 anything that we need copies made of and we  
11 introduce into evidence. We can go ahead and  
12 get that done now.

13 MR. SWAIM: Okay.

14 HEARING OFFICER AKIN-JONES: Anything  
15 else, Mr. Swaim?

16 When she gets back with those copies,  
17 we'll introduce those as exhibits for you.

18 MR. SWAIM: Okay.

19 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
20 so those two documents were all you had?

21 MR. HOGAN: Well, there is one  
22 additional.

23 HEARING OFFICER AKIN-JONES: Is there  
24 anything else that you had other than those  
25 two?

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1 MR. HOGAN: There's four pages of records  
2 from the department that Ms. Kersey will  
3 testify about that basically are  
4 record-keeping documents of the history of  
5 the salon and the license itself. I'm not  
6 sure that Mr. Kent has seen a copy of these.  
7 The other stuff, I think, was given to him.  
8 So let me, if I may, just make sure he has a

9 chance to see this before we --  
10 MS. TOBIAS: Are we going to have chance  
11 just to call me and --  
12 HEARING OFFICER AKIN-JONES: I'll give  
13 you -- you'll have a chance to fully tell  
14 both of your sides of the story. He can call  
15 you as a witness, and he can ask you  
16 questions as well as Mr. Hogan for the  
17 cosmetology board and the board members  
18 themselves. So you'll both have a chance to  
19 fully --

20 MS. TOBIAS: Mostly my fault anyway.  
21 HEARING OFFICER AKIN-JONES: Mr. Swaim,  
22 are you okay with the document Mr. Hogan just  
23 handed to you?

24 THE WITNESS: Yes. This is just getting  
25 all the suits for things.

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1 HEARING OFFICER AKIN-JONES: Okay. If  
2 you have no objection, I'm going to go ahead  
3 and introduce those as Exhibit No. 2 for the  
4 Cosmetology Technical Advisory Committee.

5 (WHEREUPON, Committee's Exhibit No. 2 was  
6 received into evidence.)

7 HEARING OFFICER AKIN-JONES: Okay. Mr.  
8 Hogan, why don't you go ahead and call your  
9 first witness?

10 MR. HOGAN: Brenda Morgan.

11 HEARING OFFICER AKIN-JONES: Well, do you  
12 have an opening statement? I'm sorry.

13 THE WITNESS: No, no. I don't have any  
14 opening remarks.

15 HEARING OFFICER AKIN-JONES: Mr. Swain,  
16 is there anything you'd like to state in the  
17 opening before we start witnesses?

18 THE WITNESS: No.

19 HEARING OFFICER AKIN-JONES: Just to tell  
20 the board about what you're here for or  
21 anything.

22 THE WITNESS: I mean, do you want me to  
23 tell what's happened or --

24 HEARING OFFICER AKIN-JONES: No.

25 THE WITNESS: Not yet? Okay.

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1 HEARING OFFICER AKIN-JONES: Very well.  
2 We'll move on to witnesses. Mr. Hogan?

3 (WHEREUPON,

4 BRENDA MORGAN,

5 having been duly called for examination  
6 and having been first duly sworn by the  
7 Hearing Officer, was examined and testified  
8 as follows:)

9 DIRECT EXAMINATION

10 BY MR. HOGAN:

11 Q Ms. Morgan, state your name and your position  
12 with the department?

13 A Brenda Morgan. I'm an inspector for the  
14 cosmetology health department.

15 Q Brenda, part of your area for inspection includes  
16 Little Rock; is that correct?

17 A Yes, sir, it does.

18 Q Did you have occasion in November of last year to  
19 inspect the Studio Jonathan Kent at 220 West Sixth  
20 Street?

21 A Yes, sir, I did.

22 Q Tell the members that in the packet of  
23 information -- I believe it's an inspection report.

24 This is a document that you filled out; is that  
25 correct?

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1 A Yes, sir, it is.

2 Q Tell the members of the committee what you found  
3 on the day of your inspection on November 22nd.

4 A I actually went to this address expecting another  
5 salon to be there and finding that I had -- that salon  
6 was not open anymore and there had been another salon  
7 opened up, Studio Jonathan Kent.

8 Q In your report you say that they had only been  
9 open for two weeks; is that correct?

10 A That's what Jonathan told me, yes.

11 Q Now, there's a difference noted in your -- I  
12 believe in the proposed penalty for Mr. Swaim as a  
13 practitioner and a penalty for the salon. I'll ask  
14 Ms. Kersey about that, though. But did Mr. Kent --  
15 was he present that day when you inspected the  
16 facility?

17 A Yes, sir, he was.

18 Q And you talked to him. Can you tell us about  
19 your conversation with him?

20 A Yes. The salon was still -- you know, he did  
21 have a client that day. I believe he was providing a  
22 highlight or a color of some sort. But he was still  
23 putting the salon together as far as getting  
24 everything in its place, but it was workable for him  
25 because he was working on -- or he did have his client

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1 there. In our conversation, he told me that he had  
2 moved, had gotten the building and was happy with the  
3 location and that his mom was taking care of all of  
4 his paperwork for him.

5 Q Did you discuss whether or not he had a license  
6 or why his license wasn't posted at the --

7 A Yes, sir. I sure --

8 Q Tell us about that.

9 A I asked about an application for a new salon or a  
10 relocation, and he said if there was one, his mom  
11 would have taken care of the paperwork for him. That  
12 he doesn't -- he does the salon and she does the

13 paperwork and the bookkeeping for him. I asked for  
14 his practitioner license and a salon license, and we  
15 didn't even find the salon license for the previous  
16 location, so there were none present.

17 Q What was the previous location? Do you recall?

18 A It was Shackelford. I can't remember the number  
19 of the -- it was 240.

20 Q And there was no practitioner license posted?

21 A No, sir.

22 Q Did Mr. Kent tell you if he had a current  
23 practitioner license or just refer that question to  
24 his bookkeeper?

25 A He -- he assumed -- assumptions were they were  
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1 not present, so he could not find any. So I don't  
2 know that he said that he had some. I know he's a  
3 licensed person in the previous years.

4 Q In the process of applying for a new location or  
5 licensure, they are typically given a letter of  
6 authorization. Did you note any letter of  
7 authorization at the business?

8 A No, sir. I did not find one there.

9 Q Is there anything further you need to make the  
10 committee aware of concerning your investigation or  
11 inspection?

12 A No, sir.

13 MR. HOGAN: I'll pass the witness.

14 HEARING OFFICER AKIN-JONES: Mr. Swaim,  
15 do you have any questions for Ms. Morgan?

16 THE WITNESS: No.

17 HEARING OFFICER AKIN-JONES: Okay.

18 Committee members, any questions for Ms.  
19 Morgan? If there are none, thank you very  
20 much.

21 Mr. Hogan, you can call your next  
22 witness.

23 MR. HOGAN: We call Ms. Kersey.

24 (WHEREUPON,  
25 KELLI KERSEY,

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1 having been called for examination, and  
2 having been first duly sworn by the Hearing  
3 Officer, was examined and testified as  
4 follows:)

5 DIRECT EXAMINATION

6 BY MR. HOGAN:

7 Q Kelli, state your name and your position with the  
8 department, please.

9 A Kelli Kersey, Section Chief, Arkansas Department  
10 of Health, Cosmetology.

11 Q Kelli, when you do an inspection or investigation  
12 like this inspection report, do you search your  
13 records to determine if the practitioner or the salon  
14 has a current license in Arkansas?

15 A Yes, sir.

16 Q What did you find on your search in the  
17 documents?

18 A He has since renewed his cosmetology license on  
19 4/3/2012.

20 Q That's the practitioner license?

21 A That's the practitioner license. And he also did  
22 a new shop application on 4/3/2012 for Studio  
23 Jonathan Kent. But on 11/22/11, he did not. His  
24 license was expired. His practitioner's license was  
25 expired, and his -- he did not have a salon license.

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1 Q Does your record show that Mr. Kent -- or Mr.  
2 Swaim or that the Studio Jonathan Kent had previously  
3 tried to be licensed before the inspection in  
4 November or if they had sent in some requests for an  
5 authorization for a change of address before November  
6 22nd of last year?

7 A Not for the salon, no.

8 Q All right. Did you have occasion or did you look  
9 to see if this business on Shackleford had a current  
10 license?

11 A I'm sorry. I didn't even look at that. Sorry.

12 Q Okay.

13 A Yeah. Because it wasn't that salon in question.

14 Q Now, since April -- what did you say April the  
15 11th?

16 A 3rd.

17 Q Third?

18 A Uh-huh.

19 Q Mr. Swaim got -- or he got his license current  
20 with respect to his practitioner license, correct?

21 A Yes. And he applied for a new salon license.

22 Q I note that the -- I believe that -- wasn't the  
23 suggested penalty different for the salon and the  
24 practitioner license? I know that the practitioner,  
25 the proposed penalty was \$633 for the lack of license

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1 and the salon was only \$550 of the proposed penalty.  
2 Can you explain the difference between those two? You  
3 know, it looks like -- if both are violations of the  
4 law if they don't have a license, why is there a  
5 difference in the proposed penalty amount?

6 A Well, when you don't have a salon license, it's a  
7 flat rate of \$250. And when you have an unlicensed  
8 practitioner, this is for the salon, you have a \$250  
9 flat rate of an unlicensed practitioner because he  
10 didn't have a current license. He had two other  
11 violations that the health and safety wasn't posted  
12 and the salon license wasn't posted, so that equaled  
13 \$550 for the salon. On a practitioner's license,  
14 their fines are \$25 plus a dollar a day however long  
15 their license has been expired, so it added up to  
16 \$633.

17 Q He apparently has gotten his license straightened  
18 out for both the practitioner and his salon, correct?

19 A Yes, sir.

20 Q So they're current and he's okay. Does he get  
21 credit or does this count in terms of what he's paid  
22 already to be licensed?

23 A No, sir.

24 Q Does that go toward the proposed penalties?

25 A No, sir. A license fee and a late fee are a

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1 different fee than an infraction fee. They're two  
2 completely separate things.

3 Q So you're asking the committee then to vote today  
4 to accept the penalty against the salon of, what, \$550  
5 for violation of the failure to post the safety rules,  
6 health and safety rules, and failure to have a current  
7 license. And you're asking the committee to accept --  
8 to find a violation of failure to have a  
9 practitioner's license current. And for the days as  
10 you have calculated, it would add up to be a \$633  
11 penalty against the practitioner. That's what you're  
12 asking them to accept?

13 A Yes, sir.

14 Q So it's an \$1183 civil penalty for violation of  
15 the code and rules that you're asking the committee to  
16 vote on today to accept; is that correct?

17 A Yes, sir.

18 Q Is there anything further you want the committee  
19 to rule on?

20 A No, sir, I don't think so.

21 MR. HOGAN: I'll pass the witness.

22 HEARING OFFICER AKIN-JONES: Okay. Thank  
23 you, Mr. Hogan.

24 Mr. Swaim, do you have any questions for  
25 Ms. Kersey?

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1 THE WITNESS: No.

2 HEARING OFFICER AKIN-JONES: Board  
3 members, questions for Ms. Kersey? Very  
4 well. Thank you very much.

5 Mr. Hogan, any other witnesses?

6 MR. HOGAN: No. That closes our case.

7 HEARING OFFICER AKIN-JONES: Mr. Swaim,  
8 at this time, I'm going to give you a chance  
9 to either tell your side of the story or call  
10 your witness. You can do those in either  
11 order. It will be fine with me. And then  
12 you'll -- Mr. Hogan and the board will have a  
13 chance to ask both of you questions. So I'll  
14 let you start however you want.

