

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

September 17, 2012

9 a.m.

Freeway Medical Building
5800 W. 10th Street, Ste. 902, Little Rock, AR

Cosmetology Technical Advisory Members:

Present:

Kimberly Ford	Roger Barnes
Rebecca Arguello	Jacqueline Reynolds
Andrea Fuentes	Jeannie Bonds
Sandy Davis	

ADH – Cosmetology Staff Members:

Present:

Kelli Kersey, Cosmetology Section Chief
Rick Hogan, ADH Attorney
Rose Horner, Cosmetology Inspector
Lavonne Lester Cosmetology Inspector
Ken Roberts, Inspector Supervisor

Teri Preachers, Admin. Specialist
Amanda Weeks, Admin. Specialist
Brenda Morgan, Cosmetology Inspector
Vera Wood, Cosmetology Inspector
Renee Mallory, Branch Chief, Lic. & Reg.

Proceedings:

Meeting called to order at 9:04 a.m.

Meeting Minutes – A motion was made and seconded to accept the May 21, 2012 meeting minutes. Motion approved.

Paid Violations – A motion was made and seconded to approve the listing of paid violations. Motion approved.

Program Updates

- ***Past Employees*** –Kelli Kersey informed the committee that Pat Jackson and Michelle Rudolph were no longer employed by the Section.
- ***New Employee*** – Ken Roberts was hired as the Inspector Supervisor.
- ***NIC Conference*** – Kelli Kersey and Ken Roberts attended the NIC Conference in August. It was held in Salt Lake City, Utah.
- ***CLEAR training*** – Kelli Kersey, Ken Roberts and Vera Wood attended CLEAR training in September. It was held in San Francisco, California.
- ***Hearings*** begin at 9:15 and the transcript of the hearings are separate 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 –

Lakeisha Franklin spoke about her enrollment at Lee's School of Cosmetology. Ms. Franklin stated that she was not notified that she was not eligible for Financial Aid. The committee recommended that she contact FASFA because this was not a legal issue for the committee.

Michelle Jackson spoke about her enrollment at Lee's School of Cosmetology. Ms. Jackson stated that she was wrongfully terminated for contacting the Better Business Bureau. The committee recommended that she pursue this as a legal matter in a Court of Law.

A motion was made and seconded to adjourn until the November 19, 2012 meeting.

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ARKANSAS DEPARTMENT OF HEALTH
COSMETOLOGY SECTION
COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

BE IT REMEMBERED that on Monday, the 17th day of
September 2012, the meeting of the Arkansas Department of
Health, Cosmetology Section, Cosmetology Technical Advisory
Committee was held, at 9:00 a.m., at the Arkansas Department of
Health, Freeway Medical Building, Suite 801, Little Rock,
Pulaski County, Arkansas.

TECHNICAL ADVISORY COMMITTEE:

- KIMBERLY FORD, Chair
- ROGER BARNES
- SANDY DAVIS
- REBECCA ARGUELLO
- JACQUELYN REYNOLDS
- JEANNIE BONDS
- ANDREA FUENTES

REPORTED BY:

SUSAN B. WHITSON, CCR
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1 APPEARANCES :

2 ON BEHALF OF THE COMMITTEE :

3 RICK HOGAN, ESQ.

4 HEARING OFFICER :

5 KENDRA AKIN-JONES, ESQ.
6 Office of the Attorney General
7 323 Center Street, Suite 200
8 Little Rock, Arkansas 72201

8 Staff Members Present :

9 KELLI KERSEY - Section Chief
10 RENEE MALLORY
11 TERI CRAVATTA

11 Inspectors Present :

12 ROSE HORNER
13 LAVONNE LESTER
14 BRENDA MORGAN
15 VERA WOOD

15 Court Reporter :

16 Susan B. Whitson, CCR
17 Arkansas Supreme Court Certificate No. 158

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P R O C E E D I N G S

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2 CHAIRMAN FORD: Next on our agenda is going to
3 be the approval of the paid violations. And you
4 should have copies of those there in your stack. I
5 believe there is three pages. Has everyone had a
6 chance to go over them?

7 MS. DAVIS: I make a motion we approve the paid
8 violations.

9 MR. BARNES: I'll second it.

10 CHAIRMAN FORD: The motion has been seconded.
11 At this time we would like to take a vote. All in
12 favor of approval of the paid violations.

13 COMMITTEE MEMBERS: Aye.

14 CHAIRMAN FORD: All opposed.

15 Approval of paid violations will stand.

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1 MR. HOGAN: I'm Rick Hogan, Attorney for the
2 Department of Health and Cosmetology Section.

3 I haven't had a chance to speak with you, I know
4 I spoke with a representative of yours, somebody out
5 of Dallas. I don't know, I think a lawyer.

6 But, members of the committee, I'm passing out
7 to you now a motion. And after consulting with the
8 Attorney General's Office, the best advice that we
9 could come up with for this situation was to
10 retroactively apply the hours to Ms. Melton that she
11 had earned through, I believe, January through April
12 and also other hours that were provided to us on the
13 sign-in sheets and the paper cards, for a total of
14 524 hours -- 524.59 hours that she had not been
15 credited for although she had earned.

16 So I passed out a motion in front of you and I
17 would ask one of you to make this in the form of a
18 motion. Would -- if you -- before you do that or
19 during the discussion of the motion, either I or
20 Ms. Kersey, I'm sure Ms. Melton would be happy to
21 answer any questions before you vote on this. But, I
22 believe, procedurally this is the best way to
23 approach the situation. The hours did not get
24 credited, there was some -- well, I don't need to
25 really get into the reasons. But the hours of 524.59

1 hours for a total of 15-point -- or 15,000 --
2 1,506.17 hours should be credited for Ms. Melton.
3 That's our recommendation.

4 And so, with that motion in front of you, I
5 would ask that you adopt that at this time. And if
6 you have any questions, like I said, we're available.

7 CHAIRMAN FORD: Do we need to go off record at
8 this time so that we can give them a chance to --

9 MR. HOGAN: Yes. If you want to look through
10 the motion, you don't have to be on the record, there
11 is no question about that. And I don't -- if --
12 yeah. Why don't we go off the record to give the
13 committee a --

14 CHAIRMAN FORD: At this time we would like to go
15 off record for deliberation.

16 (WHEREUPON, the Committee retired to deliberate,
17 off the record, from 9:17 a.m. to 9:18 a.m., and
18 returned with the following discussion:)

19 MR. HOGAN: Do you want to put it on the floor
20 for -- the motion on the floor for discussion and
21 then we can discuss it at this point?

22 CHAIRMAN FORD: At this time we'll go back on
23 record for discussion.

24 Go ahead, discussion.

25 MS. BONDS: If we could just tell us a little

1 bit why the hours were not certified and why we're
2 going to certify them?

3 MR. HOGAN: Well, Kelli can address that issue,
4 if it's okay.

5 To the best as I understand it, the law is very
6 specific about this, that the paperwork has to be
7 submitted at the beginning, as you know.

8 MS. BONDS: Right.

9 MR. HOGAN: You guys are all in the profession
10 so you know.

11 MS. BONDS: Right.

12 MR. HOGAN: In this particular case there was
13 some error that occurred that was -- the student was
14 not certified at the beginning. And so, in an effort
15 to not penalize the student, since she had in fact
16 earned the hours, the -- and since there was proof
17 that the hours were earned, then in order to make
18 certain that the law is followed but also that it
19 would be -- could be done, the authority to do this
20 retroactively lies with this committee, and
21 ultimately with the board of health.

22 There -- there was not, however, paperwork
23 submitted at the beginning that we could verify to
24 certify the hours from the beginning, that the
25 certificate should have been here, that was not in

1 the records here. So it involved an exhaustive
2 investigation and working with the school and working
3 with Ms. Melton to determine if, in fact, the hours
4 were earned and she should be credited for those
5 hours. So, after several months, discussions and
6 talks, we were able to verify through sign-in sheets,
7 through a letter from the cosmetology school, and
8 also from other documents, that she should have been
9 credited for 524.59 hours that were not credited
10 because she was not certified at the beginning of the
11 program in January properly. We found that it was no
12 fault of Ms. Melton's that that was -- that that
13 occurred that we could determine, and so in order to
14 make it right, we wanted to propose to you that you
15 retroactively apply that certification back to
16 January when it -- when she in fact started and
17 earned the hours.

18 Did I confuse you?

19 MS. BONDS: No.

20 So we're saying it's the cosmetology school's
21 error?

22 MR. HOGAN: That's right.

23 I don't want to prejudge that --

24 MS. BONDS: Sure.

25 MR. HOGAN: -- but that, that's certainly the

1 issue.

2 MS. BONDS: Yeah, okay.

3 MR. HOGAN: Had it been done in accordance with
4 our rules at the beginning --

5 MS. BONDS: It wouldn't have ever happened.

6 MR. HOGAN: -- we wouldn't be here today.

7 MS. BONDS: I understand. Okay.

8 MR. BARNES: I make a motion that we accept the
9 hours and graduate the student and --

10 MS. ARGUELLO: I second the motion.

11 MR. BARNES: -- I have been through this issue
12 before at our school, I've had plenty of students
13 like this, so this is not the first time this has
14 happened.

15 MS. ARGUELLO: I second the motion.

16 CHAIRMAN FORD: The motion has been seconded.
17 At this time, all in favor of the motion standing for
18 approval of the set hours.

19 COMMITTEE MEMBERS: Aye.

20 CHAIRMAN FORD: All opposed?

21 Motion will stand.

22 MR. HOGAN: Thank you, Ms. Melton. Appreciate
23 you.

24 MS. MELTON: Uh-huh.

25 ---o---

1 ADMINISTRATIVE HEARING

2 ADH

3 v.

4 A TOUCH OF CLASS BEAUTY SALON, OWNER, ERICA SMITH

5 ADH

6 v.

7 ERICA LEVONTA SMITH

8 HEARING OFFICER JONES: Ms. Smith?

9 MS. SMITH: Yes, ma'am.

10 MS. AKIN-JONES: We're going to take these two
11 together --

12 MS. SMITH: Yes, ma'am.

13 HEARING OFFICER JONES: -- just to expedite
14 things for everybody. And so if the committee wants
15 to go ahead and pull those two, it's 11414 and
16 115118.17 We'll go ahead and get started. My name is
18 Kendra Akin Jones and I'm the Hearing Officer today
19 in the matter of A Touch of Class Beauty Salon and
20 Erica Levonta Smith, Violation Nos. 12-586, 12-256
21 and 12-587, to be heard before the Arkansas
22 Cosmetology Technical Advisory Committee. Today is
23 September 17, 2012, we're located in Suite 801 of the
24 Freeway Medical Building.

25 Ms. Smith, if you would, please identify

1 yourself for the record.

2 MS. SMITH: I'm Erica Smith.

3 HEARING OFFICER JONES: Okay. And, Ms. Smith,
4 you do not have counsel here with you today?

5 MS. SMITH: No, ma'am.

6 HEARING OFFICER JONES: And you received a copy
7 of the Orders and Notices of Hearing for the
8 violations in A Touch of Class Beauty and your
9 personal violation?

10 MS. SMITH: Yes, ma'am.

11 HEARING OFFICER JONES: Okay. Counsel for the
12 state?

13 MR. HOGAN: Rick Hogan. I also -- I have one
14 witness -- or two witnesses this morning, Ms. Kersey
15 and Ms. Lester.

16 And, Madam Hearing Officer, I would like to --

17 HEARING OFFICER JONES: We'll do that in just a
18 second. Let me go through some opening statements
19 first.

20 MR. HOGAN: Oh, okay. Jumped the gun.

21 HEARING OFFICER JONES: For your benefit as the
22 respondent and those present who may not have been
23 before an administrative hearing before, the board
24 will base its decision today based solely on the
25 evidence presented here. This hearing is being held

1 under the Administrative Procedures Act, which means
2 the strict rules of evidence do not apply. The board
3 members know of this case only as it appears and is
4 set forth in the Order and Notice of Hearing. And
5 anything that you have that you want them to consider
6 needs to be presented here today. This includes
7 things that you may have submitted to the staff
8 previously, if you want them to consider it, we need
9 to make sure they have it.

10 All participants should also be aware that
11 this -- these proceedings are subject to the Freedom
12 of Information Act, and that does include the board's
13 recess for deliberation.

14 For those of who are going to be witnesses in
15 today's matter, if you would, please stand and raise
16 your right hand to be sworn in. Ms. Smith, that
17 includes you.

18 MR. HOGAN: Teri -- just go ahead and stand up,
19 Teri, just so -- you don't need to be sworn in, we
20 just wanted you to stand up.

21 No, I'm just kidding. Is there any --

22 Ms. Smith, did you bring anybody with you you
23 would like to testify for you today?

24 MS. SMITH: No, ma'am. I mean, no, sir.

25 MR. HOGAN: It's probably my hair, is full for

1 everybody.

2 (WHEREUPON, the witnesses were sworn by the
3 Hearing Officer.)

4 HEARING OFFICER JONES: Very well. You may be
5 seated.

6 Okay. Mr. Hogan, preliminary matters.

7 MR. HOGAN: Madam Hearing Officer, we have two
8 packets of information, I haven't counted the pages,
9 they are all stapled and everything. We would ask
10 that these be admitted as Board's Exhibits Nos. 1 and
11 2. They include the Order and Notice of Hearing to A
12 Touch of Class Beauty Salon, and also to Erica Smith,
13 and we would ask that they be admitted as Board's
14 Exhibit No. 1 and 2 for the record, please.

15 HEARING OFFICER JONES: Okay. We'll do A Touch
16 of Class Beauty Salon packet as Board's Exhibit
17 No. 1; and Erica Levonta Smith packet as Board's
18 Exhibit No. 2.

19 (WHEREUPON, Board's Exhibits Nos. 1 and 2 were
20 received in evidence.)

21 MR. HOGAN: And then we would also ask that the
22 board's rules and regulations be admitted as the
23 Board's Exhibit No. 3 for the record, please.

24 HEARING OFFICER JONES: Those will be so
25 admitted.

1 (WHEREUPON, Board's Exhibit No. 3 was received
2 in evidence.)

3 MR. HOGAN: And that the committee be able to
4 take notice of the statutes or laws that control this
5 committee and the Board of Health for Cosmetology.

6 HEARING OFFICER JONES: So, noted.

7 Ms. Smith, do you have anything in your
8 possession you would like the board to consider
9 today?

10 MS. SMITH: Yes, ma'am.

11 HEARING OFFICER JONES: Okay. Do you have
12 copies of it or do we need to get some copies made
13 first?

14 MS. SMITH: I need you to get some copies made.

15 HEARING OFFICER JONES: Okay. Teri in the back
16 will get some copies made.

17 And what do you have with you?

18 MS. SMITH: It's just medical records for the --
19 for my reasons for not having my stuff that I had.

20 HEARING OFFICER JONES: Okay. Before we get
21 some copies made, Mr. Hogan, if you will, do you have
22 any objections to these?

23 MR. HOGAN: No. I don't have any objections.

24 HEARING OFFICER JONES: Okay. We'll get those
25 copies made and when they come back, we will label

1 those as Respondent's Exhibit No. 1.

2 (WHEREUPON, Respondent's Exhibit No. 1 was
3 received in evidence.)

4 HEARING OFFICER JONES: If everybody would, shut
5 their cell phones -- turn them on vibrate, please.

6 Okay. Ms. Smith, we're going to go ahead, I'm
7 going to go ahead and let Mr. Hogan start while she's
8 getting your copies made and then we'll get those
9 handed out to the board when she gets back.

10 MS. SMITH: Yes, ma'am.

11 HEARING OFFICER JONES: Mr. Hogan, opening
12 statement?

13 MR. HOGAN: No.

14 HEARING OFFICER JONES: Okay.

15 MR. HOGAN: We'll just call Ms. Lester.

16 HEARING OFFICER JONES: Okay. Well, let me --
17 let me offer Ms. Smith an opportunity for an opening
18 statement.

19 MR. HOGAN: Okay.

20 HEARING OFFICER JONES: Would you like to state
21 anything in opening?

22 You'll have a chance to give your full side and
23 answer questions from the board and from Mr. Hogan,
24 but if there is anything you would like to say in an
25 opening, I'll let you do so now.

1 MS. SMITH: I'm so lost. I will just --

2 HEARING OFFICER JONES: If you have any
3 questions during this whole thing, just ask me and
4 I'll do my best to answer it, how the proceedings are
5 going to go. I will say, please verbalize all your
6 responses so that the court reporter can get those
7 down for us.

8 MS. SMITH: Yes, ma'am.

9 HEARING OFFICER JONES: What's going to happen
10 is Mr. Hogan is going to call his witnesses. Once he
11 asks them questions, you will have the opportunity to
12 question them as well.

13 MS. SMITH: Yes, ma'am.

14 HEARING OFFICER JONES: The board will also have
15 the opportunity to ask questions. Once he is
16 completed with his witnesses, if you have any
17 witnesses you can call them, if not, you will be able
18 to just tell your side of the story.

19 MS. SMITH: Yes, ma'am.

20 HEARING OFFICER JONES: And then I'll let
21 Mr. Hogan and the board ask you questions.

22 MS. SMITH: Yes, ma'am.

23 HEARING OFFICER JONES: Okay?

24 MS. SMITH: Yes, ma'am.

25 HEARING OFFICER JONES: Feel free to ask any

1 questions along the way though.

2 MS. SMITH: Okay.

3 HEARING OFFICER JONES: Moving along.

4 Mr. Hogan?

5 MR. HOGAN: I had two cups of coffee this
6 morning, I'm a little bit in a hurry. I think it's
7 time to call my first witness, but I'm a little gun
8 shy.

9 And one thing on your -- in your advantage,
10 Ms. Smith, is that you're not going up against a
11 really good lawyer, you should be in good shape.