15 (WHEREUPON,

16 JONATHAN SWAIM,

17 having been called for examination and  
18 having been first duly sworn by the Hearing

19 Officer, was examined and testified as  
20 follows:)

21 DIRECT TESTIMONY

22 THE WITNESS: Well, we went through the  
23 last couple years. I had some major things  
24 happen in my life that just kind of destroyed  
25 everything. At the end of last year, I

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1 started becoming very ill and from the  
2 economy and everything had lost a lot of my  
3 day spa people, massage therapists,  
4 manicurists and all that. So I was  
5 downsizing. So in the middle of all this, my  
6 father wind up getting cancer, and so I  
7 started trying to take everything over from  
8 mom. And it's like right here I have a  
9 letter from the department stating that my  
10 license -- we sent a check in -- that my  
11 license does not expire until 6/26 of '12.

12 HEARING OFFICER AKIN-JONES: Just for  
13 clarification, let me go ahead and mark these  
14 as exhibits. I'll mark this one as the Swaim  
15 Exhibit No. 1, which is the letter dated  
16 November 17, 2010, and then the handwritten  
17 notes will be Swaim Exhibit No. 2. To make  
18 sure we get a clear record.

19 (WHEREUPON, Respondent's Exhibit Nos. 1  
20 and 2 and are attached hereto.)

21 THE WITNESS: Okay. So as far as I know,  
22 since it says here on the paper from the  
23 department and they sent the check back that  
24 my license didn't expire until '12. So to  
25 me, I was on that one all good. On all the

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1 other things, I had made such a fast move out  
2 of the other salon to where everything was in  
3 boxes, and honestly, I didn't know where any  
4 of my stuff was. I knew they were in boxes  
5 somewhere. And, you know, I did find my -- I  
6 have a regulation -- you know, rules and  
7 regulation or whatever that one's called and  
8 the license that was to the past salon. Not  
9 the one on Shackleford because I had the big  
10 one there, and then I downsized to Rodney  
11 Parham for three years. And then I decided  
12 -- I moved in down there the first -- well,  
13 it was about the second week of November.  
14 And then that's when she came and we  
15 realized, you know, I had to start finding --  
16 trying to find this stuff.

17 Well then, I again was put under doctor's  
18 care and was not able to work. So then  
19 whenever I started trying to get back to work  
20 was when I actually found all this out. I

21 mean, I knew that it had been posted, but I  
22 didn't know that, you know, like I didn't  
23 have a license or any of that or didn't know  
24 where they were.

25 HEARING OFFICER AKIN-JONES: I'm going to

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1 let Mr. Hogan ask you some questions now if  
2 you're finished for now, and I'll give you  
3 another chance if there's anything else you  
4 want to clarify.

5 THE WITNESS: Okay. Thank you.

6 HEARING OFFICER AKIN-JONES: Go ahead,  
7 Mr. Hogan.

8 CROSS-EXAMINATION

9 BY MR. HOGAN:

10 Q Mr. Swaim, sorry about your father. Let me ask  
11 you, were you aware that your personal license as a  
12 practitioner was related to your birthday? I mean,  
13 the 6/26 is -- that's your birthday; is that right?

14 A Yes.

15 Q So were you aware as practitioner that your  
16 license was good for two years from your -- in other  
17 words, your records show that your license would have  
18 expired 6/26/2010. Were you aware of that?

19 A Well, that -- that's what -- you know, we thought  
20 it was all taken care of, I mean, somehow. So I knew  
21 because I'd lost my wallet and so I didn't have my  
22 card and --

23 Q How long have you been practicing, you know, when  
24 you -- in the business of cosmetology?

25 A Since '87.

0025

1 Q Since '87, you would have been licensed for a  
2 two-year period from your birthday.

3 A Well, it's never been the same --

4 Q In other words, you --

5 A It's never been the same to me because I've lived  
6 in a lot of different states.

7 Q Okay. So in Arkansas how long have you been  
8 practicing?

9 A Quite a while.

10 Q Okay.

11 A See, that was one of those things that when I had  
12 my large salon, I never took care of any of my stuff.  
13 I had accountants and all these people that did it.  
14 And so I really never paid attention to any of that.

15 Q I agree with you. I think your letter's  
16 inartfully worded. What it's telling you is that if  
17 you had renewed your license, it would have expired  
18 6/26/2010. You understand that now, correct?

19 A Yes.

20 Q It's not telling you that your license is good  
21 through 6/26/2012.

22 A Oh, see, that's the way I read it.

23 MS. TOBIAS: You just -- yeah.  
24 A That's the way I --  
25 HEARING OFFICER AKIN-JONES: Okay. Just  
0026  
1 one at a time. I'm going to give you a  
2 chance for him to let you explain.  
3 MS. TOBIAS: No, I was just going to tell  
4 him something, sorry.  
5 HEARING OFFICER AKIN-JONES: We just have  
6 to have one at time for the court reporter.  
7 We don't want her to get upset with us.  
8 BY MR. HOGAN:  
9 Q But you had no idea that your license had expired  
10 on your birthday in 2010?  
11 A No. Honestly not.  
12 Q And you had not checked, I guess -- for example,  
13 on your birthday in 2011, did you check or, to your  
14 knowledge, did anybody check on your behalf whether  
15 or not you had a current license as a cosmetologist?  
16 A No. Because like I said, I just assumed that  
17 everything had been taken taking care of from the lady  
18 that used to do it.  
19 Q Well, this letter that you've introduced is dated  
20 November 17, 2010. And when Ms. Morgan came to your  
21 business and suggested that you should have license  
22 posted and you should have the health and safety rules  
23 posted, what was -- did you inquire then as to whether  
24 or not you had a current license?  
25 A No. I guess just -- because once again, I would  
0027  
1 just assume it was there beside I'd never seen any  
2 letter or anything about it.  
3 Q When you got the notice of hearing or the -- you  
4 got the inspection report and signed it in November of  
5 last year. Did you then check to see if you had --  
6 you were cited for not having a current license for  
7 the -- for both the salon and you as a professional --  
8 A Well, I was thinking that was just for it not  
9 being posted.  
10 Q Did you inquire then after that when you got this  
11 inspection report as to the status of your current --  
12 whether or not your license was current for the salon  
13 or for you as a practitioner?  
14 A Well, I finally did when I went through the boxes  
15 and couldn't find my stuff.  
16 Q When was that?  
17 A Like February-something or when I finally  
18 finished unpacking stuff.  
19 Q February of this year?  
20 A Yes.  
21 Q Would that have been before or after you received  
22 the notice of today's hearing?  
23 A That was before.  
24 Q Okay. Thank you.

25 HEARING OFFICER AKIN-JONES: Board

0028

1 members, any questions for Mr. Swaim?

2 MS. FUENTES: When you had renewed your  
3 license in the past 10 or 12 times, did they  
4 send you a new license in return for your  
5 check? Is that how you remember it?

6 THE WITNESS: Yeah. That's --

7 MS. FUENTES: So when would have been the  
8 last time you had an actual physical license  
9 in your possession?

10 THE WITNESS: I always had. When I --  
11 always had, and then whenever I moved and all  
12 that, I just thought it was shoved in boxes  
13 because it was --

14 MS. FUENTES: So when would have been the  
15 last time you saw your license, a current  
16 license?

17 THE WITNESS: Sometime last year, like  
18 the first of last year, I guess, I was  
19 remembering when I saw it.

20 MS. FUENTES: And when you had had your  
21 salons in the past, did you post the other  
22 people's license that worked for you? Were  
23 they posted somewhere in the salon?

24 THE WITNESS: Yeah, on everyone's  
25 station.

0029

1 MS. FUENTES: And yours would have been  
2 posted at your station?

3 THE WITNESS: Uh-huh.

4 MS. FUENTES: And so when was the last  
5 time you saw it? Approximately a year ago it  
6 was posted on your station?

7 THE WITNESS: Yeah, because I was moving  
8 the stations and everything. And so I took  
9 everything down and stuck it in an office.  
10 And so that was the last time. So it was  
11 just a thing of not hanging it back on my  
12 mirror.

13 HEARING OFFICER AKIN-JONES: Board  
14 members, further questions for Mr. Swaim?

15 MS. DAVIS: I have one. When they  
16 changed all the fees and everything several  
17 years ago, when they went from \$13 and  
18 increased that amount, at that time did you  
19 read the rules and regulations about  
20 cosmetology to know what the fees were going  
21 to be, when they were going to be due and all  
22 to get it in your mind when your license was  
23 going to be due?

24 THE WITNESS: No, ma'am, because like I  
25 said at that time I had such a large staff

0030

1 that I had someone else because it was all I  
2 could do to babysit -- I mean, to run the  
3 employees. And so, I mean, I know that  
4 sounds bad, but, you know, I had a person who  
5 took care of my checkbook, my accounting, my  
6 bills, everything.

7 MS. DAVIS: As the owner of the salon, do  
8 you feel like it was your responsibility to  
9 know about the rules and regulations and the  
10 licenses that were due?

11 THE WITNESS: Well, I usually did read --  
12 you know, see the stuff that would come in  
13 and look over it. But then usually once --  
14 whichever person took it to take care of it,  
15 then it was just kind of out of my head.

16 HEARING OFFICER AKIN-JONES: Any further  
17 questions from the board members for Mr.  
18 Swaim? Very well. Thank you, Mr. Swaim.  
19 You can call your witness now.

20 THE WITNESS: I'd like to call my mother,  
21 Freda.

22 HEARING OFFICER AKIN-JONES: If you  
23 would, please state your name for the record,  
24 your full name.

25 MS. TOBIAS: My full name?

0031

1 HEARING OFFICER AKIN-JONES: Other than  
2 just mom.

3 MS. TOBIAS: Freda Swaim Tobias, okay.

4 HEARING OFFICER AKIN-JONES: He has to  
5 ask you questions.

6 MS. TOBIAS: I thought I got to tell  
7 something.

8 HEARING OFFICER AKIN-JONES: Well, you  
9 do, but he has to ask you a question, too.

10 MR. SWAIM: I have to ask her?

11 HEARING OFFICER AKIN-JONES: It doesn't  
12 have to be a very detailed question. You  
13 just have to ask her a question so she can  
14 answer those questions.

15 MR. SWAIM: She's usually the one telling  
16 me what to do. I should really take  
17 advantage of this, huh?

18 MS. TOBIAS: And then when I quit --  
19 didn't do it, see what happened.

20 (WHEREUPON,

21 FREDA SWAIM TOBIAS,

22 having been called for examination and  
23 having been first duly sworn by the Hearing  
24 Officer, was examined and testified as  
25 follows:)

0032

1 DIRECT EXAMINATION

2 BY MR. SWAIM:

3 Q Can you help explain to me about the licensing  
4 and everything of what you think happened?

5 A I remember the day that you called me screaming  
6 at me about, "I thought you'd taken care of all this?  
7 Why in the world haven't you?"

8 And I said, What are you talking about?"

9 But we have had quite a bad last three years.  
10 And there was -- there were the times that quite  
11 frankly you didn't seem to remember much of anything.  
12 Your sister told me she got to looking at your meds,  
13 and she said it was because of some of the medicines  
14 you were taking. And she said, "He doesn't remember a  
15 lot of things, and he thinks he's got it taken care of  
16 and then he doesn't."

17 Of course, we know we've been blessed because I  
18 was told 20 years ago you wouldn't live very long.  
19 But there are times that those medications do kind of  
20 overwhelm you. Secondly, I took care of so much.  
21 Your brother and sister kept telling me that I should  
22 give it to you and then because I just did not think  
23 you could keep up with all of it or remember all of  
24 it. But you did you call me on and check twice on,  
25 "Mom, is there a box in the garage that has some more

0033

1 of my salon stuff in there?" And I really honestly  
2 think you believe those licenses were in something  
3 that had not been opened. I'm sorry.