12 I would call Ms. Lester, if that's okay.

13 HEARING OFFICER JONES: Quite all right.

14 WHEREUPON,

15 LAVONNE LESTER,

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

19 DIRECT EXAMINATION

20 BY MR. HOGAN:

21 Q Ms. Lester, state your name and position with the
22 department.

23 A Lavonne Lester, inspector for the cosmetology section.

24 Q Lavonne, let me ask you about the packet that's
25 identified, Erica Levonta Smith.

1 Did you -- and I believe your inspection reports are
2 identical. But did you have occasion to inspect this
3 particular establishment? I believe it's located in Jonesboro,
4 Arkansas. Is that right?

5 A Yes, sir.

6 Q In your packet, in both packets, there is a cosmetology
7 inspection report. Can you tell the members of the company and
8 for the record what the -- what you found during the
9 inspection?

10 A My first inspection was in December of 2011.

11 Q Yes, ma'am.

12 A And I found that Erica had not renewed her cosmetologist
13 license at that time.

14 Q And did that matter then go to a hearing or did she
15 consent to a violation and agree to a -- a payment schedule of
16 some kind?

17 A I guess there -- I see here there was a consent agreement.

18 Q And she agreed to pay a civil penalty in May of this year,
19 is that correct?

20 A Yes.

21 Q Now --

22 A I don't --

23 MS. SMITH: That was in April.

24 THE WITNESS: Oh, okay.

25 MS. SMITH: And then in December we talked about

1 submitting my license in.

2 BY MR. HOGAN:

3 Q And that penalty was \$258 at that time. Is that correct?

4 A Yes, sir.

5 Q Now, after that inspection and that agreement, based on
6 your inspection in December of last year, did you have occasion
7 to go back and inspect Ms. Smith and also this salon?

8 A Yes. I was back there on 4/3/12, and at that time her
9 practitioner and her salon license had both expired.

10 Q Now, when you first were there in December, only her
11 practitioner's license was not current?

12 A That's correct.

13 Q And then she was penalized and then she agreed to a
14 penalty?

15 A (Nodding head up and down.)

16 Q And I'll ask Ms. Kersey about whether or not the penalty
17 was paid.

18 But did you discuss with her then back in December that
19 she was required to have current license and posted license?

20 A Absolutely. Yes.

21 Q And do you remember any of that discussion at that time,
22 what was talked about or what she said or what you may have
23 said to her or what --

24 A (Shaking head from side to side.)

25 Q Did you give her a copy of rules or did she have -- was

1 she clear that she was required to keep a current practitioner
2 license in a salon?

3 A I'm quite sure that she was clear on that.

4 Q Now, so when you went back in April of this year, is
5 that -- was that customary? Was it based on any complaint or
6 why did you go back in April, was that just --

7 A Just a routine inspection.

8 Q Okay. Now, did she at that time have a practitioner's
9 license that was current?

10 A No, sir.

11 Q Okay. Did she have a salon license that was current?

12 A No, sir.

13 Q And how did you determine that neither of those were
14 current at that time?

15 A She showed me what she had and neither one of them were
16 current.

17 Q And you looked at the dates that they expired?

18 A Yes, sir.

19 Q Do you remember the dates of expiration on both the salon
20 and the --

21 A (Shaking head from side to side.)

22 Q Okay.

23 A Hers would have expired 7/7, but she still had her 2010
24 cosmetologist license. And the salon expired on 12/31 of '11.

25 Q Okay. Now, how -- you -- how long have you inspected this

1 particular salon and this licensee? I mean have you gone there
2 for several years? Has her business been -- has she been in
3 operation for quite some time?

4 A How many years?

5 MS. SMITH: About five or six?

6 THE WITNESS: I think around five years.

7 BY MR. HOGAN:

8 Q Five years?

9 A Yes. I believe I first went there when she first opened
10 it up.

11 THE WITNESS: Remember I came when you --

12 MS. SMITH: Yeah, you --

13 HEARING OFFICER JONES: Okay. Y'all can't talk
14 to each other. Sorry.

15 MR. HOGAN: Well, you can after the hearing.

16 HEARING OFFICER JONES: Yeah.

17 BY MR. HOGAN:

18 Q But, so she's been in business about five years or so?

19 A Yes. At this location.

20 Q Now, prior to December of last year, when you cited her
21 for violation of licensure, had she had any problems before
22 that time about being current in either her establishment or
23 her practitioner license?

24 A I don't recall.

25 Q Did she --

1 A Without the paperwork, I don't remember.

2 Q Did she give you a reason why she was not current either
3 in December or April of this year for both licenses when you
4 talked?

5 A I don't recall her telling me. No.

6 Q Okay. Is there anything further you want to make the
7 committee aware of at this time?

8 A No, sir.

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

10 HEARING OFFICER JONES: Okay. Ms. Smith, you
11 can ask Ms. Lester any questions you may have for
12 her.

13 CROSS-EXAMINATION

14 BY MS. SMITH:

15 Q Oh, I, with the dates for the violations, when -- in
16 December, when you came and inspected and I didn't have my
17 personal license, I don't know if you recall me telling you
18 about the -- when the state board went from the plastic license
19 back to the paper license --

20 A Uh-huh.

21 Q -- and it had just been a mess for me like ever since
22 then?

23 A Uh-huh.

24 Q And you went back outside and called to the office to see
25 what was going on?

1 A Uh-huh.

2 HEARING OFFICER JONES: Ms. Lester, if you're
3 going to answer, please make it verbal instead of
4 just shaking your head.

5 THE WITNESS: Yes.

6 BY MS. SMITH:

7 Q And you just told me to check and see what was going on
8 because I had renewed my license but I was explaining to you
9 that they told me that we was going back to the paper license
10 because it had been a big mess with the part, the plastic
11 license and everything. So in December I wasn't given a
12 violation for that because I was given time to call and see
13 what was going on with that. Do you remember that?

14 A I vaguely remember that conversation. Yes.

15 Q And in April when you came back and you explained to me
16 that -- I still didn't have the license and I told you that I
17 did call and they explained to me what was going on, and you --
18 that's when you told me you was going to have to cite me for a
19 violation for not having my license because I -- it was nothing
20 that you could do about it, I had to be cited.

21 A Yeah.

22 Q And we both agreed that there was nothing I could do, I
23 had -- because nothing had been done about it, and I just can't
24 operate without a license. And she did tell me that.

25 HEARING OFFICER JONES: I'm not real sure that

1 was a question so --

2 THE WITNESS: Okay. It's all right.

3 MS. SMITH: It was, it's more of me asking her
4 did she remember.

5 HEARING OFFICER JONES: Okay.

6 MS. SMITH: -- that and so --

7 HEARING OFFICER JONES: Okay. Do you have any
8 further questions for Ms. Lester?

9 MS. SMITH: No, ma'am.

10 HEARING OFFICER JONES: Okay. Committee
11 members, questions for Ms. Lester?

12 Okay. If there are none --

13 MS. DAVIS: Wait. I have one.

14 HEARING OFFICER JONES: Okay.

15 MS. DAVIS: Ms. Lester, are you the one that
16 told her that she would have extra time to pay that
17 or --

18 THE WITNESS: No.

19 MS. DAVIS: -- did the board tell her that she
20 had extra time?

21 THE WITNESS: I don't know. I did not.

22 MS. DAVIS: Okay. Thank you.

23 HEARING OFFICER JONES: Further questions from
24 the committee?

25 Okay. If there are none, thank you, Ms. Lester.

1 Mr. Hogan, call your next.

2 MR. HOGAN: Call Ms. Kersey.

3 WHEREUPON,

4 KELLI KERSEY,

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

8 MR. HOGAN: I think we'll follow up for the
9 question for you.

10 MS. DAVIS: Okay.

11 DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q State your name and position with the Department of
14 Health.

15 A Kelli Kersey, Section Chief, Arkansas Department of
16 Health, Cosmetology.

17 Q Kelli, there has been some discussion about the paper
18 transferring to plastic license or maybe electronic license or
19 something. Can you go, historically going through your records
20 which you have control and custody of at the health department,
21 correct?

22 A Yes.

23 Q Based on your records and the inspection report that
24 occurred in December of last year, what happened in the
25 license -- well, I don't know if you call it a -- we'll call

1 her a licensee, Ms. Smith -- is that her name?

2 A Yes.

3 COURT REPORTER: Could you speak up, please?

4 I'm getting a little background noise.

5 CHAIRMAN FORD: Could I ask everybody to please
6 bring your personal conversations down or step
7 outside? It's kind of difficult to hear with the air
8 and the paper shuffling and everything, so please be
9 considerate that we do have hearings going on here.

10 BY MR. HOGAN:

11 Q Ms. Kersey, in the records, there is a consent agreement
12 that is signed, appears to be signed by Ms. Smith in May of
13 2012?

14 A Uh-huh.

15 Q Can you tell -- there is some writing at the bottom of it.
16 But can you tell the members of the committee what occurred
17 prior to the consent agreement and what happened as a result of
18 the consent agreement?

19 A Well, she signed this and but she can't pay her penalty
20 until her license is renewed, she still had not renewed her
21 license at that time, so you can't get payment arrangements
22 until you renew your license, so...

23 Q So her practitioner's license had never been renewed?

24 A No.

25 Q And she was practicing on or before December of last year

1 through this year without a current practitioner's license?

2 A Correct.

3 Q Now, she agreed to pay a \$256 penalty?

4 A Uh-huh.

5 Q And she would have had to have paid that penalty and had
6 her license renewed this year, according to what she agreed to
7 do, in May of 2012. Correct?

8 A Correct.

9 Q And to date has she either paid the penalty or attempted
10 to renew her license?

11 A She actually has renewed her license now, but she has not
12 paid the penalty.

13 Q Now, when did she renew her practitioner's license?

14 A 8/31/2012.

15 Q Did she also renew her establishment license?

16 A She also renewed her establishment license on that day.

17 Q On 8/31 --

18 A Uh-huh.

19 Q -- of this year?

20 A 2012.

21 Q All right. Now, so according to your records today, she
22 is currently licensed to practice cosmetology and also operate
23 the salon?

24 A Yes.

25 Q Now, and also according to your records, there is a civil

1 penalty of \$256 that's outstanding from a previous violation?

2 A Uh-huh.

3 Q And you have made a recommendation to the committee, I
4 believe, that a total amount of, what was it, 7 --

5 A 714.

6 Q 700 and --

7 A It's on, keep going, or it might have been at the
8 beginning, I'm sorry. It's 714.

9 Q \$714?

10 A Correct.

11 Q All right. Now, is there anything further you need to
12 make the committee aware of at this time?

13 A The reason that -- I mean I don't know if y'all -- the
14 reason it went up is because she didn't pay the first one and
15 then she got a violation again.

16 MS. BONDS: Sure, sure.

17 THE WITNESS: So it just continues to accrue.

18 MS. DAVIS: Uh-huh.

19 BY MR. HOGAN:

20 Q Now, I noticed in your letter that she could resolve this
21 matter, I'm looking at your August 8, 2012 letter in which you
22 propose a penalty of \$714, that she could consent, again you
23 offered a consent agreement to the section office with a check
24 or money order in the amount of \$714, the consent agreement, if
25 she wanted to agree to, she could by September 10 of 2012, and

1 to date she has not -- in fact, she asked for a hearing today.

2 Is that correct?

3 A I believe so. I'm not certain on that one though.

4 Yes, she did. Okay.

5 Q Now --

6 A And that's just her personal penalty. There is a
7 different penalty for the salon. 714 is just the personal.

8 CHAIRMAN FORD: This is personal.

9 BY MR. HOGAN:

10 Q Okay. Well, we're taking them both together so --

11 A Okay. So --

12 Q -- what's the additional penalty for the salon?

13 A 422.

14 Q You have to say it a little louder.

15 A 422. I'm sorry.

16 Q All right. \$422. So you're asking the committee today to
17 assess a penalty in the amount of 714 plus 422. Is that right?

18 A Yes, sir.

19 Q All right. For a total amount of what?

20 CHAIRMAN FORD: 1,136.

21 MR. HOGAN: There you go.

22 THE WITNESS: There we go. Okay. 1,136.

23 HEARING OFFICER JONES: No, you can't answer the
24 question, only Ms. Kersey.

25 THE WITNESS: 1,136.

1 BY MR. HOGAN:

2 Q Okay. All right. Now, Ms. Smith has presented to us
3 today some additional records, documents, it appears to be
4 medical records. Have you -- have you seen these before,
5 Ms. Kersey?

6 A I have not.

7 Q And this indicates that she was under medical care and was
8 hospitalized during this time and that -- okay. I apologize.
9 She was taking care of someone else, Felicha Smith, which I
10 guess is the -- who Ms. Erica Smith was caring for.

11 Okay. But had -- this is dated September 14th from
12 Felicha Smith, this letter. Have you -- have you been informed
13 prior to this date that there was any medical reason for
14 Ms. Erica Smith or anybody else in her family for being unable
15 to resolve the -- either the consent decree or agreement that
16 she made back in April or today's matter of not having a
17 license for either the salon or her practice?

18 A I have not. This is the first that I've seen this or
19 heard of it.

20 Q Do you know of any exception in the rules or any waiver
21 provision in the rules when a practitioner has had to care for
22 another family member or care for someone else for medical
23 reasons that would allow her to be excused from paying the
24 penalties that accrued as of December of last year? Are you
25 aware of any provision like that?

1 A No, sir. We do have a -- there is a provision that if the
2 person is under a doctor's care, but not if they are a
3 caregiver.

4 Q And so there is no provision you're aware of that would
5 allow either this committee or the Board of Health or anyone
6 else to waive or forego the penalty in this matter for both the
7 practitioner or the salon, based on her caring for someone
8 else --

9 A No, sir.

10 Q -- medically?

11 A No, sir.

12 Q Is there anything further you want to make the committee
13 aware of at this time?

14 A No. I mean she was working, though, on these dates, so --

15 Q During the inspection report?

16 A During the inspection report.

17 Q She was working both in December and then again, I forgot
18 the date of the second inspection?

19 A April.

20 Q April when the second inspection occurred?

21 A Correct.

22 Q Let me ask you this, I mean, based on your -- is there
23 any -- is it -- what's the word? Is it unusual that a practice
24 or licensee would be inspected once in December and again in
25 April, based on a previous violation that occurred, say, in

1 December?

2 A No, sir. There -- our regulations say two to four times a
3 year, so our inspectors just rotate. Whenever they are done
4 with their rotation, they just start over in their territory.

5 MR. HOGAN: Okay. I'll pass the witness.

6 HEARING OFFICER JONES: Ms. Smith, do you have
7 any questions for Ms. Kersey?

8 CROSS-EXAMINATION

9 BY MS. SMITH:

10 Q Ms. Kersey, do you remember me calling? I spoke with so
11 many people, and since you are one of the witness, like I can't
12 keep the names in order of the other people I talked to, but I
13 did call. And do you remember me calling and telling you that
14 I hadn't been -- hadn't been working for a few months?

15 A I don't recall that.

16 Q Because -- because of my -- first of all, I was in a car
17 accident, a bad car accident and my back is messed up so I
18 couldn't work. And you were -- and I also told you -- you said
19 I would need medical records showing that?

20 A (Nodding head up and down.)

21 Q And also, I don't know if it was you I spoke to, but about
22 me writing a check for my license in July?

23 A No. I don't think it was me. I'm sorry.

24 Q Just, I didn't know if it was you but I spoke with several
25 people --

1 A Yeah.

2 Q -- concerning my -- this license situation.

3 A Yeah.

4 Q But I just didn't know if it was you. I just wanted to
5 know if it was you?

6 A I'm sorry. I don't think it was me.

7 MS. SMITH: Okay.

8 HEARING OFFICER JONES: Any other questions for
9 Ms. Kersey?

10 MS. SMITH: No, ma'am.

11 HEARING OFFICER JONES: Board members, questions
12 for Ms. Kersey?

13 CHAIRMAN FORD: Did you have -- do we -- do you
14 have any documentation concerning her health issues
15 on file or --

16 THE WITNESS: I do not.

17 CHAIRMAN FORD: -- any medical records or any
18 type of statements?

19 THE WITNESS: I do not personally.

20 HEARING OFFICER JONES: Other questions from the
21 board for Ms. Kersey?

22 If there are none --

23 MS. ARGUELLO: Are there any documentations of
24 phone calls to or about this issue regarding her
25 wreck or not working?

1 THE WITNESS: Not my knowledge. No.

2 MS. ARGUELLO: Okay.

3 HEARING OFFICER JONES: Anything further from
4 the board?

5 Okay. Thank you, Ms. Kersey.

6 Mr. Hogan, any further witnesses?

7 MR. HOGAN: That -- we will rest our case.

8 HEARING OFFICER JONES: Okay.

9 MR. HOGAN: Well, let me just call -- I'm sorry.
10 Can I have a do over on that?

11 HEARING OFFICER JONES: You can.

12 MR. HOGAN: Let me just call Ms. Smith.

13 WHEREUPON,

14 ERICA SMITH,

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

18 DIRECT EXAMINATION

19 BY MR. HOGAN:

20 Q Erica, you've been sworn and everything.

21 A (Nodding head up and down.)

22 Q Let me ask you some questions. You've submitted some
23 documents here, a letter dated September the 14th, from Felicha
24 Smith?

25 A Yes, sir.

1 Q Who is Felicha Smith?

2 A That's my sister.

3 Q Your sister?

4 A (Nodding head up and down.)

5 Q And she had five children and it says that you cared for
6 her since, is that June of this year?

7 A Well, it actually started in April, but it went way
8 downhill in May.

9 Q The medical records indicate -- that you've submitted,
10 they start on June the 5th of this year?

11 A Yes. That's --

12 Q Is that correct?

13 A That's the time of when she was admitted into that
14 particular place.

15 Q Now, this appears to be a -- a facility that she was
16 admitted into?

17 A Yes, sir.

18 Q And so your -- your position is that you cared for her
19 five children while she was admitted in this facility, is that
20 right?

21 A And she was released to me.

22 Q Released to your care?

23 A Yes.

24 Q And when was -- when was she released to your care? Is
25 that when she was discharged in June 5th of this year?

1 A Yes, sir.

2 Q Now, is she currently -- did she then reside with you
3 or --

4 A She stayed with me for a while.

5 Q How long did she live with you at your residence?

6 A Couple months. And it's -- I'm still like helping her
7 now, it's just like back and forth now because she's kind of
8 getting more stable now.

9 Q How old are her children?

10 A Fifteen, eleven, seven, two, and three months.

11 Q Was there anybody else -- do you have children or --

12 A I have a son myself.

13 Q How old is your son?

14 A He's four.

15 Q And do you have parents? Do your parents or her in-laws
16 or your in-laws, did anybody else provide any care or
17 assistance to you during this period of time?

18 A My mom helped when she could. It was me and my mom,
19 basically.

20 Q That were caring for your sister?

21 A And her kids.

22 Q Is your mother in good health? Is she -- was she able to
23 take care of your sister while you were at work working in the
24 salon?

25 A No, sir. I was -- I didn't -- I didn't get a chance to

1 work. Like I had to -- like me and my mom both had to like cut
2 everything completely off during this time.

3 Q And that happened from approximately June the 5th when
4 she was discharged --

5 A That actually was -- that -- she -- she had a baby in May
6 and things for her went bad after -- she had -- she was
7 suffering with high blood pressure like really, really bad,
8 they had her like on bed rest, she couldn't do anything, they
9 didn't even want her standing up. So this was like in April,
10 so I had to help her because this before the last child was
11 born and I was there helping her with that. And in May she
12 took -- got really, really, really sick and they had to send
13 her to The Med in Memphis, which they had to take the baby,
14 which he was premature, he had stayed over there for like a
15 month and I had to go back and forth to Memphis to check on him
16 and also be there with the other kids. And things just went
17 real bad for her and she end up being admitted into a hospital
18 because she wasn't stable.

19 Q During that period of time did you close your salon?

20 A Yes. I wasn't working. I couldn't work. I mean --

21 Q Could you tell the members of the committee, it appears
22 that your salon was open in December when Ms. Lester inspected
23 it?

24 A No. That -- yeah, it was open in December.

25 Q And I was open in April --

1 A Yes, sir.

2 Q -- when she inspected it again?

3 A Yes, sir.

4 Q And so you had been operating since December of last year,
5 of course, without a practitioner's license and also for part
6 of that time without a salon license, and you knew you needed a
7 salon and a practitioner's license. Correct?

8 A Yes, sir. And that's when I signed the paper saying that
9 I agree to that fine which was like \$250 and I agreed to pay
10 that because I knew, I know you can't do that, and I
11 couldn't --

12 Q So -- so why didn't you pay that fine at that time and get
13 your practitioner's license renewed?

14 A Because in April -- right after this happened, that's when
15 everything just start. Even with me, like I have -- I called
16 my doctor this morning to ask her if I needed her to send
17 medical records for me, like my -- my back completely messed up
18 on me again. That was like at March -- I mean April, like
19 maybe the 20th, 20th of April or something, so I had to go
20 back to the chiropractor, which I had been under her care prior
21 to, prior to that for a wreck that I was in. And then like
22 after that my sister got sick, I had to go to Marianna with
23 her, and after she got sick with her blood pressure, they
24 had -- we had to rush her to The Med, she stayed there for a
25 while, they had the baby, she had the baby then.

1 Q After April when you were inspected by Ms. Lester the last
2 time, when did you close your business?

3 A Like maybe like the following week. And I called, and I
4 don't know who I spoke with, but I called like in July and I
5 spoke with a lady. I said this is Erica Smith, I'm calling to
6 see how much do I need to send in for my licenses and
7 everything, and I said, because I haven't been able to work, I
8 said, so I'm needing to know how much to send in because I had
9 a fine before and I needed to know exactly how much money I
10 needed to send in to get my stuff back up to date because I'm
11 just now going back to work.

12 Q Okay.

13 A And she gave me -- and I asked her, I said, would you
14 please put it in the system so they will know that I called,
15 you know, and that I hadn't been working, but she said she will
16 put it in there. But like when I called to let her know about
17 it and everything like a week or so later, that's when I got
18 another penalty, I get another penalty because the fine hadn't
19 been paid yet. But I called personally, no one had come in and
20 inspect, I called and let her know that I was returning to
21 work.

22 Q When was that in July?

23 A No. That should be on file because when I called again,
24 they -- whoever I spoke with said that they see that I called.
25 And I called concerning that I still hadn't received no license

1 and I had wrote a check for my license. Because the first time
2 with the license for my salon -- I mean for my personal use I
3 had sent a money order which was, it was a long time ago, and I
4 couldn't come up with the receipt, so I said I will do a check
5 so it will always be on my file. Like if I needed to have it,
6 I have the -- a check showing that I paid it.

7 Q Did you contact the department or the cosmetology section
8 before or after July 4th?

9 A I can't remember the exact date, but it was -- it was --
10 no, it was after.

11 Q It was after?

12 A Yeah. I think it was after.

13 Q Okay. And so from July when you started back to work
14 until May, you're saying your business and your practice had
15 ceased during that period?

16 A Yeah. I wasn't -- I wasn't able -- I wasn't able to work,
17 like it was -- like it was so much --

18 Q And it wasn't until August the 31st that you renewed
19 both your salon and your practitioner's license?

20 A Yes. Because I called and they told me that they didn't
21 have records of my check. And I asked her, I said, well, do I
22 just need to drive up there and just bring the -- bring the
23 money for my license, and she said if you can come, that will
24 be fine, but I --

25 Q So -- so you operated your business from sometime in July

1 through August, knowing that you needed both a salon license
2 and a practitioner's license --

3 A I called --

4 Q -- and you had not renewed it?

5 A I called -- yes, this was after me calling and getting
6 everything squared away.

7 Q Okay.

8 A With me letting them know that I was just going back to
9 work.

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

11 That means we've rested. We're resting.

12 HEARING OFFICER JONES: Ms. Smith, I'll give you
13 a chance to answer questions now or to just kind of
14 tell your side or you can wait and I'll let the board
15 ask you some questions now and you can tell your side
16 when they ask you questions again. Either way you're
17 going to get to say whatever you want.

18 THE WITNESS: Okay.

19 HEARING OFFICER JONES: So, does the board have
20 any questions right now for Ms. Smith?

21 MS. BONDS: Yes.

22 HEARING OFFICER JONES: Okay. Go right ahead.

23 MS. BONDS: I have just a couple of questions
24 for you.

25 THE WITNESS: Yes, ma'am.

1 MS. BONDS: Were you working in the salon the
2 day the inspection happened? Were you seeing clients
3 that day that she, Ms. Lester, came in to inspect?

4 THE WITNESS: Yes, ma'am.

5 MS. BONDS: You were seeing clients?

6 THE WITNESS: Yes, ma'am.

7 MS. BONDS: And you did not have a current
8 license then. Correct?

9 THE WITNESS: No, ma'am.

10 MS. BONDS: Okay. Did you work at any time
11 during the period when all this was going on with
12 your family, while your license were expired, did you
13 work one day during that time?

14 THE WITNESS: No, ma'am. I wasn't working.

15 MS. BONDS: You did not work one day during that
16 time?

17 THE WITNESS: No, ma'am.

18 MS. BONDS: You can honestly tell under oath the
19 advisory board that you did not work the whole time
20 your license were expired?

21 THE WITNESS: I worked when my license was
22 expired but after I talked with -- with whoever I
23 spoke with, I wasn't working then because I was back
24 and forth.

25 MS. BONDS: So you didn't work the whole time?

1 From the -- the second time she came in, you did not
2 work --

3 THE WITNESS: Oh, yes, I --

4 MS. BONDS: You did work?

5 THE WITNESS: Oh, yes. Yes, I did.

6 MS. BONDS: Okay. Thank you.

7 THE WITNESS: Oh, yes, I'm sorry.

8 MS. BONDS: Okay. That's fine. I was just
9 wondering if you worked during that time.

10 Okay. Thank you.

11 HEARING OFFICER JONES: Further questions for
12 the board members?

13 CHAIRMAN FORD: Yes, ma'am.

14 In your salon, I see on the inspection sheet --

15 THE WITNESS: Uh-huh.

16 CHAIRMAN FORD: -- that there is another
17 person's name and license listed here.

18 THE WITNESS: Uh-huh.

19 CHAIRMAN FORD: At that time did you have an
20 employee or a booth renter --

21 THE WITNESS: He did.

22 CHAIRMAN FORD: -- in your salon?

23 THE WITNESS: Yes, ma'am.

24 CHAIRMAN FORD: So you do -- so you do agree
25 that your renter or either your employee was working

1 without the coverage of a salon?

2 THE WITNESS: Yes, ma'am.

3 CHAIRMAN FORD: So can you give a date that you
4 stopped working from your medical reasons?

5 THE WITNESS: The day that -- when I talked
6 to -- I talked to my -- the chiropractor this
7 morning. The actual date for me was like the 30th,
8 I think that's what she said my appointment was,
9 because I couldn't work and I had been off work for
10 like a few days before then.

11 CHAIRMAN FORD: But you don't have those medical
12 records here with you today?

13 THE WITNESS: I don't. I asked them if I needed
14 them if she would fax them, so she said she would do
15 that, or how ever, I can get -- if I need them, I can
16 get them.

17 CHAIRMAN FORD: No further questions for me.

18 HEARING OFFICER JONES: Very well. Other board
19 members, questions right now?

20 I'll give you another chance after she finishes
21 with her information, but you can go right now if you
22 want.

23 MS. REYNOLDS: Ms. Smith?

24 THE WITNESS: Yes, ma'am.

25 MS. REYNOLDS: The other operator that was

1 working in your salon, was this a guy, female?

2 THE WITNESS: Uh-huh.

3 MS. REYNOLDS: A guy?

4 THE WITNESS: A guy.

5 MS. REYNOLDS: Did he know the license on your
6 salon were actually expired?

7 THE WITNESS: No, he didn't.

8 MS. REYNOLDS: But he worked in there?

9 THE WITNESS: Yeah, he worked in there but, as
10 far as what the penalty was and stuff, it was just on
11 me, so...

12 HEARING OFFICER JONES: Okay. At this time the
13 state has rested. Ms. Smith, you can tell your side
14 of the story, tell the committee whatever you want
15 them to hear that hasn't already come out.

16 DIRECT TESTIMONY

17 THE WITNESS: Basically everything, like I had
18 said, I explained is basically what happened. God
19 knows I wouldn't let a hundred dollars for some
20 licenses turn into an \$1,100 fine purposely.

21 I -- the case -- the issue with my sister, like
22 I said, my -- that was a very difficult, difficult
23 time for us and everything just went downhill from
24 there. And it's like I was trying to be there for my
25 sister and I was trying to be there for her children,

1 take care of my own family and everything was just so
2 overwhelming. And, like I said, when -- I agreed the
3 first time when she came, and I told Ms. Lester,
4 you're right, you know, and I don't want to get you
5 in no trouble, you got to write me up, you just got
6 to write me up, and I agreed to pay, you know, my
7 penalty because I know I can't operate like that.
8 But after that did happen, and like I say, everything
9 else has been down, it's just like everything just
10 now is just trying to come to a place for me and my
11 sister. Like I said, she has five children and they
12 are not able to take care of themselves, so someone
13 has to be able to do it. And I never will be able to
14 explain what we went through with her, and I don't
15 know if anybody in here -- well, women that has had
16 kids know how postpartum is, and my sister suffered
17 from a severe -- and when I say severe, it was very
18 severe case of postpartum, and that was the only
19 thing on my mind at the time was to deal with my
20 sister and make sure that she was okay. Because
21 we -- we really dealt with some really, really
22 horrible issues dealing with that, and I had never
23 experienced anything in my life, it was only things,
24 you know, I see on TV. And when it came down to
25 that, you know, I had to do what I had to do. And I

1 understand, like I said, my first fine, I understand
2 that, I agreed to pay that and I will, you know, I'll
3 pay that, but I just wanted to be heard so, you know,
4 it wouldn't seem like I was just, okay, I'm just
5 going to do what I'm going to do anyway, it's not
6 like that. I never had a problem, when she comes to
7 my salon, everything is always the way it's supposed
8 to be, she's never had a problem out of me, ever.
9 And, you know, I just don't want my reputation or my
10 salon reputation to be, you know, go downhill for
11 something like this that was just -- it was just
12 beyond my control.

13 HEARING OFFICER JONES: Okay. Thank you,
14 Ms. Smith.

15 Mr. Hogan, do you have any questions you want to
16 ask Ms. Smith?

17 MR. HOGAN: No.

18 HEARING OFFICER JONES: Okay. Board members, at
19 this time do you have any further questions you would
20 look to ask Ms. Smith?

21 Okay. Ms. Smith, thank you very much.

22 Mr. Hogan, anything in closing?

23 MR. HOGAN: We have nothing further.

24 HEARING OFFICER JONES: Ms. Smith, last
25 opportunity to say anything before the board recesses

1 for deliberations.

2 THE WITNESS: No, ma'am. That's all.

3 HEARING OFFICER JONES: Very well.

4 At this time the record will be closed and made
5 complete except for the board's recess for
6 deliberations. Once the board does reach a decision
7 we will go back on the record.

8 MS. FUENTES: We are combining these, is that
9 right? The salon and the individual?

10 MR. HOGAN: Uh-huh.

11 (WHEREUPON, the Committee retired to deliberate,
12 off the record, from 10:06 a.m. to 10:09 a.m., and
13 returned with the following decision:)

14 CHAIRMAN FORD: All right. At this time we
15 would like to go back on record.

16 HEARING OFFICER JONES: We'll go back on the
17 record for the motion.

18 MS. BONDS: I motion it stays as is.

19 HEARING OFFICER JONES: Can you elaborate on
20 that motion just briefly?

21 MS. BONDS: Yes. I motion that the \$1,136 fine
22 is to be paid as is.

23 HEARING OFFICER JONES: Motion and a second?

24 MS. DAVIS: I second.

25 CHAIRMAN FORD: The motion has been seconded.

1 ADMINISTRATIVE HEARING

2 ADH

3 v.

4 ROSA BONILLA

5 HEARING OFFICER JONES: Okay. Rosa Bonilla.

6 MS. KERSEY: Rosa Hatch. That's the
7 interpreter.8 HEARING OFFICER JONES: Ms. Hatch, if I speak
9 too fast at any point, let me know and I can slow
10 down. I have a tendency to get going on a roll.11 My name is Kendra Akin Jones and I'm the Hearing
12 Officer today. This is the matter of the Arkansas
13 Department of Health versus Rosa Bonilla to be heard
14 before the Cosmetology Technical Advisory Committee.
15 Today is September 17, 2012, and we're in the Freeway
16 Medical Building.17 Ms. Hatch, if you would, please identify
18 yourself for the record.19 INTERPRETER: My name is Rosa Hatch. I work for
20 the Arkansas Department of Health at the Office of
21 Minority Health.22 HEARING OFFICER JONES: And you're going to be
23 our interpreter for this hearing?24 INTERPRETER: I'm going to be the interpreter
25 for this hearing.

1 HEARING OFFICER JONES: And, Ms. Bonilla, please
2 identify yourself for the record.

3 MS. BONILLA: My name is Rosa Bonilla.

4 INTERPRETER: What information did you need?

5 HEARING OFFICER JONES: Just her name.

6 INTERPRETER: She already said it. Rosa
7 Bonilla.

8 HEARING OFFICER JONES: Okay. Y'all will have
9 to speak up, I don't hear all that well and neither
10 does Mr. Hogan.

11 Okay. And, Ms. Bonilla, do you not have an
12 attorney here with you today?

13 MS. BONILLA: No.

14 HEARING OFFICER JONES: You received a copy of
15 the Order and Notice of Hearing for today?

16 MS. BONILLA: Yes.

17 HEARING OFFICER JONES: Okay. Mr. Hogan, if you
18 would, identify yourself.

19 MR. HOGAN: I'm Rose Hogan -- Rick Hogan.

20 HEARING OFFICER JONES: For the respondent's
21 benefit or those present who have not appeared before
22 an administrative hearing, I'll base the decision --
23 the decision today will be based solely on the
24 evidence presented to the board.

25 This hearing is being held under the

1 Administrative Procedures Act, so the strict rules of
2 evidence do not apply.

3 INTERPRETER: Say again.

4 HEARING OFFICER JONES: The strict rules of
5 evidence do not apply.

6 The board members know of this case only as it
7 appears in the notice of hearing. Anything that you
8 have in your possession you want the board to
9 consider needs to be presented today.

10 INTERPRETER: At this time?

11 HEARING OFFICER JONES: Sorry?

12 INTERPRETER: You say any -- anything that she
13 has in her possession she can say it?

14 HEARING OFFICER JONES: Right.

15 INTERPRETER: At this time?

16 HEARING OFFICER JONES: Well, anything she has,
17 if she has any kind of paperwork --

18 INTERPRETER: Okay.

19 HEARING OFFICER JONES: -- that she want them to
20 look at, we can get it and get copies made.

21 MS. BONILLA: I was about to bring it but I -- I
22 changed my car and I left it in the other car.

23 HEARING OFFICER JONES: Okay. So you don't have
24 anything in your possession today that you want them
25 to look at?

1 INTERPRETER: No, she doesn't have anything.

2 HEARING OFFICER JONES: Very well. All
3 participants should be aware that this hearing is
4 open to the public under the Freedom of Information
5 Act.

6 Ms. Hatch, I'm going to have Ms. Whitson swear
7 you in as an interpreter.

8 WHEREUPON,

9 ROSA HATCH,
10 was duly sworn by the undersigned notary public to interpret
11 the proceedings:

12 HEARING OFFICER JONES: Okay. Those who are
13 going to be witnesses in today's matter, please raise
14 your right hand.

15 Ms. Bonilla, this is you.

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

18 HEARING OFFICER JONES: Very well. Mr. Hogan,
19 preliminary matters.

20 MR. HOGAN: We have a packet of information, it
21 includes the Order and Notice of Hearing as well as
22 the inspection report, and the records of the board
23 regarding the inspection and licensure. We also have
24 copies of the license that were held at the salon,
25 and we have a memo dated June 22nd of this year

1 from Ms. Kersey to me.