4 MR. SWAIM: Can I ask more?

5 HEARING OFFICER AKIN-JONES: Yeah. Sure.

6 You can ask more questions.

7 BY MR. SWAIM:

8 Q The last since -- how much would you say that  
9 I've been able to work since I moved downtown?

10 A Not very much, but I could not give a percentage  
11 of time, I don't think. I really don't know, but I  
12 know that you've been a lot times not able. And then  
13 when they -- we were trying to find a place for you to  
14 go for a while and to a rehab place or something until  
15 you could get yourself together. I know during that  
16 time, you didn't do much.

17 Q Rehab for depression.

18 A Oh, it was -- we really thought he was going to  
19 have to be hospitalized. Oh, I'm not supposed to talk  
20 to them. And it has been bad, but I would like  
21 everybody to look at all the years that he was in  
22 business, never a problem. Never a problem. And then  
23 it comes to the downturn in the economy and he lost a  
24 lovely home. He lost everything. He went into  
25 bankruptcy. Next thing, it was mom because I've got

0034

1 liens on my home now of taxes on his salon of \$30,000,  
2 and I also owe about that much. That salon was in my  
3 name for several years. So then I go through  
4 bankruptcy. The only thing I was able to keep was my

5 house because it was -- I'm somebody that has  
6 children, you know, and somehow it goes back to that  
7 family issue. Then the attorneys tell me because of  
8 some of the things hanging out I need you to do a  
9 bankruptcy on the salon of all things.

10 So if for just a moment you could think how we  
11 might have felt through all that time and how  
12 confusing things could get and look at the 20 or 25  
13 years that his license was always current. He didn't  
14 have any kind of citation all those years, all those  
15 years. And then the last two or three years, it's  
16 been kind of bad. And we were so excited when he  
17 seemed to be like he was going to get it together  
18 again downtown because John is a fabulous  
19 hairdresser. It's broke a mom's heart to see the  
20 things that's happened here. And I guess I'm just  
21 thinking if you look at the whole picture, it wouldn't  
22 look not quite so bad.

23 HEARING OFFICER AKIN-JONES: Mr. Swaim,  
24 do you have any further questions for your  
25 mother?

0035

1 MR. SWAIM: No.

2 HEARING OFFICER AKIN-JONES: Very well.

3 Mr. Hogan, questions for Ms. Tobias?

4 MR. HOGAN: No, I have no questions.

5 HEARING OFFICER AKIN-JONES: Board  
6 members, questions? Very well. Thank you,  
7 ma'am. Mr. Swaim, any other witnesses you  
8 want to call, anything else you want to say  
9 before we go to closings?

10 MR. SWAIM: I just know that -- I've gone  
11 so blank on your name, I'm sorry. Brenda.  
12 I've known her for years and she knows that  
13 I've always had my stuff in line.

14 HEARING OFFICER AKIN-JONES: Okay. We're  
15 going to move on to closings at this time.  
16 Mr. Hogan, anything you'd like to say at  
17 closing?

18 MR. HOGAN: No, I'll waive it.

19 HEARING OFFICER AKIN-JONES: Mr. Swaim,  
20 last chance before we let the board recess  
21 for deliberations. Anything else you want to  
22 say?

23 MR. SWAIM: Just the fact that, you know,  
24 this industry is very important to me. I go  
25 to schools and teach. I travel for a company

0036

1 out of Italy doing shows for them and I'm  
2 just trying to keep it -- get it all back  
3 together.

4 HEARING OFFICER AKIN-JONES: Very well.  
5 Thank you.

6 MS. DAVIS: At this time, the record will

7 be made complete except for the board's  
8 recess for deliberations. Once the board  
9 reaches a decision, we will go back on the  
10 record.

11 (WHEREUPON, the committee retired to  
12 deliberate off the record from 10:01 a.m. to  
13 10:04 a.m. and returned with the following  
14 decision:)

15 MS. DAVIS: I make a motion that the fees  
16 stand as stated in both of the letters, the  
17 one for the personal, \$633, and for the  
18 salon, \$550.

19 MS. FUENTES: I second it.

20 HEARING OFFICER AKIN-JONES: The motion  
21 has a second. All those in favor please  
22 raise your hand. Please let the record  
23 reflect the board's decision is unanimous.  
24 Please reduce that decision to writing and  
25 make or attempt service upon all parties. If

0037

1 the respondent cares to appeal the decision,  
2 an appeal can be taken under Arkansas Code  
3 Annotated 25-15-201, et seq., or any specific  
4 provision of this board. If there are no  
5 other questions or comments, the hearing is  
6 concluded and the record is closed.

7 (WHEREUPON, the proceedings were  
8 concluded in the matter at 10:05 a.m.)  
9  
10  
11  
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0038

1 IN THE MATTER OF: License No. 51867  
2 ARKANSAS DEPARTMENT OF HEALTH PETITIONER  
3 v.  
4 PETRO'S BEAUTY AND BARBER SHOP RESPONDENT  
5 PROCEEDINGS

6 MR. HOGAN: We had a hearing last time  
7 that we met and the board voted to assess a  
8 penalty. I'll have to look here and see

9 exactly how much that was.

10 MS. PEACH: \$1,025.

11 MR. HOGAN: And after that was sent out  
12 notifying -- and I'm sorry. What was your  
13 name?

14 MS. PEACH: Mona Peach.

15 MR. HOGAN: After that was sent out, we  
16 were notified by Ms. Peach, I guess, that  
17 they had failed to get notice of the previous  
18 hearing. And so they wanted the opportunity  
19 to come and present their side of the matter  
20 and that's basically what we're here for  
21 today is to allow you all to state your side  
22 of the case. We previously had in the record  
23 the statement, the order, notice of hearing  
24 and documents of the inspection conducted by  
25 Ms. Wood. I think you all have a copy of

0039

1 that, correct?

2 MS. PEACH: Yes, sir.

3 HEARING OFFICER AKIN-JONES: Okay. Mr.  
4 Hogan, thank you for that update. We'll go  
5 ahead and start the hearing. Today is May  
6 21, 2012. We're in the Freeway Medical  
7 Building. My name is Kendra Akin-Jones, and  
8 I'm the Hearing Officer for the matter of the  
9 Arkansas Department of Health versus Petro's  
10 Beauty and Barber Shop. If the respondent  
11 would, if you would identify yourself for the  
12 record.

13 MS. PEACH: Mona Peach.

14 HEARING OFFICER AKIN-JONES: Okay, Ms.  
15 Peach. And you received a copy of the order  
16 and notice for today's hearing.

17 MS. PEACH: Yes, ma'am.

18 HEARING OFFICER AKIN-JONES: And you  
19 don't have counsel with you today?

20 MS. PEACH: No, ma'am.

21 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
22 if you will, identify yourself.

23 MR. HOGAN: Rick Hogan. I'm general  
24 counsel for the health department and Board  
25 of Health.

0040

1 HEARING OFFICER AKIN-JONES: For the  
2 respondent's benefit and the benefit of those  
3 present today who may not have appeared for  
4 an administrative, the board will base its  
5 decision solely on the evidence that is  
6 presented today and in this hearing what was  
7 taken into evidence at the March 19, 2012,  
8 hearing as well. This hearing is being held  
9 under the Administrative Procedures Act,  
10 which means the strict rules of evidence do

11 not apply. Board members know this case only  
12 as it appears to set forth in the order and  
13 notice of hearing or anything that is  
14 submitted into evidence today to be  
15 considered. All participants should also be  
16 aware this hearing is open under the Freedom  
17 of Information Act to the public and that  
18 does include the board's recess for  
19 deliberations. For those of you, who are  
20 going to be witnesses in today's matter,  
21 please raise your right hand.

22 (WHEREUPON, the witnesses were sworn in  
23 by the Hearing Officer.)

24 HEARING OFFICER AKIN-JONES: Preliminary  
25 matters, Mr. Hogan. Is there anything you'd

0041

1 like to introduce?

2 MR. HOGAN: Yes. There is the document  
3 that actually -- I think this is part of the  
4 record previously, but I want to go and make  
5 sure that you all have had an opportunity to  
6 see what we're going to be discussing today  
7 and if you have any remarks about it. I  
8 think there's eight pages here that we'd ask  
9 that that be admitted as Exhibit 1 for the  
10 record.

11 HEARING OFFICER AKIN-JONES: That will be  
12 so admitted as Exhibit 1.

13 (WHEREUPON, Committee's Exhibit No. 1 is  
14 admitted into evidence.)

15 HEARING OFFICER AKIN-JONES: Anything  
16 else in preliminary matters?

17 MR. HOGAN: We just ask that the board be  
18 able to take notice of their rules and  
19 regulations and the cosmetology statute in  
20 Arkansas.

21 HEARING OFFICER AKIN-JONES: Those will  
22 be so noted.

23 MR. HOGAN: Now, I've also been handed a  
24 front and back -- actually, there's two  
25 statements here, one from Joey Ward.

0042

1 MS. PEACH: Correct.

2 HEARING OFFICER AKIN-JONES: And Fay  
3 Langley, correct?

4 MS. PEACH: Correct.

5 MR. HOGAN: I don't have any objections  
6 to that being part of the record today  
7 either.

8 HEARING OFFICER AKIN-JONES: The order  
9 and notice hearing will be Exhibit 1. The  
10 statement from Mr. Ward will be Exhibit 2.  
11 The statement from Ms. Langley Exhibit 3.

12 (WHEREUPON, Committee's Exhibit Nos. 2

13 and 3 are admitted into evidence.)

14 HEARING OFFICER AKIN-JONES: Anything  
15 further on preliminary matters? Anything  
16 else you want to introduce other than these  
17 two?

18 MS. PEACH: No, ma'am.

19 HEARING OFFICER AKIN-JONES: Very well.  
20 At this time, Mr. Hogan, call your first  
21 witness.

22 MR. HOGAN: We previously called Ms.  
23 Wood, and I think the record is already clear  
24 about the failure to have a photo I don't  
25 know. and the failure to have a current

0043

1 license and the licensed not being posted.  
2 The only thing that I would supplement that  
3 with is some testimony from Ms. Kersey to  
4 make sure this is clear on the record.

5 HEARING OFFICER AKIN-JONES: And what is  
6 "this," Hogan?

7 MR. HOGAN: I'm sorry.

8 HEARING OFFICER AKIN-JONES: Are you  
9 going to introduce that or --

10 MR. HOGAN: Yes, this is already  
11 introduced. It's part of the packet. But I  
12 wanted to -- I'm not sure I asked her about  
13 this at the last hearing and I wanted to do  
14 that.

15 HEARING OFFICER AKIN-JONES: Go right  
16 ahead.

17 (WHEREUPON,

18 KELLI KERSEY,

19 having been duly called for examination  
20 and having been first duly sworn by the  
21 Hearing Officer, was examined and testified  
22 as follows:)

23 DIRECT EXAMINATION

24 Q State your name and your position with the  
25 Department of Health, please?

0044

1 A Kelli Kersey, Section Chief, Arkansas Department  
2 of Health, Cosmetology.

3 Q Kelli, I know you previously testified about  
4 Petro's Beauty and Barber Shop as not having a current  
5 salon license and that's what your records reflect;  
6 is that correct?

7 A Yes, sir.

8 Q You've given me a document that's the last page  
9 of these eight pages and it appears to be kind of an  
10 itemized report based on certain dates of the  
11 inspector's visits to the facility or salon; is that  
12 correct?