2 Would Ms. Bonilla or anybody with her today like
3 to review those records before we get started with
4 the hearing?

5 HEARING OFFICER JONES: Mr. Hogan, one moment
6 while they are conversing. I'm looking at the packet
7 of information you-all handed me, and I'm not seeing
8 the memo you're referring to from Ms. Kersey, and I
9 just want to make sure the board members --

10 MS. KERSEY: Yeah, right here.

11 HEARING OFFICER JONES: Oh, okay. Sorry. Just
12 overlooked it. Okay.

13 MR. HOGAN: Do you want to see these?

14 Can we go off the record just a minute?

15 MS. KERSEY: I think they have those back there,
16 Rick.

17 MR. HOGAN: We'll just take a few minutes, if I
18 could have the interpreter with me just a second.

19 HEARING OFFICER JONES: We'll go off the record
20 just a second.

21 (WHEREUPON, a brief discussion was held off the
22 record.)

23 CHAIRMAN FORD: At this time would like to go
24 back on record.

25 HEARING OFFICER JONES: Okay. Mr. Hogan, have

1 you had a chance to talk with Ms. Bonilla and the
2 interpreter about the documents you wanted to
3 introduce?

4 MR. HOGAN: Yes, I have. We have gone through
5 all of the documents that the board -- committee
6 plans to discuss.

7 HEARING OFFICER JONES: Okay. And, Ms. Bonilla,
8 you-all are okay with those documents?

9 MS. BONILLA: Yes.

10 HEARING OFFICER JONES: Very well. Those will
11 be admitted as a packet as Board's Exhibit No. 1.

12 (WHEREUPON, Board's Exhibit No. 1 was received
13 in evidence.)

14 Anything in opening, Mr. Hogan?

15 MR. HOGAN: No, ma'am.

16 HEARING OFFICER JONES: Anything in an opening
17 statement, Ms. Bonilla?

18 INTERPRETER: Are you asking like she can state
19 something?

20 MR. HOGAN: This is not testimony, this is just
21 opening remarks.

22 HEARING OFFICER JONES: This is just an opening
23 remark.

24 INTERPRETER: Okay.

25 HEARING OFFICER JONES: She will have a chance

1 to tell her full side.

2 INTERPRETER: Okay.

3 MS. BONILLA: No. She doesn't know exactly what
4 information can do her -- she may has an opening
5 remark.

6 HEARING OFFICER JONES: Okay. Very well.

7 Well, she will have plenty of opportunity to
8 tell her side.

9 Okay. You can call your first witness,
10 Mr. Hogan.

11 MR. HOGAN: I'll call Ms. Kersey to testify now.
12 Thank you.

13 WHEREUPON,

14 KELLI KERSEY,

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

18 DIRECT EXAMINATION

19 BY MR. HOGAN:

20 Q Kelli, state your name for the record.

21 A Kelli Kersey, Section Chief, Arkansas Department of
22 Health, Cosmetology.

23 Q Did you have occasion to send an Order and Notice of
24 Hearing in this matter to Ms. Rosa Bonilla?

25 A Yes, sir. I did.

1 Q Ms. Kersey, I have in front of me a letter dated June 22
2 of this year. Do you see that document?

3 A Yes, sir.

4 Q Does it contain an interview that you had with
5 Ms. Bonilla?

6 A Yes, sir. It does.

7 Q Can you briefly tell the members of the committee,
8 starting with the paragraph, "Rosa Bonilla arrived, and Mr." --
9 is it Geuvara?

10 A Ms. Geuvara.

11 Q Informed us that Rosa did not --

12 A Yes.

13 Q Now, just for the interpreter and everybody, just kind of
14 describe then what occurred.

15 Well, yeah go head and back up.

16 A Our inspector, Rose Horner, went out to do a routine
17 inspection on June the 6th. She contacted the office and
18 thought -- and said that she thought she had found a fraudulent
19 license with Ms. Rosa Bonilla's name on it.

20 I forgot.

21 She sent us photographs of the license. We looked at
22 that -- we looked up Rosa Bonilla in the system. She was not
23 in the system, she did not have a license.

24 On June 22nd, Ken Roberts and I went back out to
25 investigate.

1 Q Where was this, Studio 265?

2 A Yes, sir. In Springdale, Arkansas.

3 We questioned Ms. Bonilla about her license and how she
4 had obtained it. She stated that she had bought the license
5 for \$500 from a man named John. And we asked her how she had
6 found out about John. She said a client had informed her of a
7 person that could get her a license that was from the board.
8 We asked -- we asked her if she thought it was a good idea.
9 She stated no but she didn't have the documents that the
10 cosmetology office had required, which was a social security
11 card is what we had asked her for. She said that she ever saw
12 him but she had sent him a check with her birthday on it and
13 she didn't have a last name or his address. She -- we asked
14 her if she knew how to contact John now and she said no.

15 So, when we left there, it was her intent to try to find
16 him to get -- and maybe get a copy of the check that she had
17 sent him, and we have not heard from her since. So we actually
18 do have a copy of the license. It was -- what triggered
19 Ms. Horner was that it had two different license numbers on it.
20 And the issue date -- there was something about the issue date.
21 Oh, I know what it was. It was in the receipts, that it was
22 7/6/2012 but she went on 6/6/2012. So there was several things
23 that Ms. Horner caught.

24 Anyway, y'all have a copy of that now. And it has the
25 license No. 19761.

1 Q Did it appear to you, based on your conversation with
2 Ms. Bonilla, that she knew she had to have a license from this
3 committee and board and that this --

4 A (Nodding head up and down.)

5 Q -- and that this license was not an official license?

6 A Yes, sir.

7 Well, I'm going to take part of that -- she knew she had
8 to have a license, but she didn't indicate that she didn't know
9 this wasn't a real license. She assumed because she got it
10 from John from the board that it was real.

11 Q Did she indicate to you, however, that she knew she had to
12 have a social security number?

13 A Yes, sir.

14 Q And she could not get a license from this board without a
15 social security number?

16 A Yes, sir.

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

18 HEARING OFFICER JONES: Ms. Bonilla, do you have
19 any questions for Ms. Kersey?

20 INTERPRETER: Say again.

21 HEARING OFFICER JONES: Do you have any
22 questions for Ms. Kersey?

23 She can ask Ms. Kersey any questions.

24 MS. BONILLA: No.

25 HEARING OFFICER JONES: Okay. Board members,

1 questions for Ms. Kersey?

2 Go right ahead.

3 MS. BONDS: Did you speak with the salon owner?

4 THE WITNESS: I did.

5 MS. BONDS: And he was -- he -- she was not
6 aware that this was a fraudulent license?

7 THE WITNESS: She did say that she wasn't
8 aware --

9 MS. BONDS: Okay.

10 THE WITNESS: -- it was a fraudulent license.

11 HEARING OFFICER JONES: Further questions from
12 the board?

13 Okay. If there are no other questions for
14 Ms. Kersey, thank you very much.

15 MR. HOGAN: Let me just ask, if I could.

16 HEARING OFFICER JONES: Go right ahead.

17 BY MR. HOGAN:

18 Q What does the law state for -- with respect to a person
19 with a fraudulent or procuring a fraudulent license?

20 A I don't know if I can tell you what --

21 Q Do you have a recommendation to the committee?

22 A I do not. Sorry.

23 MR. HOGAN: Okay.

24 THE WITNESS: Can I ask you a question? No, I'm
25 just kidding.

1 MR. HOGAN: I pass the witness. We --

2 HEARING OFFICER JONES: Do you have any other
3 witnesses?

4 MR. HOGAN: I think we're going to rest. That's
5 all we need.

6 HEARING OFFICER JONES: Okay. Okay.
7 Ms. Bonilla, do you have any witnesses with you
8 today?

9 MS. BONILLA: No.

10 HEARING OFFICER JONES: Okay. This is your
11 opportunity to tell your side of the story to the
12 board, then I'm going to allow Mr. Hogan and the
13 board to ask you any questions they may have.

14 WHEREUPON,

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

19 MR. HOGAN: Ms. Bonilla, my name is Rick Hogan.

20 HEARING OFFICER JONES: No, she gets to tell her
21 side of the story.

22 MR. HOGAN: Oh, I thought you were letting me
23 ask. I got out of hand I'm sorry. I'm loco,
24 whatever that was.

25 DIRECT TESTIMONY

1 THE WITNESS: Okay. I call this place.

2 INTERPRETER: To the department of health, she
3 means.

4 THE WITNESS: I say -- I asked if -- well, I
5 asked -- I told him that I have a license from El
6 Salvador about being a cosmetologist and ask if I
7 can, you know, transfer it to here. And then they
8 say that I would need to have a social security
9 number. And then somebody else, since I don't have a
10 social security number, somebody else told me that I
11 can have a pin number, P-I-N number, and then with
12 that I might have a -- be able to get one. And then
13 I -- I got it, that number, and then I called back
14 here and then they told me that it's -- it's not
15 possible to get it with that number.

16 I was -- I was working in salon in, one salon in
17 the beginning. I commented that I didn't have a
18 license and I didn't have a way to get it. One of
19 the clients told me that in Fort Smith somebody could
20 help me to, to get the license. So I asked to get
21 the phone number of that person so I can call the
22 person. And then I -- I got that -- that number for
23 John. And then I -- and I -- I apply for employment
24 at Salon 265, and then I told them -- I showed them
25 my license from El Salvador and I told her that my

1 license is being in process now, the Arkansas
2 license.

3 She gave me the employment to -- to, for
4 cleaning and washing the hair but nothing, nothing
5 else.

6 I called John, I called John about how, how the
7 progress -- what's the progress of the, you know, for
8 getting the license, and the person asked me for my
9 birthday and -- just for my birthday. And then he
10 didn't answer me, so finally when he answer he told
11 me that he needed a copy of the license of the person
12 of the salon where I was working to make it easy
13 for -- for -- to -- to have her -- her license. So I
14 took the copy of the old one, I didn't give her the
15 copy of the current year but a copy of the previous
16 year, and then I sent a copy to -- to him. But the
17 owner of the salon didn't know that I -- I took that
18 copy. I did it -- he told me that I -- that that was
19 legal, that he can make that, that license and he had
20 to pay some money to another person so I -- I -- I
21 paid it, and then after that, the next year, he
22 would, it would be easier for him just to have him
23 renewed every year the license. So when I got the
24 license I started working as a stylist, and that's
25 all.

1 HEARING OFFICER JONES: Okay. Mr. Hogan, do you
2 have any questions for Ms. Bonilla?

3 CROSS-EXAMINATION

4 BY MR. HOGAN:

5 Q What -- why didn't you tell the owner that you were
6 utilizing the previous ownership number, the 2014 number, why
7 did you not tell the owner that?

8 A I just didn't think that it wasn't a problem to get it.

9 Q But you got the previous year's licensure number from the
10 owner. Right? The previous license?

11 A Yes.

12 Q Why did you not use the current license?

13 A Because he had it on the wall -- she had it on the wall.

14 Q You didn't think it would be wrong to utilize the owner's
15 license number without telling them?

16 A I asked John if there is any wrongdoing in this and he
17 assured me that I was okay, that nothing was wrong about it.

18 Q But you have no way to contact John now?

19 A I call him back like two months after and he never
20 answered back.

21 Q Does anybody else you know also have a license that John
22 has gotten for them?

23 A I -- I know that --

24 INTERPRETER: She said that, I know that there
25 are some other people but I don't know any of those

1 people because he don't -- because he lives in Fort
2 Smith.

3 BY MR. HOGAN:

4 Q John lives in Fort Smith?

5 A Uh-huh.

6 Q How long have you been in the United States?

7 A Four years.

8 Q How long have you been in Arkansas?

9 A Four years. I'm sorry.

10 Q Were you trained in cosmetology in Mexico or --

11 A Yes. In El Salvador.

12 Q El Salvador?

13 A (Nodding head up and down.)

14 Q And what kind of training did you receive?

15 A I -- it's a two-year career that is cosmetology and a
16 stylist. It's manicure, pedicure, everything is cosmetology,
17 and the stylist is all about the hair for men and women.

18 Q Did you have to have a certificate or a license in El
19 Salvador to practice cosmetology?

20 A That -- that -- those, yes, I have all of that and those
21 are the documents that I had in the other car that I forgot,
22 you know, I didn't bring it, I wanted to show.

23 INTERPRETER: She wanted to show that.

24 BY MR. HOGAN:

25 Q So in Salvador you had to go through a process with the

1 government office to get a license?

2 A Yeah, it's different over there. You just have to go to
3 school and then you show whatever your documents when you
4 finish, your certificate when you finish, and that that you
5 take to the place, you know, and they hire you for with those
6 documents, but it's not like you have to be certified and pay
7 fees every year or anything like that.

8 Q But somebody official has to certify that you are
9 qualified to practice cosmetology in El Salvador?

10 A When you go to work, they only -- you need to take your,
11 your certificate or, you know, your papers and that when you
12 get out of school you got all of those, and then from the
13 government and all of that, and then those are the documents
14 that you always take to different places, you know, where you
15 want to work.

16 Q And did you buy those certificates from some broker or
17 some person or did you get those from your school in El
18 Salvador?

19 A I got to go to school and it was very expensive.

20 Q And you got those from your school? Provided that as part
21 of your training?

22 A Yeah. I -- I have everything from the school, letters
23 from my teachers and everything, you know, certifying that I
24 actually took those classes.

25 Q Do you have a copy of the Notice of Hearing, today's

1 hearing?

2 A Yeah.

3 Q This document?

4 A Yes.

5 Q This? This?

6 Okay. On this -- right. The second page, the last
7 paragraph, it says, "you can present witnesses and other
8 evidence to this committee in your defense at this time," which
9 is today. Why didn't you bring these other documents with you
10 today?

11 A I didn't wanted to come by myself so I left my car and we,
12 you know, the person who brought me on to here, we just came in
13 his car and so, and my documents that I, the ones I wanted to
14 present got left in my car. And but --

15 INTERPRETER: I think the documents were the
16 certification from El Salvador.

17 THE WITNESS: Everything that I -- my studies
18 and, you know, from El Salvador, that's what's
19 basically my evidence, you know.

20 INTERPRETER: You know, evidence you want to
21 present.

22 BY MR. HOGAN:

23 Q Is there a way you can blame a husband or a boyfriend on
24 this, because that's what my wife would do.

25 I was just --

1 MR. HOGAN: That's all I have.

2 THE WITNESS: No. No.

3 HEARING OFFICER JONES: Okay. Does the board --
4 do the board members have any questions for
5 Ms. Bonilla?

6 CHAIRMAN FORD: I do.

7 HEARING OFFICER JONES: Go right ahead.

8 CHAIRMAN FORD: Ms. Bonilla, where did you
9 send -- I see here in the interview that you did not
10 send cash, you sent a check. Where did you send this
11 check and where did you send the documents?

12 How did you get them to John?

13 THE WITNESS: The person who translated for me
14 to John, I just, I just say that it's a check, but
15 actually it was a money order.

16 CHAIRMAN FORD: Okay. And how did you get the
17 money order to him?

18 THE WITNESS: By mail.

19 CHAIRMAN FORD: By mail?

20 THE WITNESS: Uh-huh.

21 CHAIRMAN FORD: Do you happen to have that
22 address?

23 Do you have a copy of the money order?

24 THE WITNESS: No. No.

25 CHAIRMAN FORD: Do you have the address that you

1 sent everything to John?

2 THE WITNESS: No.

3 CHAIRMAN FORD: Nothing?

4 THE WITNESS: No, just the phone number. No.

5 INTERPRETER: The only thing she had was a phone
6 number but he's not answering the phone.

7 CHAIRMAN FORD: Who mailed -- well, who mailed
8 the documents for you?

9 Did you mail them or did somebody else help you?

10 INTERPRETER: "I sent it," she said.

11 CHAIRMAN FORD: You mailed it?

12 THE WITNESS: Uh-huh.

13 CHAIRMAN FORD: So you had to have somewhere to
14 send it. Where did you send it?

15 THE WITNESS: The address that he sent, the
16 person gave me.

17 CHAIRMAN FORD: That John gave you?

18 THE WITNESS: Yes.

19 CHAIRMAN FORD: So when you came here and you
20 called to the cosmetology section, you had a clear --
21 did you have a clear understanding of what the
22 requirements were in order for you to become licensed
23 here?

24 THE WITNESS: Yes.

25 MS. FORD: No more questions.

1 HEARING OFFICER JONES: Okay. Questions, other
2 questions from the board members?

3 MR. BARNES: Yes, one question, John's phone
4 number. You're very careful at keeping records, did
5 you keep John's phone number?

6 You called it two months after your first
7 conversation, do you still have that phone number?

8 THE WITNESS: I don't have it because they gave
9 it in a -- in a -- in a little piece of paper so I
10 forgot, I don't have that, but I put it on my phone
11 but I -- I -- I have another phone now so I lost the
12 contact that I had in the other phone.

13 MR. BARNES: So you've lost everything connected
14 to John?

15 THE WITNESS: When I have these investigation --
16 when the person came and make this interview, I tried
17 to find, you know, that -- at least that because I
18 knew that I don't have the phone but at least that
19 little paper and I was trying to look for it to -- to
20 call it, the person, and see what, what was wrong,
21 and then I didn't find it.

22 HEARING OFFICER JONES: Further questions from
23 the board members?

24 Go right ahead.

25 MS. DAVIS: I have one.

1 Ms. Bonilla, when you were hired at the salon,
2 you did not have a license, you presented this
3 paperwork to owner of the salon. Is that correct?

4 THE WITNESS: Yes. I presented my diploma and
5 my title and from El Salvador and documents from El
6 Salvador.

7 MS. DAVIS: And what did she hire you to do in
8 that salon?

9 THE WITNESS: You mean all the salon, I just to
10 pass the client from one place to another and give
11 shampoo to the hair.

12 MS. DAVIS: Okay. Thank you.

13 HEARING OFFICER JONES: Okay. Further
14 questions?

15 Go right ahead.

16 MS. REYNOLDS: What's her name?

17 HEARING OFFICER JONES: Ms. Bonilla.

18 MS. REYNOLDS: Ms. Bonilla, what school did you
19 get your license from?

20 What state, what city and state?

21 THE WITNESS: The academy the school is, the
22 name is Karina, Karina, that's Academy, Karina,
23 that's academy, the city is San Miguel and the
24 country is El Salvador.

25 MS. REYNOLDS: So you've never had a license in

1 the United States at all?

2 THE WITNESS: No, until I got this one from
3 John.

4 MR. BARNES: I've got another question here.

5 HEARING OFFICER JONES: Go right ahead.

6 MR. BARNES: Who gave you John's phone number?

7 THE WITNESS: A client that I had when I was
8 working in Siloam Springs.

9 MR. BARNES: Did anybody in the salon or the
10 owner of the salon provide you any assistance in
11 obtaining this license?

12 THE WITNESS: No, she doesn't know anything
13 about it. She actually, you know, didn't hire me, I
14 didn't work there because of that, because I didn't
15 have -- I didn't have it at the time.

16 HEARING OFFICER JONES: Any other questions from
17 the board members?

18 If there are none, thank you, Ms. Bonilla.

19 Mr. Hogan, anything in closing?

20 MR. HOGAN: If I may just summarize, the -- the
21 statute or the law provides that it's a violation if
22 you have procured a license through fraud or
23 deception. I believe that based on the evidence,
24 Ms. Bonilla knew that she had to have a license, she
25 knew that a social security card was required, and

1 she knew from her home country or her previous
2 country that a license would be required through an
3 official process. I think the evidence is clear that
4 she procured this license without going through
5 official means because she did not have proper
6 identification.

7 So then the question is what is the penalty for
8 that? Clearly the license, no need to revoke it
9 because it's not a genuine license, and the question
10 becomes under the law you may assess a civil penalty
11 up to a thousand dollars for violating the statute or
12 the rule. The law also provides that in a matter
13 such as this, it may be referred to the prosecuting
14 attorney in that district.

15 Frankly, I doubt that a monetary penalty is
16 something that could be, if assessed, would be
17 something that would be effective in enforcement;
18 therefore, I would recommend that the committee move
19 that this matter -- first of all, that there is a
20 violation of your laws, that the violation was done
21 knowingly, and that this matter should be referred to
22 the prosecuting attorney for proper criminal action
23 in that area of the state.

24 HEARING OFFICER JONES: Okay. Ms. Bonilla,
25 anything you would like to say to the board before

1 they recess for deliberations?

2 MS. BONILLA: The only thing I wanted to do is
3 work legally. And because I thought that that was
4 legal, so that -- that I took that road. If not I
5 wouldn't be done it and we -- if this -- if I knew
6 that this was wrong, I would work some other kind of
7 work and I wouldn't have all these problems.

8 HEARING OFFICER JONES: Anything further?

9 Is that it?

10 MS. BONILLA: No.

11 HEARING OFFICER JONES: Okay. At this time the
12 record will be made closed and complete, except for
13 the board's recess for deliberations. Once the board
14 has reached a decision, we will go back on the
15 record.

16 CHAIRMAN FORD: At this time we're going to go
17 off the record for deliberation.

18 (WHEREUPON, the Committee retired to deliberate,
19 off the record, from 11:11 a.m. to 11:32 a.m., and
20 returned with the following decision:)

21 HEARING OFFICER JONES: Okay. At this time
22 we'll go back on the record for the board's decision.

23 MS. FUENTES: Okay. I motion that we impose a
24 civil penalty of \$1,000 for Ms. Bonilla, and we're
25 going to give her eight months to procure her license

1 and to make payment. If it's not paid within that
2 eight months we're going to turn it over to the
3 attorney general for prosecution, and the motion --
4 no?

5 HEARING OFFICER JONES: The attorney general's
6 office doesn't prosecute. It's the local prosecuting
7 attorney.

8 MS. FUENTES: Excuse me. Which part was I on --

9 MR. HOGAN: Just change to the prosecuting
10 attorney from the attorney general and we're all
11 good.

12 MS. FUENTES: Okay. It's going to be referred
13 to the prosecuting attorney if it's not paid within
14 eight months.

15 MR. HOGAN: And then the last part, refer to the
16 AG for the consumer alert.

17 MS. FUENTES: For the consumer alert, just
18 letting them know that the fraudulent licenses are
19 out there.

20 MR. HOGAN: And ask the department to follow up
21 with that area of the state about the procurement of
22 the fraudulent licenses with the salons.

23 MS. FUENTES: Thank you.

24 MR. HOGAN: Does everybody understand the
25 motion?

1 COMMITTEE MEMBERS: Yes.

2 HEARING OFFICER JONES: Okay. Is there a
3 second?

4 MS. DAVIS: I'll second.

5 MS. BONDS: I'll second.

6 CHAIRMAN FORD: The motion has been seconded.

7 At this time we're going to take a vote.

8 All in favor of the motion standing with the
9 eight months being the time limit for the fine of a
10 thousand dollars to be paid and to get and/or
11 licensed, and also that the attorney general will be
12 notified to send out a consumer alert. And if the
13 terms that we have agreed upon here are not met and
14 fulfilled in the eight month period, that we will
15 refer it over to the local prosecuting attorney.

16 All in favor, say, "Aye."

17 COMMITTEE MEMBERS: Aye.

18 CHAIRMAN FORD: All opposed?

19 HEARING OFFICER JONES: Let the record reflect
20 the decision of the board is unanimous. Please
21 reduce that decision to writing and make or attempt
22 service upon all parties. If the respondent cares to
23 appeal the decision, an appeal may be taken under
24 Arkansas Code Annotated 25-15-201, or any specific
25 provision of this board.

1 This hearing is concluded and the record closed.

2 CHAIRMAN FORD: Did you explain that to her?

3 INTERPRETER: Yes.

4 MR. BARNES: I would like to make a comment to
5 Rosa. Can I do that?

6 HEARING OFFICER JONES: Go off the record.

7 (WHEREUPON, at 11:35 a.m., the above-entitled
8 proceedings were concluded.)

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1 ADMINISTRATIVE HEARING

2 ADH

3 v.

4 PAULETTE'S HOUSE OF BEAUTY

5 HEARING OFFICER JONES: My name is Kendra Akin
6 Jones and I'm the Hearing Officer today in the matter
7 of Paulette's House of Beauty to be heard before the
8 Cosmetology Technical Advisory Committee. It's
9 violation 12-408. Today is September 17, 2012, and
10 we're located in the Freeway Medical Building.

11 Would the respondent please identify yourself
12 for the record?

13 MR. WILLIAMS: My name is Kendrick Williams,
14 owner of Paulette's House of Beauty.

15 HEARING OFFICER JONES: Okay. Thank you,
16 Mr. Williams.

17 And you do not have counsel here with you today?

18 MR. WILLIAMS: No.

19 HEARING OFFICER JONES: You received a copy of
20 the Order and Notice of Hearing for today's matter?

21 MR. WILLIAMS: Yes.

22 HEARING OFFICER JONES: And, Mr. Hogan, if you
23 would, identify yourself.

24 MR. HOGAN: Rick Hogan, General Counsel for the
25 Arkansas Department of Health.

1 HEARING OFFICER JONES: For the benefit of the
2 respondent and anywhere here who may not have
3 appeared before for in an administrative hearing, the
4 board will base its decision solely on the evidence
5 presented here today. This hearing is being held
6 under the Administrative Procedures Act, which means
7 the strict rules of evidence do not apply. The board
8 members know of the case only as it appears and is
9 set forth in the Order and Notice of Hearing.
10 Anything, Mr. Williams, that you have in your
11 possession you want them to consider today needs to
12 be introduced today as evidence.

13 This hearing is open to the public under the
14 Freedom of Information Act and that does include the
15 board's recess for deliberations.

16 If at any time you have any questions about how
17 things are going, just let me know.

18 MR. WILLIAMS: Okay.

19 HEARING OFFICER JONES: For those of you who are
20 going to be witnesses in today's matter, please raise
21 your right hand and be sworn in. Mr. Williams, that
22 includes you.

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

25 HEARING OFFICER JONES: Very well.

1 Preliminary matters, Mr. Hogan?

2 MR. HOGAN: We just ask that this 12-page
3 document be admitted as Board's Exhibit No. 1, and
4 contains the Order and Notice of Hearing, and the
5 inspection report and the certified return receipt,
6 and I would like to make that Board's Exhibit No. 1
7 for the record, please.

8 HEARING OFFICER JONES: Okay. And,
9 Mr. Williams, do you have any objection to the entry
10 of that?

11 MR. WILLIAMS: The entry to what?

12 HEARING OFFICER JONES: For the entry of this
13 into evidence. It's the Order and Notice of Hearing,
14 a copy of the inspection report, notice of violation,
15 and a copy of the green card where it was signed for.

16 MR. WILLIAMS: Uh-huh.

17 HEARING OFFICER JONES: Is that okay with you?

18 MR. WILLIAMS: Uh-huh.

19 HEARING OFFICER JONES: That will be so admitted
20 as Board's Exhibit No. 1.

21 (WHEREUPON, Board's Exhibit No. 1 was received
22 in evidence.)

23 MR. HOGAN: And that the board be able to take
24 notice of their -- well, I would like to admit the
25 board's rules and regulations and that they be able

1 to take notice of the statute.

2 HEARING OFFICER JONES: Those will be so
3 admitted and noted.

4 Anything further, Mr. Hogan?

5 MR. HOGAN: No. That will be all.

6 HEARING OFFICER JONES: Mr. Williams, do you
7 have anything in your possession that you want the
8 board to look at today?

9 MR. WILLIAMS: No.

10 HEARING OFFICER JONES: Okay. Very well.
11 Opening statement, Mr. Hogan?

12 MR. HOGAN: I'll waive it.

13 HEARING OFFICER JONES: Mr. Williams, anything
14 in opening?

15 MR. WILLIAMS: What?

16 HEARING OFFICER JONES: Is there anything you
17 would like to state in opening?

18 MR. WILLIAMS: Well, what I was contacted about,
19 they summoned me, they sent me this statement saying
20 that Tekeila -- Tekeila Terrell didn't have a
21 license, and she got it -- she got it renewed on May
22 the 7th. When I hired her she had a license. So
23 in the previous -- in the previous years, I have -- I
24 have -- I have 17 stylists working for me. In the
25 previous years they always, at the end of the year

1 they always renewed their license. So -- so -- so
2 every year we get the license renewed, now the law,
3 now they changed things up. They went from the
4 license, now they doing the little cards, now they
5 say you have to do it on your birthday. So being
6 that -- I didn't know that -- you know, I know every
7 year I would get my license renewed and I always in
8 the previous years, I know it didn't make no
9 difference on all my staff, all my barbers and
10 beauticians, I always made sure they have their
11 license at the end of year. But now, when they set
12 it by birthdays, I didn't know her license had -- it
13 was up for renewal. And by me having 17 different
14 stylists, it's hard to keep up with everybody's
15 birthday. I didn't know -- I didn't know that I had
16 to keep up with everybody's birthday for that.

17 And -- and the way -- the way -- the way it had
18 it, it's like her license is expired because when I
19 hired her she had license and her license was
20 current, so I didn't know that, I didn't know that I
21 had to keep up with her birthday or what. And they
22 gave her a fine. I had no problem with the fine they
23 gave her, because she knew what she had did, she had
24 violated the license and they gave me a fine. But
25 the problem I had was they going to give me a fine

1 for \$250 and I'm like I didn't -- I didn't -- I
2 wasn't aware of it. If they had -- if they -- if I
3 had notice or something to let me know that they
4 doing it like that now, there is a difference, but I
5 ain't never had a notice like that. Because in the
6 previous years, I always made sure that every
7 stylist, every barber, whoever, I know this is not
8 barber board, but I made sure everybody get a license
9 when it was time to do it because we had a certain
10 day we do it by, and then we used to do it at the end
11 of the year, we renewed every year, make sure
12 everybody do it at the same time. Even they, if they
13 didn't -- everybody, when I mail in mine, I tell
14 them, say give me the money, I'll go ahead and pay
15 all yours, too. But I know this time they got to go
16 by their birthday, and it's 17 different people, the
17 birthdays, it's kind of hard for me to keep up with
18 the birthday like that.

19 And I was just wondering why, I was just trying
20 to figure out why that I -- I -- now she got a fine
21 for her thing, her fine was like \$58 or something
22 like that, and they gave me a fine for 250. I'm
23 like, why should I get fine if I didn't -- my license
24 are current. And I know, even though I know I own
25 the salon, but still I'm looking at it's -- her

1 birthday this month, somebody else birthday next
2 month, so that mean I'm going to keep getting these
3 fines if I don't keep up with the birthday because I
4 can't do it all at one time. It's different. It's
5 not that I work in that salon, I work in another
6 salon, so that mean I've got to keep up with
7 everybody's birthday every month by month.

8 HEARING OFFICER JONES: Okay. Mr. Hogan, you
9 can call your first witness.

10 MR. HOGAN: We'll call Ms. Kersey.

11 WHEREUPON,

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

16 DIRECT EXAMINATION

17 BY MR. HOGAN:

18 Q Kelli, will you state your name for the record, please.

19 A Kelli Kersey, section chief, Arkansas Department of
20 Health, Cosmetology Section.

21 Q As chief of the section, do you have custody and control
22 of all the records kept in your possession?

23 A Yes, sir.

24 Q And do you have an inspection report that was prepared by
25 Pat Jackson on May 8 of this year regarding Paulette's House of

1 Beauty?

2 A Yes. I do.

3 Q And does that inspection report indicate that Tekeila
4 Reams or that --

5 A Tara --

6 Q It's also got Tequila Terrell, is that the same person?

7 MR. WILLIAMS: Yes, same person.

8 MR. HOGAN: It is?

9 BY MR. HOGAN:

10 Q That she did not have a license on the date of the
11 inspection in May of this year?

12 A That's correct.

13 Q Now, Mr. Kendrick, I forgot the last name.

14 MR. WILLIAMS: Williams.

15 BY MR. HOGAN:

16 Q Now, Mr. Williams talked about how the licensing change to
17 their birthday. Can you elaborate about the change that was
18 made to the licensure process that a salon owner might not be
19 aware of it or with respect to the persons that are working for
20 it?

21 A In 2008 it changed from everyone's license expiring on
22 December 31st of the year to everyone's birthday. So, ever
23 since 2008 everyone's license has expired on their birthdays.

24 Q Now, the practitioner is required to have their license
25 posted at their station. Correct?

1 A Yes, sir.

2 Q And at their station, the license would have a specific
3 expiration date. Is that correct?

4 A Yes, sir.

5 Q Okay. So if an owner wanted to go through the stations to
6 determine whether he had seven or 17, as to whether or not
7 their licensees were current, he could merely look at the
8 posted license that was up on the wall for that licensee.
9 Correct?

10 A Yes, sir.

11 Q Now, what does the law provide if -- whose responsibility
12 is it to make sure that a practitioner in a salon is in fact
13 currently licensed?

14 A Well, it's the responsibility of the practitioner and of
15 the salon owner to make sure they have a currently licensed
16 practitioner working in their salon.

17 Q And if, according to Rule 5.186, if a salon owner allows a
18 person to engage or even attempt to engage in cosmetology
19 without a current license, then that's grounds for disciplinary
20 action?

21 A Yes, sir.

22 Q And so, is it your recommendation, based upon your review
23 of the inspection report and from what you've heard from
24 Mr. Williams today, that the board should assess a penalty in
25 this matter?

1 A Yes, sir.

2 Q And, Ms. Terrell or Reams was previously assessed a
3 penalty for violating the law. Is that correct?

4 A Yes, sir.

5 Q What do you base your recommendation for a penalty to the
6 committee?

7 A What do I base it on?

8 Q Yes. What is your recommendation and how did you arrive
9 at that?

10 A When a salon has an unlicensed person working in the
11 there, it's \$250.

12 Q And that's what you're recommending to the committee
13 today?

14 A Yes, sir.

15 Q Is -- has Mr. Williams contacted your office, that you're
16 aware of --

17 A Not that I --

18 Q -- to ask about any change in the rules since 2008 about
19 when a licensee had to have their license renewed?

20 A I have not spoken to him myself. I'm unaware if he has.

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

22 HEARING OFFICER JONES: Mr. Williams, do you
23 have any questions for Ms. Kersey?

24 CROSS-EXAMINATION

25 BY MR. WILLIAMS:

1 Q One Monday about -- about two weeks before that I called
2 up here and they gave, I think I talked to you, and they were
3 telling -- they were telling me that I had -- if I didn't -- if
4 I didn't agree with that about the hearing, that I couldn't
5 agree with the hearing, and I -- and you're looking for the
6 previous years, I had the salon for years, you looking through
7 the previous years, every time, every time a license, I made
8 sure every stylist, every barber and beautician, by that date
9 they knew, and that changed, I got the little cards, I made
10 sure everybody had the little cards and renewed and everything,
11 and then they came up with this thing, they came up with your
12 birthday now. And once they started doing that they -- they
13 get the owner's license then, because I didn't know -- because
14 I couldn't -- I couldn't -- they told me I couldn't get it,
15 like I get mine at the beginning of the year, they told me I
16 couldn't do it then like everybody also, they have to do it on
17 their birthday. So once they started doing it on their
18 birthday, so then that was -- that was -- I didn't know it was
19 my responsibility to keep up with everything, keep up with
20 theirs. All I made sure when I hire you as a stylist, made
21 sure you got the proper license and everything. And after
22 that, I didn't know I had to keep up with them like that. I
23 understand that, that she got fired for it, I don't have no
24 problem with that. I don't think she had a problem with that,
25 she understood that, too. They gave her a fine for \$58 but

1 then they gave me a fine for 250, and I don't -- it's just
2 like, if I let somebody borrow my car and they -- they --
3 they -- and I got, the car insured, I get somebody to borrow my
4 car and they mess around leave their license or something or
5 didn't their license renewed, I get in trouble because they
6 borrowed my car. I'm not understanding that, why should I get
7 a fine for that.