13 A Yes, sir.

14 Q Tell the members of the committee what this --

15 and this looks like this.

16 MS. PEACH: I don't have that.

17 BY HEARING OFFICER AKIN-JONES: It's not  
18 in my packet, Mr. Hogan.

19 MR. HOGAN: Okay. We may need to make  
20 copies of it then. Do you see it?

21 BY MS. PEACH: I don't have it.

22 MR. HOGAN: She's going to make us some  
23 copies. I apologize. Do you have a copy of  
24 it now, Ms. Peach?

25 MS. PEACH: Yes, sir.

0045

1 A This is just the inspection history of the salon.

2 And the reason this was printed out is they were  
3 closed. They were inspected and --

4 Q When was that, if you don't mind?

5 A Oh, sorry. 1/27/2011. It had been questioned  
6 why they have not had a license since 2007 since I've  
7 been here. They were closed 1/27/2011 and 5/24/2010,  
8 I had just started and we have no records before 2010.  
9 So if there was a question why they weren't written up  
10 before, I wanted to show that.

11 Q On this document it says like March 19, 2009, Ms.  
12 Wood apparently went there for an inspection and it  
13 says "closed today." That doesn't mean that the  
14 business was closed or out of business. It just means  
15 that they weren't open that day, right?

16 A Right.

17 Q And then she went back again July 16, 2009; is  
18 that correct?

19 A Yes.

20 Q Now, were they open that day?

21 A It appears they were. But we -- since we came to  
22 the department, we have no records before 2010. I  
23 don't know what happened to those records.

24 Q And Ms. Wood went there in May of 2010, January  
25 of 2011?

0046

1 A Yes, sir.

2 Q They were -- well, they weren't open on January  
3 27, 2011, but apparently May 2010, they were open.

4 A Correct.

5 Q All right. Now, do you have any documents or  
6 records that indicate whether or not Petro's Beauty  
7 and Barber Shop has attempted to get a license since  
8 they were most recently inspected in November of last  
9 year?

10 A They did apply for -- I'm sorry, and I don't have  
11 that -- a new shop license.

12 Q Do you recall when that -- would that have been  
13 after this inspection, I guess, in November of 2011?

14 A Yes, sir.

15 Q Do you remember if was before or after they  
16 received the notice of hearing for the hearing that we

17 had -- I guess it's been a couple months ago now.  
18 A Yes, it was in March.  
19 Q In March?  
20 A I believe it was after that inspection.  
21 Q Okay. Presently, does your records reflect that  
22 Petro's Beauty and Barber Shop is currently licensed?  
23 A Yes, sir.  
24 Q They are licensed currently?  
25 A Yes.

0047

1 Q So they're in good stead currently, correct?  
2 A Yes.  
3 Q And they are licensed as Petro's Beauty and  
4 Barber Shop; is that correct?  
5 A Yes, sir.  
6 Q Can you generally -- and I know it's in the  
7 statutes and regulations, there's two different laws  
8 about what regulates the profession of barbers and  
9 what regulates the profession of cosmetologists.  
10 Does the fact that a business is holding themselves  
11 out, through signs and otherwise, as being both a  
12 beauty and a barber shop indicate that they should  
13 have at least a cosmetology license with it for the  
14 beauty part of it?  
15 A Well, the only thing that determines that is if  
16 they have a cosmetologist working for them in the --  
17 in the salon. Then they have to have a cosmetology  
18 establishment license even if it says -- whatever it  
19 says, it doesn't matter. What determines it is if  
20 there's a cosmetologist presently working there.  
21 Q And do they have a cosmetologist presently  
22 working when Ms. Wood was there in November?  
23 A Yes, sir.  
24 Q And who was that cosmetologist?  
25 A Fay Langley.

0048

1 Q And on the inspection report, it indicates the  
2 number there is 66628 and a date 3/12. Does that mean  
3 that Ms. Langley had a cosmetologist license that  
4 would have expired in March of 2012?  
5 A Yes, sir.  
6 Q And that's her license number there?  
7 A Yes, sir.  
8 Q So by virtue of the fact that they employed and a  
9 cosmetologist worked at the facility, then they  
10 should have had a cosmetologist salon license?  
11 A Yes, sir.  
12 Q Is there anything further that you want to make  
13 the committee aware of?  
14 A No, sir.  
15 MR. HOGAN: I'll pass the witness.  
16 HEARING OFFICER AKIN-JONES: Ms. Peach,  
17 do you have any questions for Ms. Kersey?  
18 MS. PEACH: Just a few.

19 HEARING OFFICER AKIN-JONES: Go right  
20 ahead.

21 CROSS-EXAMINATION

22 BY MS. PEACH:

23 Q When you got the application for the new license,  
24 do you remember the name that was stated on the  
25 license that you issued me?

0049

1 A I have it in front of me now. Yeah. Is that  
2 okay?

3 MR. HOGAN: Go ahead. I think she's  
4 asking you what the name is.

5 BY MS. PEACH:

6 Q I'm asking you to read the name of it.

7 A Petro's Barber Shop.

8 Q Right. And you said earlier that you didn't have  
9 any records past 2010.

10 A Uh-huh, before. Yeah.

11 Q So you can't go back and see that I did have a  
12 shop license at one time to employ a cosmetologist.

13 You don't have any record of that?

14 A Well, yeah, we have where you had a license that  
15 expired in 2012. I mean, 2007. No, we don't have an  
16 inspection. I'm sorry. I shouldn't have --

17 Q You just don't have any of the inspection  
18 records?

19 A Right.

20 Q Okay. But you do have a record that I did have a  
21 shop license back in '07?

22 A That expired in 2007, uh-huh.

23 Q Do you know for how many years I had that  
24 license?

25 A Before that?

0050

1 Q Uh-huh. How many years prior to the expiration  
2 date in '07.

3 A No. I'm sorry.

4 Q You don't know, okay. This is hard. I guess  
5 that's it. Thank you.

6 MR. HOGAN: When you do your side of the  
7 case, you can actually call her as a witness  
8 then if you --

9 HEARING OFFICER AKIN-JONES: Right. If  
10 you have more questions.

11 MS. PEACH: I think that's it.

12 HEARING OFFICER AKIN-JONES: Board  
13 members, do you have any questions for Ms.  
14 Kersey? Very well. Thank you, Ms. Kersey.  
15 Mr. Hogan, anything else?

16 MR. HOGAN: I believe that concludes our  
17 case.

18 HEARING OFFICER AKIN-JONES: Very well.  
19 Ms. Peach, you can either tell your side of  
20 the story or call a witness in whichever

21 order you want to. Or I figured that the  
22 gentleman here was intentionally going to be  
23 a witness.

24 MS. PEACH: My shop manager couldn't be  
25 here. There's an illness in his family and

0051

1 he couldn't be here. I really wanted him  
2 here but couldn't help that because I don't  
3 actually work in that shop. I just own it.  
4 I guess I'll let -- I'll call him as a  
5 witness.

6 HEARING OFFICER AKIN-JONES: Okay. Very  
7 well. If you would, please state your name  
8 for the record.

9 THE WITNESS: Tom Thomason.

10 (WHEREUPON,

11 TOM THOMASON,

12 having been duly called for examination  
13 and having been first duly sworn by the  
14 Hearing Officer, was examined and testified  
15 as follows:)

16 DIRECT EXAMINATION

17 BY MS. PEACH:

18 Q If you would, go back to what you know about Fay  
19 working -- which is the lady that has the cosmetology  
20 license that worked in my shop and still works in my  
21 shop. Just tell them what you know about that.

22 A She just went to work over at Petro before the  
23 first of last year. I don't know exactly what month.  
24 She was wanting to come out to the other shop and take  
25 over there because we were talking about moving to a

0052

1 different location. And she came out there after the  
2 first of the year and said something about, "Well, I  
3 think my license has expired." She had a barber's  
4 license as well as a cosmetology license, and she  
5 said, "I don't know if Arkansas will let me transfer  
6 that." She had been a barber in another state. But  
7 when she was hired out there, Mike, the shop manager  
8 -- I know this is hearsay and you probably can't allow  
9 it -- but anyway --

10 HEARING OFFICER AKIN-JONES: I can. The  
11 strict rules of evidence don't allow. You  
12 can go right head.

13 THE WITNESS: Oh, okay.

14 A But Mike had indicated to us that she had told  
15 him that she had a barber's license and so, you know,  
16 we hired her as a barber. And she didn't post her  
17 license evidently or maybe she had it in a drawer or  
18 something. But anyway after the first of the year she  
19 indicated to us when she came out to the house that,  
20 you know, that she needed to see if Arkansas would  
21 transfer her license, just move it over or however  
22 they do it. And so that should have triggered us to

23 think about why is she thinking about her license.  
24 Well, she didn't come out and tell us that the  
25 cosmetology board had come out there and done the  
0053

1 inspection and had caught -- she had already been  
2 cited or whatever. So, you know, we should have --  
3 you know, we should have picked up on that and we  
4 didn't because you were just -- because we were just  
5 won- -- you know, we thought maybe she was just  
6 wondering if she could transfer her license. And in  
7 the meantime, all the correspondences was sent to  
8 Petro at that location and I think the license has got  
9 your address on it, doesn't it?

10 BY MS. PEACH:

11 Q Now.

12 A The house address. And so they sat there and  
13 that mail stayed down there in the office of Petro and  
14 we never knew there was a hearing on the first  
15 go-round. We were ignorant of it until Mike called us  
16 and said, "Hey, what's going on?" And we went to the  
17 lady at Petro and tried to get her to, you know, to  
18 issue us a letter saying, "Why didn't you give us the  
19 letter in a timely fashion?" Well, she didn't want to  
20 do that, I guess because she was afraid of her job.  
21 But anyway, we didn't receive notification until way  
22 late until after the hearing.

23 But anyway, that's kind of a roundabout way, but  
24 I was trying clue you in as to how we came about the  
25 information, you know. Whether or not she has gone  
0054

1 and transferred her license or whatever, I do not  
2 know. But she indicated to us she was a licensed  
3 barber, and Petro was running under a barber shop  
4 license this whole time, which was current. But we  
5 went on -- or Mona went on and applied for a  
6 cosmetology license after the fact to, you know,  
7 appease everybody and to make faith.

8 Q The right way to do business.

9 A Right. So I mean, it wasn't like she was  
10 operating a barber shop. She thought she had a  
11 licensed barber and Mike was handling that, and it got  
12 dropped in the scheme of things, so.

13 Q Thank you.

14 A You're welcome.

15 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
16 any questions for Mr. Thomason?

17 MR. HOGAN: Mr. Thomason may know. On  
18 the inspection report, I can't -- there's a  
19 signature of someone there. Do you have that  
20 in front of you, Ms. Peach?

21 MS. PEACH: I'm not sure I do. That's  
22 Fay, I imagine. Wasn't she the one that was  
23 there when it was inspected?

24 MR. HOGAN: Well, it doesn't look like a

25 Fay, but do you see where I'm talking about

0055

1 that's signed by the representative there?

2 MS. PEACH: They were mad. Whoever

3 signed that wasn't happy.

4 CROSS-EXAMINATION

5 BY MR. HOGAN:

6 Q Do you recognize this signature?

7 MS. PEACH: No.

8 HEARING OFFICER AKIN-JONES: Ms. Peach,  
9 these questions are for Mr. Thomason.

10 MS. PEACH: Oh, I'm sorry.

11 MR. HOGAN: That's quite all right.

12 A I don't recognize it, but I have never seen

13 Mike's signature, so I'm sorry.

14 BY MR. HOGAN:

15 Q That would be Mike?

16 A He is the manager.

17 MS. PEACH: Jenkins.

18 MR. HOGAN: Oh, at the --

19 MS. PEACH: Petro.

20 MR. HOGAN: Okay. Well, that's all. I

21 don't have anything further, Mr. Thomason.

22 HEARING OFFICER AKIN-JONES: Board

23 members, any questions for Mr. Thomason?

24 MS. FUENTES: I have some questions. So

25 in your shop, do barbers also haven to post a

0056

1 license? Is your -- as a barber, do you also

2 have to post your license in the salon?

3 THE WITNESS: That I couldn't tell you.

4 I've been over there three or four times. I

5 just go with her. I'm her fiance and --

6 MS. FUENTES: Well, as of right now, do

7 you have possession of your barber license?

8 THE WITNESS: I don't because I'm not a

9 barber.

10 MS. FUENTES: Oh, I thought you said

11 were. I'm sorry.

12 THE WITNESS: No, ma'am. I work for the

13 railroad.

14 MS. FUENTES: Okay. I'm sorry.

15 HEARING OFFICER AKIN-JONES: I think

16 those questions might be better for Ms.

17 Peach.

18 MS. FUENTES: I thought he was also

19 working in the salon.

20 THE WITNESS: No, ma'am. They wouldn't

21 let me touch the hair.

22 HEARING OFFICER AKIN-JONES: Very well.

23 Any questions for Mr. Thomason?

24 Ms. Peach?

25 (WHEREUPON,

0057

1 MONA PEACH,  
2 having been duly called for examination  
3 and having been first duly sworn by the  
4 Hearing Officer, was examined and testified  
5 as follows:)

6 DIRECT TESTIMONY

7 MS. PEACH: Okay. I just want to give  
8 you a little history.

9 HEARING OFFICER AKIN-JONES: I think that  
10 would be a great idea.

11 MS. PEACH: I've been a barber 35 years,  
12 a barber. My mother was a cosmetologist. My  
13 grandfather was a barber. There's a history  
14 of it in my family. I worked at the Air  
15 Force base for 25 years, ran my own shop  
16 there. Always -- if you know anything about  
17 the military, you know everything had to be  
18 by the book. And I was a contractor out  
19 there and had an excellent record. I was  
20 contacted by Petro about 17, 18 years ago to  
21 take over a shop that was in sad shape. That  
22 was -- you know, patting my own self on the  
23 back. I took the shop and I'm a Christian,  
24 and I've done a great job with it. This was  
25 -- April 25th of last year my home and my

0058

1 barber shop in Vilonia got blown away in the  
2 tornado. I put Petro kind of on the back  
3 burner trying to rebuild my shop at my home  
4 and rebuild my home. So when this happened  
5 in November, they did not tell me anything  
6 about her coming out, inspecting, and Fay not  
7 being a licensed barber, that she was a  
8 cosmetologist. It was just -- you know, I  
9 dropped the ball. I'm totally responsible  
10 for what happened, but I think there are  
11 extenuating circumstances that you guys  
12 needed to hear before you decided to fine me  
13 \$1,025.

14 I didn't -- I didn't handle it as well as  
15 I should have. The tornado was a big blow to  
16 my shop. You know, there was nothing left of  
17 it. I should have stayed on top of Petro  
18 better. It's not my nature not to run  
19 things, you know, legally. And as soon as I  
20 found out what was going on, I contacted the  
21 cosmetology board immediately and started  
22 trying to, you know, figure out a way to try  
23 to rectify the problem. And, you know, the  
24 only way they said to it was to come and  
25 visit with you guys about what had happened.

0059

1 But that -- Fay did show up at my shop in  
2 Vilonia right after the first of the year

3 because I was looking to hire someone and she  
4 lived there in Conway, thought it might work  
5 for her to work a few days at my shop there  
6 and a few days at Petro. And that's when she  
7 told me -- she never said that Ms. Woods came  
8 and inspected, there was any problem. That's  
9 when she started in about her barber license.

10 And so then in March is when I got the  
11 notice that there was a problem from Mike, my  
12 manager out there. And our mail --  
13 previously, when I had my cosmetology  
14 license, they had my home address that they  
15 sent correspondences to. For some reason,  
16 everything that was going on with this was  
17 going to Petro. Well, my barber shop is  
18 upstairs and mail used to have mailboxes.  
19 Petro's been sold to another company. And  
20 they've changed the way they do business. We  
21 had mail slots, the barber shop, the phone  
22 center, different ones. We all had mail  
23 slots. Well, they took those out and a lady  
24 was in charge of dispensing the mail, so we  
25 never got notice of it until Mike had went

0060

1 down there and got some mail from her, these  
2 notices that we had missed the hearing. I  
3 just don't want you to think that's how I do  
4 business because it's not. And as soon as I  
5 found out, I made sure that we applied for  
6 the license and got the license. And the  
7 lady that's working for me under -- you know,  
8 I felt like she was deceptive in her deal.  
9 You know, I'm dealing with her, too. I don't  
10 want her -- you know, I want to have a good  
11 working relationship with the cosmetology  
12 board because I -- you know, if I need to  
13 hire a cosmetologist, that's -- you know, we  
14 need to -- we all need to be employed. So  
15 that's my story. I'm sticking to it.

16 HEARING OFFICER AKIN-JONES: Okay. Thank  
17 you, Ms. Peach.

18 MS. PEACH: You're welcome.

19 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
20 any questions?

21 CROSS-EXAMINATION

22 BY MR. HOGAN:

23 Q Well, thanks for coming. You're marrying outside  
24 your profession. I think that's a good decision.

25 MR. THOMASON: She does a good job,

0061

1 though.

2 BY MR. HOGAN:

3 Q He looks good. I wanted to ask you a few

4 questions. You said you had two businesses, right?

5 A Yes, sir.

6 Q One in Conway and then this one out at the  
7 Galloway exit; is that right?

8 A Galloway, North Little Rock, and Vilonia.

9 Q In any of your businesses, have you employed,  
10 other than Ms. Langley -- is it Langley or Longley?

11 A I don't know.

12 Q Langley. Other than Fay, have you employed any  
13 cosmetologists ever?

14 A Yes, sir. Yes, sir. At Petro back in -- before  
15 prior to '07, yes, sir, I had cosmetologists.

16 Q And you had a license as a salon from the  
17 cosmetology board at that time, correct?

18 A Yes, sir.

19 Q And I appreciate you accepting responsibility,  
20 and we certainly understand the reason that you  
21 weren't here for the last hearing. And I think the  
22 committee certainly respects and understands now why  
23 you didn't get the notice. But you said Ms. Langley  
24 still works for you; is that correct?

25 A Yes, sir.

0062

1 Q And her license would have expired in March. Do  
2 you know if she got her license back?

3 A No, but I will find out as soon as this is over.

4 Q Okay. Do you currently have any other licensed  
5 cosmetologists working for you in either the Vilonia  
6 or North Little Rock business?

7 A No, sir.

8 Q And you've only held a barber's license, correct?

9 A Correct.

10 Q Now, the inspection report indicates that -- was  
11 there a sign or something that said Petro's Beauty and  
12 Barber Shop? How did -- is that the name of the  
13 business? What is the name of your business?

14 A Petro Barber Shop.

15 Q So you don't have -- you weren't licensed in '07  
16 or before that as a beauty and barber shop?

17 A It could have been. Prior to '07, it could have  
18 been that we added the beauty, you know, Petro Beauty  
19 and Barber Shop. You know, I think -- thinking back  
20 on it, when I took that shop over, that's what it was  
21 called.

22 Q Okay. Petro's Beauty and Barber Shop?

23 A And I changed it to just barber shop.

24 Q But you have now currently gotten licensed for  
25 the salon?

0063

1 A Yes, sir.

2 Q It's your intention to offer cosmetology services  
3 as well as barber services at this location?

4 A Yes, sir. We don't do a lot of women, but yes,  
5 sir. It's staffed to do that.

6 Q Thank you.

7 MR. HOGAN: I'll pass the witness.

8 HEARING OFFICER AKIN-JONES: Board  
9 members, questions for Ms. Peach?

10 MS. REYNOLDS: Your license at the time  
11 -- and I can't even remember if you said --

12 THE WITNESS: '07.

13 MS. REYNOLDS: Yes. You said you had n  
14 out-of-state license.

15 THE WITNESS: No, ma'am, not me.

16 MS. REYNOLDS: Oh, it was the other lady.

17 THE WITNESS: Yes, ma'am.

18 MS. FUENTES: And that was leading right  
19 up to my question. Are the licenses posted  
20 for barbers? Is that your law as well like  
21 ours?

22 THE WITNESS:: Yes, ma'am, it is. Yes,  
23 ma'am.

24 MS. FUENTES: And on Mr. Thomason's  
25 testimony, she had stated that she had an

0064

1 out-of-state barber license.

2 THE WITNESS: Correct.

3 MS. FUENTES: So that would've been the  
4 license that was posted. It was not an  
5 Arkansas barber license?

6 THE WITNESS: That's -- that's an  
7 assumption. We don't know that. That's just  
8 what she said.

9 MS. FUENTES: And so you don't know what  
10 was posted?

11 THE WITNESS: No, ma'am, I don't.  
12 Honestly, I don't.

13 HEARING OFFICER AKIN-JONES: Other  
14 questions?

15 MS. DAVIS: I have one.

16 HEARING OFFICER AKIN-JONES: Go right  
17 ahead.

18 MS. DAVIS: So that would've been your  
19 office manager's responsibility to look at  
20 that license that was posted, the barber  
21 license?

22 THE WITNESS: Ultimately, it's mine. But  
23 yes. Second-in-command, he was there all the  
24 time.

25 MS. REYNOLDS: Ms. Peach, is that the

0065

1 lady you were saying earlier that you were  
2 going to check to see if she had Arkansas  
3 license?

4 THE WITNESS: Yes, ma'am.

5 MS. REYNOLDS: So all this time that she  
6 has been working at your salon, you don't  
7 know if she has a current Arkansas license?

8 THE WITNESS: No, ma'am. Honestly, no,

9 ma'am.  
10 MS. REYNOLDS: Okay.  
11 HEARING OFFICER AKIN-JONES: Just to kind  
12 of clarify your question real quick, if you  
13 look on Exhibit 3, the letter from Ms.  
14 Langley, she does state that she has a  
15 license. In the letter that she wrote to  
16 Exhibit 3.  
17 THE WITNESS: On the inspection, it does  
18 show that Fay's license was current.  
19 MS. FUENTES: Cosmetology license?  
20 THE WITNESS: Yes, ma'am.  
21 MS. DAVIS: At the time of the inspection  
22 was the name of the salon Petro's Beauty and  
23 Barber or Petro's Barber?  
24 THE WITNESS: Petro Barber Shop. In  
25 November?

0066

1 MS. DAVIS: Yes. 11/15/11.  
2 THE WITNESS: No, ma'am. It was Petro  
3 Beauty and Barber Shop according to the  
4 inspector's records. In mine, it was barber  
5 shop.  
6 MR. BARNES: The barber shop issue isn't  
7 anything we need to consider. The only thing  
8 we're looking at is if it is a beauty salon.  
9 THE WITNESS: Yes, sir.  
10 MR. BARNES: And the lady that was  
11 working there was supposed to have a  
12 cosmetology license.  
13 THE WITNESS: Yes, sir.  
14 HEARING OFFICER AKIN-JONES: Are there  
15 any other questions from the board for Ms.  
16 Peach? There are none. Thank you, Ms.  
17 Peach.  
18 Ms. Jackie, do you still have questions  
19 for Ms. Wood?  
20 MS. REYNOLDS: Yes.  
21 HEARING OFFICER AKIN-JONES: Ms. Wood,  
22 you were sworn in earlier. If you will,  
23 state your name for the record. The board  
24 members have at least a question or two for  
25 you.