8 MR. HOGAN: Can I ask Ms. Kersey some questions?

9 HEARING OFFICER JONES: Not right now.

10 In a minute.

11 MR. HOGAN: Okay.

12 HEARING OFFICER JONES: I'm going to let

13 Mr. Williams finish.

14 I'm not sure that last one was a question, but
15 if you have any further questions for Ms. Kersey?

16 BY MR. WILLIAMS:

17 Q I'm just wondering why should I get -- why can I get --
18 why should I get a fine for the stylist not getting their
19 license renewed in time? They had a license, now when I hired
20 them they had a license. I'm not there, I'm not there with
21 them a lot. I don't see them that often because I'm not there
22 with them, I just -- I had -- I opened up a salon and I hired
23 them, I didn't know what license they had there. Her birthday
24 was March 29th. I didn't know her birthday was March 29th.
25 So are y'all saying that I got to write everybody's birthday

1 down and just, look, your birthday here you need to go get your
2 license or do something, do that like or -- because I -- I -- I
3 really didn't -- didn't know, didn't know I had to keep up with
4 that all. I thought I made sure I had got the salon license
5 together and I made sure they had their license when they got
6 there, when they hiring. Now, I may have a stylist got a
7 birthday tomorrow, I don't -- I can't keep up with everybody's
8 birthday so I didn't -- I didn't know. They changed the rule
9 up so -- and all -- and then in the way, just like in the
10 barber's business or barbers and stuff we just, you got from
11 July to September 1st, you got to have your license by that
12 time we didn't -- I just made sure, I just write one check for
13 everybody, I just made sure that everybody got their license,
14 but I know that's not the situation about the situation, but I
15 just made sure you if you work here, yeah, you got your
16 license, but I didn't know I had to keep up with everybody's
17 birthday like that. So I didn't think if you going to get me
18 fine like that if you're going on birthdays, because they
19 changed the rules, because it was easier the other way.

20 A Yeah. I don't know, is that a question to me? I'm not
21 really sure. I mean --

22 Q Well, I'm wondering why did I get that fine?

23 A I mean, it's in the laws.

24 Q Well, they didn't -- they didn't give us a -- didn't give
25 us nothing to let us know that the law changed like that.

1 A It was in 2008, though. That was four years ago.

2 Q Two thousand -- yeah 2008, I saw that -- I sent it in, we
3 sent it in on time and everything. Every time, when I get
4 ready to renew at the end of the year, hey, anybody want their
5 license -- anybody ain't did their license, come on, give me
6 yours, I'll do everybody send it all in at the same time, and
7 everybody was -- then we doing like that. Then they came with
8 the cards, I made sure I picked up everybody's cards, I got
9 everything together and did the same thing.

10 A Which expired on their birthday, the cards did.

11 Q Yeah. I don't know when the card expired. They do now
12 it's their birthday time, and when I tried to do it before,
13 they told me they had to do it on their birthday. Mine don't
14 expire for 30 days, so I can't keep up with everybody's
15 birthday. But I know the stylist, you look back on the
16 regulations, my records is always taken care of.

17 MR. HOGAN: I don't think that was a question.

18 HEARING OFFICER JONES: I'm not sure that's a
19 question there, Mr. Williams. So if you don't have
20 anything you're going to phrase as a question that
21 Ms. Kersey can answer, I'm going to let the board ask
22 her some questions if you don't have any.

23 MR. WILLIAMS: Okay. Do that.

24 HEARING OFFICER JONES: Board members, questions
25 for Ms. Kersey?

1 Okay. Mr. Hogan, you want to redirect?

2 MR. HOGAN: Just -- just a couple of questions.

3 REDIRECT EXAMINATION

4 BY MR. HOGAN:

5 Q When did Ms. Terrell or Reams' license expire? What was
6 the date of that?

7 A March 29, 2012.

8 Q And what was the date of this inspection that found that
9 Ms. Reams Terrell was not presently -- did not have a current
10 valid practitioner's license?

11 A May 2, 2012.

12 Q And when did she get her license renewed?

13 A May 7, 2012.

14 Q So, then once Mr. Williams became aware that he had a
15 practitioner that wasn't licensed, she was licensed within a
16 week. Is that correct?

17 A Yes, sir.

18 Q And it states that a person who permits a person to engage
19 in cosmetology without a current valid Arkansas license shall
20 be subject to disciplinary action. Correct?

21 A Yes, sir.

22 Q And Mr. Williams had admitted -- or Ms. Terrell did not
23 have a current valid license, at least from March 29 through
24 May the 7th?

25 A (Nodding head up and down.)

1 Q And part of that time she was working for Paulette's House
2 of Beauty. Correct?

3 A Correct.

4 MR. HOGAN: I'll pass the witness. That's all
5 the questions I have and we rest our case.

6 HEARING OFFICER JONES: Okay. Mr. Williams.

7 MR. WILLIAMS: Ma'am.

8 HEARING OFFICER JONES: Do you have any
9 witnesses with you or anybody you would to like call
10 as a witness?

11 MR. WILLIAMS: No.

12 HEARING OFFICER JONES: Then I am going to let
13 you have this opportunity to tell the board whatever
14 else you want them to hear or know, and then I'm
15 going to give Mr. Hogan a chance to ask you questions
16 as well as the board members.

17 Go right ahead.

18 WHEREUPON,

19 KENDRICK WILLIAMS,

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

23 DIRECT TESTIMONY

24 THE WITNESS: Okay. Truly if I understood, I
25 understood that that -- my stylists had -- my

1 stylists' license had expired on May -- I mean
2 March 29th, I didn't know when her birthday was,
3 but I knew she had her license up -- I knew she had
4 her license current up to that time. Because I
5 always make sure they look at their license, I
6 always, when I go through mine I always make sure
7 they got their license. And when they -- they told
8 me you can't do it the same time like that no more,
9 so you got to start keeping up with their birthday, I
10 wasn't aware that their birthday was March 29. And
11 if I had -- had a known that I would have been
12 responsible for them I would have made sure of it,
13 but I never received any information that said that I
14 was responsible for them to make sure they had a
15 license renewed on March 29, or on their birthday,
16 everybody's birthday. Because they -- I have so much
17 other business stuff to take care of, I don't be
18 thinking about nobody's birthdays, make sure
19 everybody got their license. All I do, make sure the
20 stylist got their license by that time. When I got
21 mine renewed, I just looked, everybody got y'all
22 license, everybody had current license, so I didn't
23 have no problem, I never had a problem with that
24 before. And I just -- I just wanted to know if -- do
25 y'all think, is it fair for me to keep up with

1 everybody's license or their birthdays or something?
2 Because if it had a certain date, I was -- I'll -- I
3 could easily say, look, by January 1st, all of
4 y'all need to have your license and money together
5 and everything and I can just, I can write one check
6 and everybody get the stuff in. If they didn't have
7 it when I mail it in, you pay me back or something,
8 but just, I made sure everybody had their license,
9 but I just -- when you got a birthday on March 29,
10 someone else have one April 3, somebody else have one
11 June 2nd, then I might have another -- in my other
12 salon I might have another one. It's hard to keep up
13 with everybody date like that, but I can -- but I can
14 make sure everybody got their license if they had it
15 at one time, I could make sure everybody had their
16 license, but I didn't know to keep up with everybody
17 license, everybody birthdays like that.

18 And if -- it would be a lot simpler. Now if I
19 had to have my license and they gave me a fine, I
20 wouldn't have no problem with that, I would never
21 have no problem because I look, I understand, that's
22 the rules. But when they never -- they never gave me
23 a rule to say that I got to keep up with everybody's
24 birthday for their license, I didn't think that.
25 Now, she got a fine, cool. It was okay. She

1 understood it was okay. But I got a fine for it,
2 that's when I had a problem. I said, look, now, I
3 just don't -- that don't sit right for me because it
4 just -- and I just didn't understand it.

5 That's all. I just want to know is y'all -- do
6 y'all feel like it's fair? So...

7 HEARING OFFICER JONES: Okay. Mr. Williams, I'm
8 going to let Mr. Hogan ask you any questions if he
9 has any.

10 MR. HOGAN: I've got no questions.

11 HEARING OFFICER JONES: Okay. Board members,
12 questions?

13 Go right ahead Ms. Bonds. We'll just go down
14 the line.

15 MS. BONDS: Okay. Mr. Williams.

16 THE WITNESS: All right. How are you doing?

17 MS. BONDS: Do you have a computer?

18 THE WITNESS: Yes.

19 MS. BONDS: Do you -- are you aware that we have
20 a website on that computer?

21 THE WITNESS: No.

22 MS. BONDS: You don't know that Arkansas Board
23 of Cosmetology Health Department has a website?

24 THE WITNESS: I never looked for it.

25 MS. BONDS: You really need to get on it, it's

1 really good. On there is rules and regulations, and
2 in those rules and regulations it states everything
3 that's been changed on there. And it's been four
4 years since we've changed this to that. I myself
5 have had two salons, schools, whatever, three kids,
6 whatever, I'm busy, but I do make sure that when you
7 take on a salon, when you take on a school, that it's
8 our responsibility to make sure the people that work
9 under us has a license and a current license. She
10 went a long time without a current license. But my
11 thing is, you had to take this responsibility, you
12 have to take ownership for this, you have to read the
13 rules and regulations, the changes in the rules and
14 regulations and take responsibility as a salon owner.
15 That's all I'm saying.

16 HEARING OFFICER JONES: Next questions?

17 MS. ARGUELLO: That's okay. That pretty well
18 covered it for me, too.

19 HEARING OFFICER JONES: Okay.

20 CHAIRMAN FORD: I have a question.

21 Are you a cosmetologist or a barber by trade?

22 THE WITNESS: I'm a barber.

23 CHAIRMAN FORD: Okay. But you do have a
24 cosmetology establishment, a business, correct?

25 THE WITNESS: Yes.

1 CHAIRMAN FORD: So, therefore, when you step
2 outside of your regular box into another one which is
3 in the cosmetology field, do you feel like it's your
4 responsibility to be up on the laws for cosmetology
5 as well as barbering?

6 THE WITNESS: Yes.

7 CHAIRMAN FORD: So, with that you must have a
8 salon license in order to employ cosmetologists.
9 Correct?

10 THE WITNESS: Yes.

11 CHAIRMAN FORD: Okay. Now, in order for them to
12 come in and work under a safe and legal environment,
13 you have to have a salon license. Okay?

14 THE WITNESS: (Nodding head up and down.)

15 CHAIRMAN FORD: Also the law requires that your
16 stylists have a current license posted in the
17 station, those are our laws under the cosmetology
18 section. It's your responsibility as a business
19 owner, sir. I understand and I hear exactly what
20 you're saying about keeping up with the individual
21 dates. It's your business. The young lady license
22 that was expired was expired for two months. If it
23 were my business -- surely you have been -- have you
24 been in that facility from April -- what was it,
25 March to May, at any time did you enter that

1 facility?

2 THE WITNESS: Yes.

3 CHAIRMAN FORD: Okay. So they should be posted.
4 And it's your responsibility as that business owner
5 to check those license. There is a reason why the
6 law requires for them to be posted. That should make
7 your job easier and anybody coming in to obtain a
8 service to know that they are getting service by
9 someone that's legal and bound by the laws and the
10 regs.

11 So if the speed limit is not posted on the side
12 road, you know what the law says about the side road?
13 Right?

14 THE WITNESS: Uh-huh.

15 CHAIRMAN FORD: What the speed limit is in the
16 state of Arkansas?

17 THE WITNESS: Uh-huh.

18 CHAIRMAN FORD: Right?

19 THE WITNESS: Uh-huh.

20 CHAIRMAN FORD: So you're operating a
21 cosmetology salon, it's your responsibility to know
22 the law, sir. So I understand, but I would get that,
23 to me, I would get the stylist and make them pay my
24 money.

25 I'm -- no questions. I'm sorry. But I would.

1 HEARING OFFICER JONES: Okay.

2 CHAIRMAN FORD: I hear you. We hear you
3 clearly.

4 HEARING OFFICER JONES: Go right ahead.

5 MS. REYNOLDS: Mr. Williams, how long have you
6 been in business?

7 THE WITNESS: About 19 years.

8 MS. REYNOLDS: Nineteen years?

9 THE WITNESS: Uh-huh.

10 MS. REYNOLDS: Okay.

11 HEARING OFFICER JONES: Further questions?

12 CHAIRMAN FORD: No, ma'am.

13 HEARING OFFICER JONES: I'll give you -- do you
14 have a question for the board?

15 THE WITNESS: Yeah.

16 HEARING OFFICER JONES: Or do you just have
17 something else to say?

18 THE WITNESS: Well --

19 HEARING OFFICER JONES: I'm going to give you
20 another chance in closing to say, if you have
21 anything else.

22 THE WITNESS: Okay.

23 HEARING OFFICER JONES: If you have a
24 question -- I'm not real sure what the most
25 appropriate time would be for if you have a question

1 for the board -- but if there are no further
2 questions for you from the board -- okay.

3 MS. ARGUELLO: But could I just state something?

4 I think the question here is you -- well, your
5 not knowing the law doesn't change the law. The fact
6 is we can't change the law because you didn't
7 understand the law. So I think that's what we're
8 trying to -- to tell you here, is that your not
9 knowing the law is kind of the downfall. We can't
10 change it.

11 HEARING OFFICER JONES: Okay. If there are no
12 further questions -- oh, okay.

13 MS. REYNOLDS: Oh, Mr. Williams, I need to ask
14 you one more question. Have you ever had this
15 problem before?

16 THE WITNESS: Never.

17 MS. REYNOLDS: In 19 years?

18 THE WITNESS: Never.

19 MS. REYNOLDS: This is your first time?

20 THE WITNESS: First time.

21 MS. REYNOLDS: Okay.

22 HEARING OFFICER JONES: Okay. Anything further?

23 Okay. At this time, closing statements,
24 Mr. Hogan?

25 MR. HOGAN: I'll waive that.

1 HEARING OFFICER JONES: Mr. Williams, anything
2 you want to say in closing before the board
3 deliberates?

4 MR. WILLIAMS: All I'm saying is, is that when
5 you -- you kept -- I'm referring to the comment she
6 made, she saying being that you have -- you have
7 different salons and you have salons and different,
8 different things, when you're -- when you're dealing
9 with this type of situation all the time, you be up
10 on different things. Like when you're dealing
11 with -- I'm talking about as far as her saying, now
12 you have different salons and different things.
13 You -- you probably the people that make the rules,
14 so what I'm saying, when you making the rules, you --
15 quite naturally you're going to be real -- you're
16 going to be real aware of things like that.

17 MS. BONDS: No, sir. I get the rules, I read
18 the rules 20 years ago when I opened my first salon.

19 HEARING OFFICER JONES: Okay. Wait. Wait.
20 It's not time for discussion.

21 MS. BONDS: So sorry.

22 HEARING OFFICER JONES: Mr. Williams, go right
23 ahead.

24 MR. WILLIAMS: Okay. I'm saying, but, well, I'm
25 saying when you -- when you -- like if -- I'm dealing

1 with if I'm dealing with foods and I know different
2 things about preparation for food and it's like you,
3 you be aware of different things like that, you're
4 aware of different things like that, but when you
5 been dealing with hair all the years and I've never
6 had that problem happen before. And the rules has
7 always been a little different, it was different back
8 before and all of a sudden it was changed. I want to
9 know why did they change the date and why -- why did
10 the change. I knew it -- I know to the people had to
11 vote on it and different things to make sure that
12 things, things happen, they change the rule for a
13 reason, but I'm saying that it was already stated at
14 one date, instead of I could just put it -- I could
15 just make sure everybody had the stuff together, and
16 when you look at -- when you look at people like
17 stylists and barbers as well, the owner, the shop
18 owners, I bet you there is a whole lot of them don't
19 know, don't know, not even aware of that. But when
20 you dealing with it every day, y'all can catch on it
21 easily, it's going to be easy for y'all to catch on
22 to it, because y'all doing it every day. But when
23 we're just out here working and we steady going, a
24 lot of time don't know -- we're not knowing we having
25 to keep up with everybody birthday and stuff like

1 that, we just didn't -- I -- hey, even if you said
2 the rules are on the Arkansas website, we're not
3 aware of that, we don't be dealing with that all the
4 time. It's just like if you deal with -- if we deal
5 with making rules up for the food or something, or
6 we're dealing with the kitchen or something, hey,
7 they say make rules for it, they going to be aware of
8 all of it, you know all the rules, but when you're
9 not dealing with it all the time, all you're dealing
10 with is working and you're dealing with making sure
11 they got a license and stuff like that, it's a big
12 difference when you got to deal with the people dates
13 and different birthdays. And when they had it on the
14 end of the year, I know end of the year, everybody
15 got a license, it easy and cool, easy and quick to
16 do. Everybody gets their license, make sure they got
17 their license and go on. Now they got dates on it
18 like different birthdays and it's kind of hard for us
19 really to just keep up with all of them dates,
20 birthdays and different things. If I open up another
21 salon I got to worry about everybody's birthday
22 again. By me not know this rule that happened before
23 it's something new I got to look at now. See, I
24 didn't know anything about this. It's new to me. I
25 never heard that, that you have to keep up with

1 everybody's birthday. So it's a whole lot -- it's a
2 whole lot big challenge for me, because when you
3 y'all see -- when y'all do it every day, hey, y'all
4 quite naturally, y'all know everything that going on
5 with it here, with the -- with the state board and
6 stuff, so we don't know.

7 MR. HOGAN: I would like to point out that I
8 waived my closing argument.

9 MR. WILLIAMS: Hey, well, I know.

10 HEARING OFFICER JONES: Okay. Thank you,
11 Mr. Williams and Mr. Hogan.

12 At this time the board will recess for
13 deliberations. Once the board has reached a
14 decision, we will go back on the record.

15 (WHEREUPON, the Committee retired to deliberate,
16 off the record, from 12:28 p.m. to 12:32 p.m., and
17 returned with the following decision:)

18 MR. BARNES: I make a motion that we fine him
19 250 bucks.

20 HEARING OFFICER JONES: We have a motion. Is
21 there a second?

22 CHAIRMAN FORD: The motion is on the floor.

23 MS. FUENTES: I'll second it.

24 CHAIRMAN FORD: The motion has been seconded.

25 At this time we'll take a vote. All in favor of

1 the fine standing at \$250, say, "Aye."

2 MR. BARNES: Aye.

3 MS. BONDS: Aye.

4 MS. ARGUELLO: Aye.

5 MS. DAVIS: Aye.

6 MS. FUENTES: Aye.

7 CHAIRMAN FORD: All opposed?

8 MS. REYNOLDS: Aye.

9 CHAIRMAN FORD: We have five for, one against,
10 majority rule, fine will stand at 250.

11 HEARING OFFICER JONES: Please reduce this
12 decision to writing and make or attempt service upon
13 all parties. If the respondent cares to appeal the
14 decision, an appeal may be taken under Arkansas Code
15 Annotated 25-15-201, et seq., or any specific
16 provision of this board.

17 (WHEREUPON, at 12:33 p.m., the above-entitled
18 proceedings were concluded.)

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1 ADMINISTRATIVE HEARING

2 ADH

3 v

4 TOP NOTCH CUTZ N STYLEZ, OWNER, JEFFERY JOHNSON

5 HEARING OFFICER JONES: Okay.

6 MS. AKIN-JONES: This is Top Notch Cutz n
7 Stylez, Jeffery Johnson, owner.8 My name is Kendra Akin Jones and I'm the Hearing
9 Officer today in the matter of Top Notch Cutz n
10 Stylez, to be heard before the Arkansas Cosmetology
11 Technical Advisory Committee. Today is September 17,
12 2012, we're located in the Main Street -- or in the
13 Freeway Medical Building.

14 Sorry about that.

15 Mr. Johnson, please identify yourself for the
16 record.

17 MR. JOHNSON: I am Jeffery Johnson.

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

20 MR. JOHNSON: No.

21 HEARING OFFICER JONES: And did you receive a
22 copy of the Order and Notice of Hearing for today's
23 matter?

24 MR. JOHNSON: Yes, I did.

25 HEARING OFFICER JONES: Okay. Mr. Hogan, please

1 identify yourself for the record.

2 MR. HOGAN: Rick Hogan, General Counsel,
3 Arkansas Department of Health.

4 HEARING OFFICER JONES: For the benefit of those
5 present who may not have appeared before in an
6 administrative hearing before, the board will base
7 its decision solely on the evidence presented here
8 today. This hearing is being held under the
9 Administrative Procedures Act, which means the strict
10 rules of evidence do not apply. The board members
11 know of this case only as it appears and is set forth
12 in the Order and Notice of Hearing. Anything that
13 you have in your possession or that you have
14 submitted to staff that you would like the board to
15 consider needs to be offered into evidence today.
16 This hearing and the proceedings of it are open to
17 the public under the Freedom of Information Act, and
18 that does include the board's recess for
19 deliberations.

20 For those of you who are going to be witnesses
21 in today's matter, please raise your right hand.

22 Mr. Johnson, if you would raise your right hand,
23 too.

24 (WHEREUPON, the witnesses were sworn by the
25 Hearing Officer.)

1 HEARING OFFICER JONES: Very well. Preliminary
2 matters, Mr. Hogan?

3 MR. HOGAN: We would ask that this packet of
4 information be admitted as Board's No. 1. It's the
5 inspection report and the Order and Notice of Hearing
6 for today's matter.

7 HEARING OFFICER JONES: Okay. Mr. Johnson, do
8 you have any problem with that being admitted?

9 MR. JOHNSON: No.

10 HEARING OFFICER JONES: That will be so admitted
11 as Board's Exhibit No. 1.

12 (WHEREUPON, Board's Exhibit No. 1 was received
13 in evidence.)

14 HEARING OFFICER JONES: Anything else,
15 Mr. Hogan?

16 MR. HOGAN: That the rules and regulations of
17 the committee and board of health be admitted as
18 Board's No. 2, and that the committee be able to take
19 notice of their statutes that controls the practice
20 of cosmetology in the state.

21 HEARING OFFICER JONES: Those will be so
22 admitted and noted.

23 (WHEREUPON, Board's Exhibit No. 2 was received
24 in evidence.)

25 HEARING OFFICER JONES: Mr. Johnson, do you have

1 anything to present here today, anything you need
2 copies made up for the board to look at or --

3 MR. JOHNSON: No. Except for the license that I
4 received five days after.

5 HEARING OFFICER JONES: And you've got that with
6 you?

7 MR. JOHNSON: Uh-huh.

8 HEARING OFFICER JONES: If we could get some
9 copies of that made for the board members, please,
10 and we'll get that and submit it as Respondent's
11 Exhibit No. 1.

12 (WHEREUPON, Respondent's Exhibit No. 1 was
13 marked for identification.)

14 HEARING OFFICER JONES: We're going to go ahead
15 and get started and when she gets back she can hand
16 them to the board.

17 MR. JOHNSON: That's fine.

18 HEARING OFFICER JONES: Mr. Hogan, opening?

19 MR. HOGAN: I'll waive any opening remarks.

20 HEARING OFFICER JONES: Mr. Johnson, anything
21 you want to say in opening?

22 MR. JOHNSON: No.

23 HEARING OFFICER JONES: Okay. Go ahead,
24 Mr. Hogan, call your first.

25 WHEREUPON,

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

5 DIRECT EXAMINATION

6 BY MR. HOGAN:

7 Q Ms. Kersey, state your name for the record and your
8 position with the Department of Health.

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

11 Q As Section Chief, do you have the responsibility and
12 custody of the records of the Arkansas Department of Health
13 concerning cosmetology?

14 A Yes, sir.

15 Q And have you reviewed the inspection report that was
16 submitted or written on February 7 of this year regarding Top
17 Notch Cutz and Stylez?

18 A Yes, sir. I have.

19 Q What was the finding of the inspector in that matter with
20 respect to that salon?

21 A The salon license had been expired since 12/31/2011, but
22 he did renew on 2/13/2012.

23 Q So the license had expired, you said, in December?

24 A Uh-huh.

25 Q Of the previous year?

1 A Yes, sir.

2 Q And after being notified in February the 7th that his
3 license wasn't current, he did renew his license in less than a
4 week?

5 A Yes, sir.

6 Q Did it appear from anything in your records that this is
7 just an oversight on the part of Top Notch Cutz N Stylez that
8 they had failed to renew their license in a timely manner?

9 A I'm going to assume that since he renewed shortly after.

10 Q Was there anything in your records to indicate that
11 Mr. Johnson or his establishment had a record of previously
12 failing to comply with the laws with respect to licensure?

13 A No, sir.

14 Q And Mr. Johnson has presented, which we will admit into
15 evidence without objection on our part, that his license did
16 expire 12/3/2012 [sic] and it was renewed February 14, 2012?

17 A Yes.

18 MR. HOGAN: And I have no further questions.

19 HEARING OFFICER JONES: Mr. Johnson, do you have
20 any questions for Ms. Kersey?

21 MR. JOHNSON: No.

22 HEARING OFFICER JONES: Board members, questions
23 for Ms. Kersey?

24 CHAIRMAN FORD: I do.

25 HEARING OFFICER JONES: Okay.

1 CHAIRMAN FORD: On the inspection report, I'm
2 just, I'm looking at the date.

3 THE WITNESS: Uh-huh.

4 CHAIRMAN FORD: It says 2/7/11. Is that just a
5 typo?

6 THE WITNESS: That's just a misprint. Yeah. I
7 mean she just wrote the wrong year.

8 CHAIRMAN FORD: Okay.

9 HEARING OFFICER JONES: Further questions from
10 the board for Ms. Kersey?

11 CHAIRMAN FORD: No.

12 HEARING OFFICER JONES: Okay. If there are
13 none, Mr. Hogan, call your next.

14 MR. HOGAN: We would rest. We have nothing
15 further.

16 HEARING OFFICER JONES: Okay. Mr. Johnson.

17 MR. JOHNSON: Yes.

18 HEARING OFFICER JONES: Do you have any
19 witnesses with you today?

20 MR. JOHNSON: No.

21 HEARING OFFICER JONES: Okay. This is your
22 opportunity to tell your side of the story to the
23 board and then I'll allow Mr. Hogan and the board to
24 ask you any questions they may have.

25 MR. JOHNSON: Okay.

1 HEARING OFFICER JONES: You can tell your side,
2 anything you want them to know, whatever you want to
3 say to them.

4 WHEREUPON,

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

9 DIRECT TESTIMONY

10 THE WITNESS: Oh, well -- well, the reason my
11 license, the reason I didn't get them renewed then
12 was because I had a manager and then I terminated her
13 and so I had a lot going on, and just kind of fell
14 behind a little bit, but now I got everything back
15 together.

16 HEARING OFFICER JONES: Anything else you want
17 to add?

18 THE WITNESS: No.

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

21 MR. HOGAN: Nothing further?

22 CROSS-EXAMINATION

23 BY MR. HOGAN:

24 Q You understand that the recommend is that you pay a fine
25 of \$63, I think. You are asking the committee to reduce that

1 fine or waive that fine or are you here to accept the penalty
2 of the committee? What's your position about the 63-dollar
3 penalty?

4 A Well, I'm here, if that's the penalty then that's fine,
5 but I would ask them to waive it.

6 MR. HOGAN: I would rest.

7 HEARING OFFICER JONES: Okay. Board members,
8 questions for Mr. Johnson?

9 CHAIRMAN FORD: No.

10 HEARING OFFICER JONES: Okay. Thank you very
11 much.

12 Closing, Mr. Hogan?

13 MR. HOGAN: I have nothing in closing.

14 HEARING OFFICER JONES: Mr. Johnson, anything in
15 closing?

16 MR. JOHNSON: No.

17 HEARING OFFICER JONES: Thank you.

18 At this time the record will be closed and made
19 complete except for the board's recess for
20 deliberations. Once the board reaches a decision, we
21 will go back on the record.

22 (WHEREUPON, the Committee retired to deliberate,
23 off the record, from 12:46 p.m. to 12:47 p.m., and
24 returned with the following decision:)

25 HEARING OFFICER JONES: Very well. We will go

1 back on the record.

2 MR. BARNES: I make a motion that the penalty of
3 \$63 be paid.

4 MS. DAVIS: I second.

5 CHAIRMAN FORD: Motion has been seconded.

6 At this time we'll take a vote. All in favor of
7 the fine standing.

8 COMMITTEE MEMBERS: Aye.

9 CHAIRMAN FORD: All opposed?

10 Unanimous, the fine will stand at \$63.

11 HEARING OFFICER JONES: Please let the record
12 reflect the decision of the board is unanimous,
13 please reduce the decision to writing and make or
14 attempt service upon all parties. If the respondent
15 cares to appeal the decision, an appeal may be taken
16 under Arkansas Code Annotated 25-15-201, et seq., or
17 any specific provisions of this board.

18 This hearing is closed, the record is complete.
19 Thank you.

20 (WHEREUPON, at 12:47 p.m., the above-entitled
21 proceedings were concluded.)

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1 ADMINISTRATIVE HEARING

2 ADH

3 v.

4 CHARLETTE'S HAIR SALON, OWNER, CHARLETTE JONES

5 ADH

6 v.

7 CHARLETTE JONES

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HEARING OFFICER JONES: My name is Kendra Akin Jones and I'm the Hearing Officer today in the matter of Charlotte's Hair Salon, Violation 11-9109, and Charlotte Jones, Violation 11-9110, to be heard before the Cosmetology Technical Advisory Committee. Today is September 17, 2012, and we're located in the Freeway Medical Building.

Ms. Jones, would you please identify yourself for the record?

MR. JONES: My name is Charlotte Jones.

HEARING OFFICER JONES: And do you have counsel with you today?

MR. JONES: No, I don't.

HEARING OFFICER JONES: Okay. Did you receive a copy of the Order and Notice of Hearing for today's matters against you personally and your salon?

MR. JONES: Yes.

1 HEARING OFFICER JONES: Mr. Hogan, if you would
2 identify yourself.

3 MR. HOGAN: Rick Hogan, general counsel,
4 Arkansas Board of Health.

5 HEARING OFFICER JONES: For the benefit of
6 anyone present today who may not have appeared before
7 an administrative hearing, I will explain the board
8 will base its decision solely on the evidence that is
9 presented here today. This hearing is being held
10 under the Administrative Procedures Act, which means
11 the strict rules of evidence do not allow -- do not
12 apply. The board members know of this case only as
13 it appears and is set forth in the Order and Notice
14 of Hearing. Anything, Ms. Jones, that you have in
15 your possession that you want them to consider today,
16 you will need to introduce it into evidence.

17 All participants to the hearing should be aware
18 that these proceedings are open to the public under
19 the Freedom of Information Act, and this does include
20 the board's recess for deliberations.

21 For those of you who are going to be witnesses
22 in today's matter, please raise your right hand and
23 by sworn. Ms. Kersey?

24 MS. KERSEY: Oh, sorry. Hello.

25 (WHEREUPON, the witnesses were sworn by the

1 Hearing Officer.)

2 HEARING OFFICER JONES: Very well.

3 Preliminary matters, Mr. Hogan?

4 MR. HOGAN: We would ask that these two packets
5 of information be admitted as Board's Exhibit No. 1,
6 the 14-page document for Charlette's Hair Salon,
7 inspection report and notice of hearing, and then the
8 ten-page document for Charlette Jones as practitioner
9 be admitted as Board's Exhibit No. 2 for the record.

10 HEARING OFFICER JONES: And --

11 MR. HOGAN: And then we also --

12 HEARING OFFICER JONES: Mr. Hogan, hold on just
13 a second.

14 Ms. Jones, are you okay with these being
15 admitted? They are the inspection reports, orders
16 and notices of hearing that were sent to you, and the
17 certificate for receipt?

18 MR. JONES: Did you say inspection reports?

19 HEARING OFFICER JONES: Yes.

20 MR. JONES: That they sent to me?

21 HEARING OFFICER JONES: No, they should have
22 been -- I believe they are left with the salons.

23 MR. JONES: Okay. Yes. That's fine.

24 HEARING OFFICER JONES: Okay. No. The Order
25 and Notice of Hearing was sent to you.

1 MR. JONES: Yes.

2 HEARING OFFICER JONES: Okay. Then those will
3 be so admitted as -- the hair salon will be Exhibit 1
4 and the personal notice to Ms. Jones will be Board's
5 Exhibit 2.

6 (WHEREUPON, Board's Exhibits Nos. 1 and 2 were
7 received in evidence.)

8 HEARING OFFICER JONES: Further preliminary
9 matters Mr. Hogan?

10 MR. HOGAN: We would ask that the rules and
11 regulations be admitted and that the board be able
12 to -- committee be able to take notice of the statute
13 that controls cosmetology and related occupations.

14 HEARING OFFICER JONES: Okay. Those will be so
15 noted.

16 Ms. Jones, do you have anything with you today
17 that you would like for the board to consider in
18 their deliberations?

19 MR. JONES: No, I don't.

20 HEARING OFFICER JONES: Okay. Opening
21 statement, Mr. Hogan?

22 MR. HOGAN: I'll waive that.

23 HEARING OFFICER JONES: Ms. Jones, opening
24 statements?

25 MR. JONES: Yes.

1 I came here today to actually pay my fine. I
2 was told last week that if I make it here before 9:30
3 that I can pay the fine and I wouldn't have to sit in
4 front of you guys. Well, once I got there to pay the
5 fine, they told me that I had -- I could not pay the
6 fine and I had to come here. Therefore, I don't have
7 any paperwork or anything on me or even dates and
8 names of the people who I spoke with. That's back in
9 West Memphis. So, I mean, I can guesstimate but I
10 can't tell you the exact dates and the name of the
11 people whom I spoke with.

12 MR. HOGAN: Given that statement, then I would
13 allow Ms. Jones to get this straightened out with --
14 with the board and department and we would ask that
15 this hearing be tabled, pending her ability to work
16 with the department if she wishes to pay the
17 penalties or -- there is no reason for us to go
18 further with the hearing at this time, in my opinion.

19 MR. JONES: Well, I do have some things that I
20 would like to say, and it can be on or off.

21 MR. HOGAN: If you want a hearing we'll give you
22 a hearing.

23 MR. JONES: Okay.

24 HEARING OFFICER JONES: Do you want -- do you
25 want to go forward with the hearing or do you just

1 have some concerns you want to express is, I guess,
2 what I'm trying to figure out now. Because we can go
3 forward with the hearing. Whatever you want at this
4 point, I think, if you want to go forward with the
5 hearing or if you want to get with the board and work
6 out payment of the fine, that's -- that's kind of up
7 to you at this point.

8 MR. JONES: I live too far away from here, so I
9 would like to resolve this now, so I would -- I don't
10 mind going forward.

11 MR. HOGAN: So you're willing to go forward with
12 today's hearing?

13 THE WITNESS: Yes.

14 MR. HOGAN: Even though you didn't bring any
15 documents or evidence that would support your
16 position one way or the other?

17 MR. JONES: Well, it's -- it's names of people
18 whom I spoke with, the times and the days, you know.
19 I can guesstimate it but like I don't have any
20 paperwork that I can actually show you, only thing
21 you would do is go by my word anyway.

22 MR. HOGAN: If you're willing to pay the penalty
23 there is no need to have a hearing, that's what we're
24 saying. It sounds like from your statement you're
25 willing to pay the penalty, then there is absolutely

1 no reason to waste the committee's time or anybody
2 else or your time having a hearing if you're willing
3 to pay the penalty.

4 MR. JONES: Okay.

5 MR. HOGAN: So that's the question. If you want
6 to pay the penalty, then pay the penalty; if you
7 don't want to pay the penalty, we're going to have us
8 an old fashioned hearing, it's up to you.