0067

1 THE WITNESS: Vera Wood, inspector.  
2 HEARING OFFICER AKIN-JONES: Go right  
3 ahead.  
4 (WHEREUPON,  
5 VERA WOOD,  
6 having been duly called for examination  
7 and having been first duly sworn by the  
8 Hearing Officer, was examined and testified  
9 as follows:)  
10 MS. REYNOLDS: Okay. Ms. Woods, when you

11 went into the salon -- was it '11 or '07, I  
12 think - did she have all the licenses posted  
13 -- cosmetology? I'm talking about salon  
14 license.

15 THE WITNESS: The last inspection?

16 MS. REYNOLDS: Uh-huh.

17 THE WITNESS: I think her personal  
18 license was posted, but there was not a salon  
19 license anywhere.

20 MS. FUENTES: I have a question, too,  
21 then.

22 HEARING OFFICER AKIN-JONES: Go right  
23 ahead.

24 MS. FUENTES: Since we don't have  
25 inspection records I'd like to kind of see if

0068

1 you have any memory of the prior inspections.  
2 And to your memory, do you remember then  
3 having a current -- where there any  
4 cosmetologists working in there in the past  
5 that you remember?

6 THE WITNESS: I haven't seen Ms. Langley.  
7 I only know by sight, not necessarily. And I  
8 only have what they gave me to work with this  
9 time. But in my territory report book, in  
10 2010, January 2010, I had written them up for  
11 no shop license also.

12 MS. FUENTES: In '10, and that's what you  
13 -- okay. Thank you.

14 HEARING OFFICER AKIN-JONES: Further  
15 questions from the board members? Okay.

16 Mr. Hogan, is there anything you would  
17 like to ask Ms. Wood?

18 MR. HOGAN: No. I have nothing further.

19 HEARING OFFICER AKIN-JONES: Ms. Peach,  
20 anything you'd like to ask Ms. Wood?

21 CROSS-EXAMINATION

22 BY MS. PEACH:

23 Q I'd like to know about the write-up in 2010. I  
24 don't recall that.

25 A When we did the inspection, of course, it looks

0069

1 just like what you see. It was written up as no shop  
2 license and --

3 Q Was there a cosmetologist working in there?

4 A Yes, there was.

5 Q And why wasn't there any action taken on the --

6 A I don't know. I turned it in and it stops --

7 Q Right. That's all I needed you to tell us.

8 A -- until I show up here. But this just out of my  
9 territory book. I wrote down the date. I wrote down  
10 if there was -- if I had written, I wrote over to the  
11 side of it "no shop license."

12 Q I'd also like to ask you, do you recall if Fay

13 actually pulled her license out of a drawer and showed  
14 it to you?

15 A I don't recall. I don't think Fay was there.

16 This last time?

17 Q Uh-huh.

18 A I don't think she was there. I think it was just  
19 the barber.

20 Q Thank you.

21 A But her license was there.

22 HEARING OFFICER AKIN-JONES: Okay. Ms.  
23 Peach, any further questions for Ms. Wood?

24 MS. PEACH: No, ma'am.

25 HEARING OFFICER AKIN-JONES: Do you have

0070

1 any witnesses at all or anything else you'd  
2 like to state?

3 MS. PEACH: No, ma'am.

4 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
5 anything in closing?

6 MR. HOGAN: Just to kind of summarize.

7 We're here today because of a  
8 misunderstanding about the hearing. There's  
9 been a previous motion by the committee  
10 assessing a penalty of \$1,025 for violation  
11 of the code. Ms. Peach has asked that the  
12 committee reconsider that today and after  
13 hearing the testimony that's been presented  
14 today. So I think that my summary is that if  
15 there's anything that you heard today that  
16 would change your opinion about your previous  
17 decision in March, then you should make  
18 another motion to change that; otherwise, I  
19 would think procedurally the motion would be  
20 today to affirm what you had previously done  
21 based on all the testimony, which would be to  
22 assess the fine of \$1,025 or based on what  
23 you heard today you could reduce that fine if  
24 you chose to do based on the testimony or  
25 eliminate it altogether if you wish to. So

0071

1 part of my job, as always, is to confuse you  
2 and I think I've done that.

3 HEARING OFFICER AKIN-JONES: Ms. Peach,  
4 anything in closing you'd like to state for  
5 the board before they deliberate?

6 MS. PEACH: No. I think we've pretty  
7 much said it all. It's up to them what --  
8 you know, what they want to do.

9 HEARING OFFICER AKIN-JONES: Very well.  
10 At this time the record will be closed during  
11 the board's recess for deliberations. Once  
12 the board reaches a decision, we will go back  
13 on the record.

(WHEREUPON, the committee retired to

14 deliberate off the record from 10:48 a.m. to  
15 10:50 a.m. and returned with the following  
16 decision:)

17 MR. BARNES: I make a motion for the fine  
18 to be reduced to 750.

19 MS. DAVIS: I second the motion.

20 HEARING OFFICER AKIN-JONES: We have a  
21 motion and a second. All those in favor,  
22 please raise your right hand. Please let the  
23 record reflect the decision of the board is  
24 unanimous. Please reduce the decision to  
25 writing and make an attempt of service upon

0072

1 all parties. If the respondent wishes to  
2 appeal the decision, an appeal can be taken  
3 under the Arkansas Code Annotated 25-15-201  
4 et. seq. or any specific provision of this  
5 board. At this time, this hearing is closed  
6 and the record is complete.

7 (WHEREUPON, the proceedings were  
8 concluded in the matter at 10:50 a.m.)  
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0073

1 IN THE MATTER OF: License No. 55101  
2 ARKANSAS DEPARTMENT OF HEALTH PETITIONER  
3 v.  
4 STUDIO 265 RESPONDENT  
5 PROCEEDINGS

6 HEARING OFFICER AKIN-JONES: My name is  
7 Kendra Akin-Jones and I'm a hearing office  
8 today in the matter of the Arkansas  
9 Department of Health Cosmetology Technical  
10 Advisory Committee versus Studio 265. Today  
11 is May 21, 2012, and we're located at Suite  
12 801 in the Freeway Medical Building. Is the  
13 respondent present for this hearing?

14 We have made a call for the respondent.  
15 The respondent is not present today. Please

16 note that for the record.

17 Mr. Hogan, if you would identify yourself  
18 for the record?

19 MR. HOGAN: Rick Hogan, general counsel  
20 for the health department and Board of  
21 Health.

22 HEARING OFFICER AKIN-JONES: For the  
23 benefit of those present today, this is an  
24 administrative hearing. The board makes its  
25 decision solely on the evidence presented

0074

1 here today. This hearing is held under the  
2 Administrative Procedures Act, which means  
3 strict rules of evidence did not allow. The  
4 board members know of this case only as it  
5 appears and is set forth in the order and  
6 notice of hearing. If there's anything that  
7 would be considered today by the board, it  
8 needs to be introduced into evidence. This  
9 hearing is open to the public under the  
10 Freedom of Information Act and that does  
11 include the board's deliberations. For those  
12 of you who are going to be witnesses in  
13 today's matter, please raise your right hand  
14 to be sworn in.

15 (WHEREUPON, the witnesses were sworn in  
16 by the Hearing Officer.)

17 HEARING OFFICER AKIN-JONES: Mr. Hogan,  
18 preliminary matters?

19 MR. HOGAN: We'd ask the committee to be  
20 able to take notice of the rules and  
21 regulations and also the statute concerning  
22 cosmetology. And also we'd ask -- there's 13  
23 pages of documents. We'd ask that this be  
24 admitted as Exhibit 1, Committee Exhibit No.  
25 1. It includes the order and notice of

0075

1 hearing as well as the records of the board.

2 HEARING OFFICER AKIN-JONES: My order and  
3 notice of hearing does not have the records  
4 with it. Just make sure that the board  
5 members have -- okay.

6 MR. HOGAN: I'll just go ahead and put  
7 them all together.

8 HEARING OFFICER AKIN-JONES: That's fine.  
9 I don't have to have them. I just want to  
10 make sure we get it all on the record.

11 MR. HOGAN: Okay.

12 HEARING OFFICER AKIN-JONES: Those will  
13 be so admitted as Exhibit 1, the order and  
14 notice of hearing and the records from the  
15 board.

16 (WHEREUPON, Committee's Exhibit No. 1 is  
17 admitted into evidence.)

18 HEARING OFFICER AKIN-JONES: It's so  
19 noted that they would take judicial notice of  
20 the rules and regulations and statutes.  
21 Anything in opening statement?  
22 MR. HOGAN: No.  
23 HEARING OFFICER AKIN-JONES: Very well.  
24 Call your first witness.  
25 (WHEREUPON,

0076

1 ROSE HORNER,  
2 having been called for examination and  
3 having been first duly sworn by the Hearing  
4 Officer, was examined and testified as  
5 follows:)

6 DIRECT EXAMINATION

7 BY MR. HOGAN:

8 Q Rose, state your name and your position with the  
9 department.

10 A Rose Horner, cosmetology inspector with Arkansas  
11 Department of Health.

12 Q Rose, you covered -- your inspection includes the  
13 Fayetteville area; is that correct?

14 A Yes.

15 Q And on October 27th of last year, did you inspect  
16 Studio at 3138 South Old Missouri Road? And I guess,  
17 is that in Fayetteville or is that in --

18 A No, that's Springdale.

19 Q Springdale, okay. Sorry. Did you inspect it?

20 A Yes, sir, I did.

21 Q And there's an inspection report here. Is that  
22 the report that you signed and --

23 A Yes.

24 Q And you had it signed by Janet -- is that Finch?  
25 That was the representative that signed it; is that

0077

1 correct?

2 A Yes.

3 Q What did you find on your inspection that day?

4 A When I went in that day, the salon license that  
5 was posted said December 31st, of '10.

6 Q And so there was no current?

7 A No current salon license.

8 Q Were there people working at the facility?

9 A Yes. There were -- there were probably -- I  
10 think there were three women there that day, three  
11 stylists.

12 Q The second page of this inspection report has a  
13 list of --

14 A Uh-huh.

15 Q Are those the people that were there that day?

16 A There weren't five there that day, but I believe  
17 there were three that day.

18 Q And that's Rosa Bonilla, Edith Romero, Maria  
19 Gardune, and Duvec Guevara and Janet Finch; is that

20 correct?

21 A Yes, sir.

22 Q And Ms. Guevara is the owner? That's what you  
23 have listed on this or is that a Mr.?

24 A It was a she, Duvec.

25 Q Duvec Guevara. And she was the owner of the  
0078

1 facility?

2 A Yes, and --

3 Q Did you speak to her that day?

4 A Before I left the salon, she did -- she was  
5 there. She did drive up and -- and she was going  
6 through her files looking for her current salon  
7 license.

8 Q And did she --

9 A She didn't find it.

10 Q So did you talk to her about not having it posted  
11 and not having a current license?

12 A I did. And I told her she needed to -- you know,  
13 she could go through a checkbook to see if she had,  
14 you know, had mailed the renewal.

15 Q Have you talked to her since --

16 A No.

17 Q -- or anybody there?

18 A No.

19 MR. HOGAN: I'll pass the witness.

20 HEARING OFFICER AKIN-JONES: Board  
21 members, any questions for Ms. Horner? Okay.

22 Mr. Hogan, you can call your next  
23 witness.

24 Thank you, Ms. Horner.

25 MR. HOGAN: We'll call Ms. Kersey.  
0079

1 (WHEREUPON,

2 KELLI KERSEY,

3 having been called for examination and  
4 having been first duly sworn by the Hearing  
5 Officer, was examined and testified as  
6 follows:)

7 BY MR. HOGAN:

8 Q State your name, please, and your position with  
9 the department.

10 A Kelli Kersey, Section Chief, Arkansas Department  
11 of Health, Cosmetology.

12 Q Kelli -- it's okay if I call you Kelli?

13 A Sure.

14 Q What's the -- part of this document that we've  
15 introduced appears to be records of the department  
16 concerning this licensure of this salon up in  
17 Springdale, Studio 265; is that correct?

18 A Yes, sir.

19 Q Tell the members of the committee and for the  
20 record, what does the history reflect on this  
21 facility and the licensure and the history of

22 inspections or anything like that?

23 A The last page that's in y'all's document is a  
24 send-back letter. The owner of the salon mailed in  
25 two checks on November 1, 2011. One was for \$100 and  
0080

1 one was blank, and with a note saying for us to fill  
2 in whatever he owed or she owed, whatever. Anyway, we  
3 returned the check because we're unable to fill out  
4 checks and put a note in there to send back \$150 and  
5 we'll be glad to process their license. Well, when a  
6 salon is -- can I just go with this, I guess?

7 Q I don't know if there's anyway to stop you.

8 A I know. That's right. When a salon is late,  
9 they're only -- they're not like a practitioner. They  
10 don't have -- it doesn't accumulate. It's only \$150  
11 whether they're late -- because after one year of them  
12 being late they have to do a new shop. So well, they  
13 had -- this owner, I'm assuming, assumed that it was  
14 more because it was 2010. So they thought they had to  
15 pay for '11 and '12. So they sent the first check  
16 back -- or they sent the blank check back in that they  
17 had filled out for \$150 and renewed their license on  
18 12/8/2011. Okay. The system updated their license to  
19 12/31/2011. They, again, on 12/21, sent back the  
20 first check that they had sent in \$100. The system  
21 again printed their license to 12/31/2012. Well, the  
22 person that renewed this obviously didn't know that  
23 they only had to pay the 150, that they didn't have to  
24 pay the 250. So their license should have been to  
25 2012 the first time. They should have received this  
0081

1 check back again for \$100. So in conclusion, they  
2 really have already paid \$100 towards their fine.  
3 They just don't realize it. And we didn't either  
4 until we investigated it. Sorry.

5 Q You're assuming that the committee was going to  
6 find that there is a violation.

7 A Yes. I'm assuming that if there is a fine.  
8 Because we had talked about this last time and that's  
9 where the confusion was is that they had written me  
10 twice and I didn't understand that. So upon  
11 researching, that is what I found, is that they sent  
12 in two checks, one of them was blank. We sent them  
13 back. They sent them both in on different days, which  
14 is so confusing, you know, especially -- I'm sorry. I  
15 didn't check if two different people renewed it or  
16 not. But the system wouldn't know. You know, it  
17 would just renew it. So anyway, there's no answer. I  
18 don't even know what the question was, but...

19 Q The inspection was in October and then in  
20 November, they proceeded to start sending in checks,  
21 one that was blank and one that was for the wrong  
22 amount?

23 A Yes.

24 Q And so your conclusion that is if the committee  
25 did so choose to find a violation of the law and  
0082

1 assess a civil penalty of \$336, they could discount  
2 \$100 of that based on the previous installment that  
3 they'd made to the department?

4 A Yes, sir.

5 Q Okay.

6 A You got that out of everything I said, so good  
7 job.

8 Q Is there anything further that you want to make  
9 the committee aware of?

10 A I don't believe so. I think I've said it all.

11 Q Okay. So the motion would be that there would be  
12 a violation to assess a penalty of \$336, but to give  
13 them credit for the \$100 dollars that they had  
14 previously made or an installment to the --

15 A Yes, sir.

16 MR. HOGAN: So I'll pass the witness.

17 HEARING OFFICER AKIN-JONES: Okay. Board  
18 members, do y'all have any questions for Ms.  
19 Kersey?

20 MR. BARNES: So you're saying that the  
21 \$100 that was sent in for lateness payment  
22 can be applied to this?

23 THE WITNESS: Yes. I know we have to do  
24 it. You know, we'd have to go and manually  
25 do it, but...

0083

1 MR. BARNES: That works.

2 THE WITNESS: Yeah.

3 HEARING OFFICER AKIN-JONES: Okay.

4 Further questions for the board? If there  
5 are none, thank you, Ms. Kersey.

6 Mr. Hogan, any other witnesses?

7 MR. HOGAN: Nothing further. We'll close  
8 -- we're waiving the closing remarks.

9 HEARING OFFICER AKIN-JONES: Very well.

10 At this time, the record will be closed to  
11 make it complete except for the board's  
12 recess for the deliberations. Once the board  
13 reaches a decision, we will go back on the  
14 record.

15 (WHEREUPON, the committee retired to  
16 deliberate off the record from 11:00 a.m. to  
17 11:01 a.m. and returned with the following  
18 decision:)

19 HEARING OFFICER AKIN-JONES: Is there a  
20 motion?

21 MS. DAVIS: I make a motion that we fine  
22 the Studio 265 the \$336 and we can apply the  
23 \$100 that's already been paid toward that  
24 fine.

25 MS. FUENTES: I second.

0084

1 HEARING OFFICER AKIN-JONES: Very well.  
2 We have a motion and a second. All those in  
3 favor, please raise your right hand. Very  
4 well. Let the record reflect the decision of  
5 the board is unanimous. Please reduce the  
6 decision to writing and make or attempt  
7 service upon all parties. If the respondent  
8 cares to appeal the decision, an appeal may  
9 be taken under Arkansas Code Annotated  
10 25-15-201, et seq. or any specific provisions  
11 of the board. This hearing is concluded.  
12 The record is closed. Thank you.

13 (WHEREUPON, the proceedings were  
14 concluded in the matter at 11:03 a.m.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

0085

1 IN THE MATTER OF: License No. 65647  
2 ARKANSAS DEPARTMENT OF HEALTH PETITIONER  
3 v.  
4 TRINIA'S DIAMOND HAIR CARE SALON,  
5 OWNER, TRINIA SURRATT RESPONDENT  
6 PROCEEDINGS

7 HEARING OFFICER AKIN-JONES: My name is  
8 Kendra Akin-Jones, and I'm the hearing  
9 officer today in the matter of the Arkansas  
10 Department of Health Cosmetology Technical  
11 Advisory Committee versus Trinia's Diamond  
12 Hair Care Salon, Owner Trinia Surratt and the  
13 individual matter against Trinia Surratt as  
14 well. Today is May 21, 2012, and we're  
15 located in Suite 801 at the Freeway Medical  
16 Building. Please note for the record that  
17 the respondent has been called for and is not  
18 present today.

19 Mr. Hogan, if you would identify yourself  
20 for the record?

21 MR. HOGAN: I'm Rick Hogan, general  
22 counsel for the department and the Board of  
23 Health.

24 HEARING OFFICER AKIN-JONES: For the  
25 benefit of those present today who may not

0086

1 have appeared before an administrative

2 hearing, I want to tell you the board bases  
3 its decisions solely on the evidence  
4 presented here today. This hearing is being  
5 held under the Arkansas Administrative  
6 Procedures Act, which means that the strict  
7 rules of evidence do not apply. The board  
8 members know of this case only as it appears  
9 and is set forth in the order and notice of  
10 hearing. Anything to have them considered  
11 today, you must present as evidence today.  
12 This hearing is open to the public under the  
13 Freedom of Information Act and that does  
14 include the board's recess for deliberations.  
15 For all those who are going to be witnesses  
16 in today's matter, please raise your right  
17 hand to be sworn in.

18 (WHEREUPON, the witnesses were sworn in  
19 by the Hearing Officer.)

20 HEARING OFFICER AKIN-JONES: Preliminary  
21 matters, Mr. Hogan?

22 MR. HOGAN: We ask the committee to be  
23 able to take notice of the rules and  
24 regulations and the statute. We also would  
25 ask that Committee Exhibit No. 1, there's 18

0087

1 pages, which include the order and notice of  
2 hearing for both Trinia Surratt and the  
3 salon, Trinia's Diamond Hair Salon be  
4 admitted as Exhibit 1 for the record.

5 HEARING OFFICER AKIN-JONES: Very well.  
6 The two packets will be introduced as Exhibit  
7 1 and the board may take notice of the rules  
8 and regulations and statutes pertaining to  
9 cosmetology.

10 (WHEREUPON, Committee's Exhibit No. 1 is  
11 admitted into evidence.)

12 HEARING OFFICER AKIN-JONES: Anything  
13 further in preliminary matters?

14 MR. HOGAN: No. We have nothing further  
15 at this time.

16 HEARING OFFICER AKIN-JONES: Anything  
17 you'd like to state in an opening?

18 MR. HOGAN: No, I'll waive that.

19 HEARING OFFICER AKIN-JONES: Very well.  
20 Call your first witness.

21 MR. HOGAN: Pat Jackson, please.

22 (WHEREUPON,  
23 PAT JACKSON,

24 having been called for examination and  
25 having been first duly sworn by the Hearing

0088

1 Officer, was examined and testified as  
2 follows:)

3 DIRECT EXAMINATION

4 BY MR. HOGAN:

5 Q Pat, state your name and your position with the  
6 department, please.

7 A Pat Jackson, Inspector, Arkansas Department of  
8 Health.

9 Q Pat, your inspection area includes Pine Bluff; is  
10 that correct?

11 A Correct.

12 Q And on January of this year, January 5th, did you  
13 inspect Trinia's Diamond Hair Care Salon in Pine  
14 Bluff, Arkansas?

15 A Yes.

16 Q What did you find at that time?

17 A I found no current postage salon license and also  
18 found the practitioner's license, Trinia Surratt, to  
19 be expired.

20 Q It appears that Ms. Surratt signed the inspection  
21 report, so I take it she was there that day.

22 A She was there working, and she had a client.

23 Q And did you discuss her licensure with her at  
24 that time?

25 A Yes, sir.

0089

1 Q And what was -- tell the members of the committee  
2 about your discussion.

3 A Ms. Trinia just said, you know, that she had  
4 neglected getting these. This is -- this is not the  
5 first violation. I know we're here for just this one,  
6 but her license hasn't been current for a while. I  
7 don't have the previous inspections.

8 Q Pat, the notice of hearing at least for the  
9 salon, and I guess the one for the practitioner as  
10 well indicates a violation of Rule 5.1B Consumer  
11 Information. And it states, in part, "No license  
12 which has expired or become invalid for any reason  
13 whatsoever shall be displayed by any person in  
14 connection with the practice of cosmetology or any of  
15 its branches. An expired invalid license so  
16 displayed shall be surrendered to the department."

17 Did you find during your inspection that there  
18 was a license being displayed?

19 A Her pers- -- her practitioner license was  
20 displayed, and it was expired.

21 Q It had expired?

22 A There was no current salon license posted at all.

23 Q Okay. So she did have a license displayed. Did  
24 she tell you that she was going to get either or both  
25 of those renewed?

0090

1 A Yes, she did.

2 Q Did she tell you why she had not gotten them  
3 renewed at that point, by the time you inspected?

4 A You know, I don't recall. I just don't recall  
5 that.

6 Q And do you have anything further you want to make  
7 the committee aware of at this time?

8 A No, sir.

9 MR. HOGAN: I'll pass the witness.

10 HEARING OFFICER AKIN-JONES: Very well.

11 Board members, any questions for Pat? There  
12 are no questions? Thank you.

13 Call your next witness, Mr. Hogan.

14 (WHEREUPON,

15 KELLI KERSEY,

16 having been called for examination and  
17 having been first duly sworn by the Hearing  
18 Officer, was examined and testified as  
19 follows:)

20 DIRECT EXAMINATION

21 BY MS. KERSEY:

22 Q Ms. Kersey, state your name for the record and  
23 your position with the department.

24 A Kelli Kersey, Section Chief, Arkansas Department  
25 of Health, Cosmetology.

0091

1 Q Kelli, this is a notice of hearing for both the  
2 practitioner and the salon. Again, the recommended  
3 penalty for the salon in this case is \$1275 and for  
4 the practitioner \$698. Can you explain why the  
5 penalty is different if the violations are, in fact,  
6 the same?

7 A She -- the salon has not had a current license  
8 since 2008. She had an unlicensed practitioner. The  
9 fine -- the fee was actually more than \$1,000, but you  
10 can only assess up to \$1,000 on one penalty so it  
11 stopped at 1,000. And then she had an unlicensed  
12 practitioner, which was \$250, and her -- there was no  
13 license posted. That's \$25. So that's where that  
14 came in. A thousand -- what was it? -- 275. And the  
15 practitioner's license had been expired since  
16 4/21/2010, and so it was actually two years. It was  
17 renewed before the salon license was renewed is why  
18 it's less, so.

19 Q I want to introduce this, and I haven't yet.

20 MR. HOGAN: Madame Hearing Officer, this  
21 is a nine page document we'd ask to be made  
22 Exhibit No. 2 for the record.

23 HEARING OFFICER AKIN-JONES: What is it?

24 MR. HOGAN: Just records of the  
25 department concerning the past history of the

0092

1 license.

2 HEARING OFFICER AKIN-JONES: Very well.  
3 That will be so admitted as Exhibit 2.

4 (WHEREUPON, Committee's Exhibit No. 2 is  
5 introduced into evidence.)

6 BY MR. HOGAN:

7 Q Can you explain to the members of the committee

8 -- I know you previously discussed some of this with  
9 respect to the penalty, but what does your records  
10 reflect in terms of -- well, first, let me ask you  
11 this: The salon has been renewed now effective May  
12 3rd of this year, correct?

13 A Yes, sir.

14 Q Has the license for the practitioner, Ms. Surratt  
15 -- is that current now?

16 A Yes, sir, same day, 5/3/2012.

17 Q So as of 5/3 of this year, they have come in  
18 compliance with the law for both the salon and the  
19 practitioner?

20 A Yes, sir.

21 Q Now, is there anything further about these  
22 records that you need to point out to the committee  
23 that we've marked and introduced as Exhibit No. 2?

24 A Yes, sir. Page number 5 is an inspection history  
25 report.

0093

1 Q That looks like this?

2 A Yes, sir.

3 Q Okay.

4 A There was an inspection done by Pat on 5/24/2011.

5 Page number 6 is the actual inspection from

6 5/24/2011. And yes, she was written up for the same  
7 exact thing. Page 7, 8 and 9 are tracking

8 confirmations that were sent out certified mail for  
9 that violation that were never delivered. They were  
10 returned to us is why she never came to a hearing or  
11 anything for that violation.

12 Q Well, her license as a practitioner expired in  
13 April 2010; is that right?

14 A Yes, sir.

15 Q And she did not have a license from April 2010  
16 until May of this year, right?

17 A Yes, sir.

18 Q Have you had any contact or have you talked with  
19 Ms. Surratt or anybody representing Trinia's Diamond  
20 Hair Care Salon?

21 A I have not. When -- the same thing happened with  
22 our notices of hearing and the violation letters that  
23 happened in May of 2011. And so we actually had the  
24 inspector to hand deliver the notices this time. So  
25 she did sign them. I mean, we do have a return

0094

1 receipt where she did sign them and receive them. So  
2 we know that she does have them in her possession this  
3 time.

4 Q Let me make certain that that signed receipt is  
5 part of this record as well. Is that part of that --

6 A I believe it is.

7 Q Let's make sure on that. I don't see it any of  
8 the -- wait.

9 A Yeah, that's it.

10 Q Okay. It is the last page of the Trinia's  
11 Diamond Hair Care Salon notice of hearing. And this  
12 is a document that you're stating that your inspector  
13 hand delivered the order and notice of hearing --

14 A Yes, sir.

15 Q -- directly to Ms. Surratt?

16 A Yes, sir.

17 Q And now, what -- I'm trying to figure out what  
18 day that was because the day of the inspection was --  
19 she inspected this facility on January 5th right?

20 A Yes, sir. So that's what that is, yeah.

21 Q I'm trying to make -- well. Okay. When you say  
22 "this," what are you referring to?

23 A I'm sorry. It's the letter -- it's the e-mail  
24 sent to Pat, the inspector, to hand deliver those.

25 Q Now, I don't --

0095

1 A Yeah, I don't see that.

2 Q I don't see that. No. I don't think that's part  
3 of our information. Well, let me just make certain of  
4 this.

5 A Yeah, sorry. Sorry.

6 Q Let me just make sure.

7 HEARING OFFICER AKIN-JONES: Are we  
8 switching witnesses?

9 MR. HOGAN: Yeah, I'm going to have to  
10 recall her. I'm sorry.

11 HEARING OFFICER AKIN-JONES: Well, finish  
12 with Ms. Kersey first and then go back to  
13 keep the record clear.

14 BY MR. HOGAN:

15 Q Is there anything further you need to make the  
16 committee aware of?

17 A No, I think I'm -- that's it.

18 HEARING OFFICER AKIN-JONES: Does the  
19 committee have any questions for Ms. Kersey?

20 MS. FUENTES: I do. So we know that she  
21 had been fined on the previous from 5/24/11;  
22 is that right?

23 THE WITNESS: Yes.

24 MS. FUENTES: Did she -- were the fines  
25 paid? Do we have a record of that? If

0096

1 she was able to now renew her license in May,  
2 does that mean that the fines were paid for  
3 her last violation?

4 THE WITNESS: No. The pages after it,  
5 she never got them. She never even knew  
6 about them because they were returned to us.

7 MS. FUENTES: We don't know if she  
8 refused to sign or if she just never got  
9 them?

10 THE WITNESS: Right. So in there -- I  
11 mean, that says that on the tracking thing.

12 "Notice left, notice left." So we don't -- I  
13 mean, I don't know. So she just never  
14 claimed them.

15 MS. FUENTES: Okay. So there would have  
16 been -- she had a violation the previous time  
17 and then also the exact same thing for this  
18 time, correct?

19 THE WITNESS: Well, they just accumulate.  
20 I mean, like, you know, you still just add on  
21 to them, but she never paid for them. But I  
22 mean, it would be the same thing like if you  
23 stopped at May 24, 2011.

24 MS. FUENTES: You just can't read her --

25 THE WITNESS: Yeah. So.

0097

1 HEARING OFFICER AKIN-JONES: Further  
2 questions for Ms. Kersey? Very well.

3 Mr. Hogan?

4 MR. HOGAN: Please call Pat just for one  
5 question.

6 (WHEREUPON,

7 PAT JACKSON,

8 having been called for examination and  
9 having been first duly sworn by the Hearing  
10 Officer, was examined and testified as  
11 follows:)

12 REDIRECT EXAMINATION

13 BY MR. HOGAN:

14 Q It appears there's an email here dated April 25th  
15 from Terri Pritchard. Do you -- indicating that  
16 there's been an inability to contact Ms. Surratt  
17 through the mails and asking you to hand deliver the  
18 notice of hearing letters to her salon. Did you have  
19 occasion to do that?

20 A Yes, I did.

21 Q Tell the members -- and for the record -- when  
22 that was approximately. It must have been after April  
23 25th. Did you just take them directly to the salon  
24 and give them to Ms. Surratt?

25 A I did. And I'm sorry. I also do not have that

0098

1 date in front of me. I did make an inspection form  
2 out for that date when I delivered that packet also.  
3 So I did have another inspection form that she signed  
4 for that date, so.

5 Q When you actually delivered the notice of hearing  
6 documents?

7 A When I actually delivered notice of hearing also,  
8 uh-huh.

9 Q Do you have that with you?

10 A I don't, no.

11 Q But you do recall specifically taking it to her

12 --

13 A Absolutely.

14 Q -- and giving her --

15 A Yes. And I sent a confirmation to Terri that  
16 they had been delivered.

17 Q What was her -- Ms. Surratt's response when you  
18 took her the notice of hearing documents?

19 A Not anything significant. I just said, "I have  
20 documents for you."

21 Q Okay. All right.

22 A She signed the inspection form and the other  
23 little duplicate form that we have. I don't recall  
24 any. We had a, you know, pleasant conversation.

25 MR. HOGAN: I'll pass the witness.

0099

1 HEARING OFFICER AKIN-JONES: Board  
2 members, any questions for Pat?

3 MR. HOGAN: That concludes our case, and  
4 I'll waive closing remarks.

5 HEARING OFFICER AKIN-JONES: Very well.  
6 At this time, we'll close the record and make  
7 it complete except for the board's recess for  
8 deliberations. Once the board reaches a  
9 decision, we will go back on the record.

10 (WHEREUPON, the committee retired to  
11 deliberate off the record from 11:18 a.m. to  
12 11:19 a.m. and returned with the following  
13 decision:)

14 HEARING OFFICER AKIN-JONES: Is there a  
15 motion?

16 MS. DAVIS: I make a motion that the fine  
17 -- what would that be? I didn't add it up to  
18 know.

19 HEARING OFFICER AKIN-JONES: So the  
20 motion would be that the fine proposed in the  
21 order and notice of hearing for Trinia's  
22 Diamond Hair Care Salon and Trinia Surratt  
23 both be applied. Is there a second to that  
24 motion?

25 MR. BARNES: I got you.

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1 HEARING OFFICER AKIN-JONES: Please let  
2 the record reflect the board's decision is  
3 unanimous. Please reduce that decision to  
4 writing and make or attempt service upon all  
5 parties. If the respondent cares to appeal  
6 the decision, an appeal can be taken under  
7 Arkansas Code Annotated 25-15-201, et seq.,  
8 or any specific provision of this board. If  
9 there are no other questions or comments, the  
10 hearing is concluded and the record is  
11 closed.

12 (WHEREUPON, the proceedings were  
13 concluded in this matter at 11:19 a.m.)

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1 CERTIFICATE

2 STATE OF ARKANSAS )  
3 )ss  
4 COUNTY OF PULASKI )

5 I, Kristina R. Gray, Arkansas Certified Court  
6 Reporter #725, do hereby certify that the facts  
7 stated by me in the caption on the foregoing  
8 proceedings are true; and that the foregoing  
9 proceedings were reported verbatim through the use of  
10 the voice-writing method and thereafter transcribed  
11 by me or under my direct supervision to the best of my  
12 ability, taken at the time and place set out on the  
13 caption hereto.

14 I FURTHER CERTIFY, that I am not a relative or  
15 employee of any attorney or employed by the parties  
16 hereto, nor financially interested or otherwise, in  
17 the outcome of this action, and that I have no  
18 contract with the parties, attorneys, or persons with  
19 an interest in the action that affects or has a  
20 substantial tendency to affect impartiality, that  
21 requires me to relinquish control of an original  
22 deposition transcript or copies of the transcript  
23 before it is certified and delivered to the custodial  
24 attorney, or that requires me to provide any service  
25 not made available to all parties to the action.

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1 WITNESS MY HAND AND SEAL this 4th day of June,  
2 2012.

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6 Kristina R. Gray  
7 Arkansas State Supreme Court  
8 Certified Court Reporter #725

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