9 HEARING OFFICER JONES: And that's your choice
10 at this time, Ms. Jones. Whichever you would prefer
11 to do.

12 MR. JONES: Let's go forward with the hearing.

13 HEARING OFFICER JONES: Ma'am?

14 MR. JONES: I would like -- I would like to go,
15 since I'm here and since I've been here for this
16 long, I would like to go forward with the hearing.

17 HEARING OFFICER JONES: Very well then. That we
18 will.

19 MR. JONES: Okay.

20 HEARING OFFICER JONES: Okay. Opening
21 statements? Mr. Hogan waived his. Ms. Jones, is
22 there anything else in opening you would like to
23 state?

24 MR. JONES: Yes. I had -- I rented a building
25 and in the state of Arkansas, which is probably

1 neither here or there with y'all guys, but so you
2 have to have a back flow valve in order to rent the
3 building. At that time I didn't know the rules
4 because I'm from Massachusetts. Nothing as far as a
5 back flow valve, I didn't know anything about any of
6 that. I couldn't get a permit from the state or from
7 that city for that building, therefore, I had to move
8 my location. But I sent y'all guys in \$150 and I
9 wasn't there for no longer than a week's time. That
10 150 was -- was just gone because with each business
11 location it's 150 per so that was -- that was gone
12 and I -- I wasn't aware of that. So, at my next
13 location, I sent in 150 as well as an additional
14 hundred dollars, the 150 for the business
15 establishment.

16 MR. HOGAN: This isn't an opening statement,
17 let's go to the evidence. This is --

18 HEARING OFFICER JONES: Okay.

19 MR. HOGAN: This is not opening remarks, this is
20 evidence.

21 HEARING OFFICER JONES: I'm going to agree with
22 that, Mr. Hogan, and I'll give you plenty of
23 opportunity to tell your side.

24 MR. JONES: Okay.

25 HEARING OFFICER JONES: Mr. Hogan, if you would,

1 call your first.

2 MR. HOGAN: We would call Ms. Lester.

3 WHEREUPON,

4 LAVONNE LESTER,

5 having been called for examination, and having been first duly

6 sworn by the Hearing Officer, was examined and testified, as

7 follows:

8 DIRECT EXAMINATION

9 BY MR. HOGAN:

10 Q Ms. Lester, state your name and position with the
11 department of health.

12 A Lavonne Lester, inspector for the cosmetology section.

13 Q Did you have occasion to investigate Charlette's Salon in
14 June of this year?

15 A Yes. I did.

16 Q Did you also investigate them in November of last year?

17 A I did.

18 Q Going back to November of last year, what were your
19 findings during that inspection?

20 A At that time her personal license had not been renewed and
21 the salon license were not posted.

22 Q Did you check at that time to determine if her salon
23 license was current or just not posted or if it was --

24 A She said it was current.

25 Q You have no -- you did not cite her for not having a

1 current license --

2 A I did not, no.

3 Q -- in November of last year. Correct?

4 Now, according to the records, Ms. Jones' license,
5 practitioner license, expired in June 5th of 2011. Does that
6 sound correct?

7 A That's correct.

8 Q So you were there in November 2 of last year. That's --
9 what's that, four or five months after --

10 A Yes, sir.

11 Q -- her license expired?

12 A Yes.

13 Q And she had not updated or got her license current as a
14 practitioner?

15 A (Shaking head from side to side.)

16 Q And she was not currently posting a license for the salon?

17 A Salon license, that's correct.

18 Q Now, you went back in June, another six or seven months
19 after that?

20 A Uh-huh. Yes.

21 Q Had Ms. Jones made any efforts, to your understanding --
22 well, when you went in there, did she have a current
23 practitioner's license at that time?

24 A Yes. She did.

25 Q Okay. When did she renew her license in -- when you were

1 there on June 20th? When -- what was the date of her renewal
2 of her practitioner license? June 5th?

3 A I -- I don't know what day she renewed it.

4 Q Look at your inspection report.

5 A Yes, sir.

6 Q Dated June 20th. In the handwritten comments to the
7 right-hand column, it says, "Charlette Jones 6/5/13." Does
8 that mean she has a license through June of 2013?

9 A Of, yes, of 2013.

10 Q Would that mean then she got her license renewed when --
11 her personal license?

12 A Well, she must have renewed it sometime before 6/5/12.

13 Q June 5th? Okay.

14 A Whatever, yeah. Any time after 6/5/11 she renewed it.

15 Q Okay. Now, at that time when you were there in June of
16 this year, June 20th, she did not have a current
17 establishment license?

18 A No. She didn't.

19 Q Did you go back at that time to determine if she had a
20 current establishment license when you were there in November
21 of the previous year?

22 A I'm trying to remember, but in speaking with her she told
23 me that she had sent everything off to renew those license, so
24 I cited her for not having them posted.

25 Q So if the records reflect that her salon license expired

1 December 31st of 2011, then you have no reason to disagree
2 with that?

3 A That's correct.

4 Q So from December 31, 2011, until at least the date that
5 you were there on 6/20 of this year, she did not have a current
6 salon license?

7 A That's correct.

8 Q Now, did she subsequently get licensed for her salon? Do
9 you know?

10 A I don't. I don't know. I called the office that day and
11 they told me that her license had expired, so then she was
12 cited for not having a current salon license.

13 Q It appears that in January of this year, Ms. Jones agreed
14 to pay her violation of licensure of \$275 through an
15 installment, first installment February 20 of 2012 --

16 MR. JONES: Uh-huh.

17 BY MR. HOGAN:

18 Q -- and then March and April. Do you have any idea if she
19 made those payments or if she --

20 A No. I don't.

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

22 HEARING OFFICER JONES: Ms. Jones, do you have
23 any requests for Ms. Lester?

24 MR. JONES: No. I don't.

25 HEARING OFFICER JONES: Board members, questions

1 for Ms. Lester.

2 MR. JONES: Oh, do I have any questions for her?

3 HEARING OFFICER JONES: Uh-huh. Yes.

4 MR. JONES: It's more of a statement, so no, not
5 a question.

6 HEARING OFFICER JONES: Okay. Board members,
7 questions for Ms. Lester?

8 Okay. Thank you Ms. Lester. Mr. Hogan, call
9 your next.

10 MR. HOGAN: I'll call Ms. Kersey.

11 WHEREUPON,

12 KELLI KERSEY,

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

16 DIRECT EXAMINATION

17 BY MR. HOGAN:

18 Q State your name and your position with the department.

19 A Kelli Kersey, Section Chief, Arkansas Department of
20 Health, Cosmetology Section.

21 Q Ms. Kersey, it appears that Ms. Jones agreed in January of
22 this year that she was in violation of the law with respect to
23 her license for her practitioner's license. Is that correct?

24 A Correct.

25 Q And she agreed to pay an amount of \$275 in penalty for

1 that with a first installment in February of this year and then
2 subsequent installments in March and April. Is that correct?

3 A Yes, sir.

4 Q Now, did she in fact make any payments to the department
5 or to the board after January of 2012?

6 A She has not made any payments to the department.

7 Q Did she subsequently get her license as a practitioner
8 renewed after January of 2012?

9 A She had already renewed her practitioner's license on
10 1/6/2012.

11 Q So on January the 6th she got her practitioner's license
12 renewed --

13 A Uh-huh.

14 Q -- after the inspection in November --

15 A Yes, sir.

16 Q -- 2 of last year?

17 A Yes, sir.

18 Q So over a month later she gets her practitioner's license
19 renewed, and then she agrees to pay her penalty, which she has
20 never paid --

21 A Correct.

22 Q -- according to your records?

23 Now, the -- according to the records, her salon license
24 expired in December of last year. Is that correct?

25 A Uh-huh.

1 Q Now, did she at that time when she was renewing her
2 practitioner's license make any effort to come into compliance
3 with the law with respect to her salon license?

4 A No, sir.

5 Q Did you have any -- did she tell you or anybody in your
6 office that you know of that she was having trouble because she
7 had -- was unable to get a back flow preventer permit for her
8 establishment, and to your knowledge did it move from 504 North
9 Missouri, the establishment, as far as you know?

10 A Not -- not as far as I know. Not to my knowledge.

11 Q Did she express any hesitation at that time of getting or
12 at any time after that of being able to get her establishment
13 license renewed because of a problem of getting a permit
14 through another avenue for that building or anything like that?

15 A Not to my knowledge.

16 Q So it appears that she has an outstanding penalty of \$250
17 which she agreed to pay but hasn't?

18 A Correct.

19 Q And she has a license that expired at the end of last year
20 for her establishment.

21 Now, has she gotten her establishment license in order?

22 A No, sir. She hasn't.

23 Q So as of the end of last year, she operated an
24 establishment now for almost nine months without a license for
25 the establishment, and she operated her own personal license

1 for a period of time, even though she agreed to pay the
2 penalty, without coming into compliance with the law. Is that
3 correct?

4 A Correct.

5 Q Has she ever given you any reason for not coming in
6 compliance with the rules of this committee and the board of
7 health?

8 A Not to my knowledge.

9 Q Has she ever called you or made contact with you
10 personally about her inability to get a license for her
11 establishment?

12 A No, sir.

13 Q Do you have any knowledge of whether or not she has
14 employed other stylists other than Marguita Gray and herself at
15 Charlette's Salon in West Memphis?

16 A No, sir.

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

18 HEARING OFFICER JONES: Ms. Jones, do you have
19 any questions for Ms. Kersey?

20 MR. JONES: No.

21 HEARING OFFICER JONES: Okay. Board members,
22 questions for Ms. Kersey?

23 CHAIRMAN FORD: I do.

24 HEARING OFFICER JONES: Go right ahead.

25 CHAIRMAN FORD: I just want to be clear on

1 the -- Ms. Jones has renewed her individual license.
2 Correct?

3 THE WITNESS: Yes, ma'am.

4 CHAIRMAN FORD: Now, were her fines that -- the
5 installment agreement, were those fines based on the
6 individual license?

7 THE WITNESS: They should have been -- I think
8 there is two on there.

9 MS. DAVIS: There is two.

10 CHAIRMAN FORD: Because I see that they are
11 separated but I just want to make sure that I'm
12 getting the totals correct.

13 THE WITNESS: There is actually two payment
14 agreements in there. One is for the salon and one is
15 for --

16 CHAIRMAN FORD: Okay. With the 193 installment
17 violation dated January 12, 2012 in the individual
18 packet --

19 THE WITNESS: Uh-huh.

20 CHAIRMAN FORD: Is that correct?

21 THE WITNESS: Uh-huh.

22 CHAIRMAN FORD: Now, though -- that 193 that's
23 due --

24 THE WITNESS: Uh-huh.

25 CHAIRMAN FORD: That's based on her already

1 renewing that individual license.

2 THE WITNESS: (Nodding head up and down.)

3 CHAIRMAN FORD: But she defaulted on the payment
4 arrangements, correct?

5 THE WITNESS: Correct.

6 CHAIRMAN FORD: Okay. I was just trying to get
7 that.

8 Now, do you -- do you know what the law states
9 as far as when there is an agreement for a payment
10 arrangement and an applicant is allowed to renewed
11 and continue operating under a current license, what
12 the law states for the violation, the fees and the
13 fines that are delinquent?

14 THE WITNESS: I'm not sure what the law states,
15 but the policy is if they miss one installment, their
16 license is suspended until the fine is paid in full
17 and they can't have -- they don't have the option
18 anymore to have installments.

19 CHAIRMAN FORD: Okay.

20 THE WITNESS: They have to pay it in full.

21 CHAIRMAN FORD: Okay. So, in accordance with
22 the law, the individual license should be currently
23 suspended?

24 THE WITNESS: Yes, ma'am. And it is.

25 CHAIRMAN FORD: Okay. No more questions.

1 HEARING OFFICER JONES: Further questions from
2 the board members for Ms. Kersey?

3 If there are none, thank you.

4 Mr. Hogan, any further witnesses?

5 MR. HOGAN: I have nothing further.

6 HEARING OFFICER JONES: Okay. Ms. Jones, now is
7 your opportunity to tell the board what you want them
8 to hear and then I'll give Mr. Hogan and the board a
9 chance to ask you some questions.

10 Go right ahead.

11 WHEREUPON,

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

16 DIRECT TESTIMONY

17 THE WITNESS: Okay. As I was saying, it was, it
18 was -- I was on Polk Street, and that was the
19 building that I leased prior to me leasing 504
20 Missouri Street, and that's where I couldn't get the
21 permit from the city because of the back flow valve.
22 However, after I gave you-all the 150, then I sent in
23 a money order for 504 Missouri Street for an
24 additional 150 and the hundred dollars to renew my
25 license. When she came in she brought me the permit

1 for the occupancy for the cosmetology and she also
2 gave me an envelope. Inside that envelope was my
3 license, but it had someone else's picture on it.
4 She -- I showed her someone else's picture, she took
5 the license back, she went outside, she made a phone
6 call. She said, we don't even give these licenses
7 anymore, she said, so, I'm sorry. And she kept on
8 trying to call someone here at the board of
9 cosmetology, she couldn't get in contact, she said no
10 one is answering the phone.

11 So I got in contact with, I believe I want to
12 say it was her (indicating), and when I spoke with
13 her she said why did you send in so much money? Why
14 do we have this additional 100? And I told her the
15 reason why, because I guess when I sent it in I sent
16 in the application for the -- the cosmetology, the --
17 the business license and I sent in the other 100, but
18 I wasn't -- wasn't clear on the letter what it was
19 exactly for, I didn't say renewal of the license. I
20 don't -- I don't know, but she asked me why did I
21 send it in. A couple of days later I received my
22 check back.

23 So I guess, you know, as far as me not having my
24 cosmetology license, I mean, when I signed that paper
25 I knew that I was partial at fault and for not having

1 license January 6, 2012. That's correct, right, as far as you
2 know?

3 A Yes.

4 Q And I know that you sent back a payment agreement, or at
5 least --

6 A Uh-huh.

7 Q -- it was mailed to you on January the 11th of 2012 in
8 which you agreed to pay installments of February 20th of \$65,
9 March 20th, \$64, April 20th, \$64.

10 Now, you've said a lot of things here, but did you in fact
11 send in a check for \$65 on or before February 20th as you
12 agreed to do?

13 A No. I did not.

14 Q Did you send a check on or before March 20th for \$64 as
15 you agreed to do?

16 A I did -- on that piece of paper that I signed, I didn't
17 send no money in at all like I agreed to do. No, I did not.

18 Q So you made an agreement with this committee and with the
19 department and you failed to honor it?

20 A You're right.

21 Q Now, nothing in what you just said indicates that there
22 was a reason, whether you were supposed to be at Polk Street or
23 Missouri Street, as far as your practitioner's license, where
24 you agreed there was a violation of the law and you agreed to
25 make three installment payments, none of that matters with

1 respect to your license as a practitioner because you failed to
2 comply with the agreement that you made with the department.

3 Correct?

4 A What I was saying to you is I -- when I got the salon, I
5 sent in the moneys for it to be renewed and I received that
6 money back. That's what I'm saying to you.

7 Q When did you -- you failed to make your installments,
8 though --

9 A Right.

10 Q -- as you agreed, is that correct?

11 A Right. I did not make my installments.

12 Q And it doesn't matter whether you were working at Polk
13 Street or Missouri Street or if you were working in any other
14 establishment, you failed to do that. Right?

15 A Uh-huh.

16 Q You knew you were required to do that under the law and
17 you just failed to do it? And I don't hear any reason one way
18 or another to say that there was an excuse for not doing that
19 other than that you just -- you just didn't do it. Is that
20 right?

21 A Okay. That's fair.

22 Q Now, when did you move into this salon located on Missouri
23 Street?

24 A I want to say June of 2011.

25 THE WITNESS: Was that when my application was

1 in?

2 MS. LESTER: (Nodding head up and down.)

3 THE WITNESS: June of 2011.

4 BY MR. HOGAN:

5 Q June of 2011 you moved into your new establishment on
6 Missouri Street --

7 A Yes.

8 Q -- from Polk Street?

9 A Yes.

10 Q Okay. Your license as an establishment was still good
11 then, I mean, in June of last year you still had an
12 establishment license. Did you alert the board at that time
13 that you had moved to a different establishment?

14 A Yes. I did.

15 Q Okay. Now, your license expired, though, at the end of
16 2011, and you had been in your new establishment there for six
17 months. I guess I don't understand why there would be a
18 problem as far as one permit for another in six months that
19 would keep you from getting your establishment license at the
20 beginning of this year or at the end of last year when it
21 expired. So, why didn't you get it renewed?

22 A I really, even when she came out there, my license, and
23 because I had it in the frame, my license as well as the
24 business establishment license, it got stolen from out of my
25 place, someone came in and they took it, so when she came in

1 and it wasn't there, you know --

2 Q Well, we're talking about two different times, though.
3 She came in November of last year and she cited you for not
4 having a current practitioner's license. That case is already
5 over, you agreed to pay that penalty, you agreed that you were
6 in violation of the law. You talked to Ms. Lester at that time
7 and that's what you were cited for, that's what you agreed to
8 pay.

9 Now, she did not come back again until June of this year.
10 So, between November and June -- actually between the end of
11 December, I mean are you saying that in November your license
12 for an establishment license wasn't posted because someone had
13 stolen it? Is that your testimony?

14 A I'm getting confused right now. I really am.

15 Q Well, take your time, it's probably the heat in here.
16 Have you had a chance to look at the documents?

17 A Okay. On November the 2nd of 2011, my license wasn't
18 posted because it was stolen, but when she called in it was
19 active.

20 Q Right.

21 A On --

22 Q And she didn't cite you for that, you agreed to pay a
23 penalty for not having a practitioner's license?

24 A No. It was -- it was active.

25 MS. LESTER: Practitioner.

1 BY MR. HOGAN:

2 Q Right. And you weren't cited for that not having it
3 posted, you would have -- it would have been a second violation
4 for not posting it conspicuously, but she didn't cite you for
5 that, she gave you a break on that that day?

6 A Okay.

7 Q You didn't get cited for it?

8 A Okay.

9 Q I guess I'm having trouble understanding why that has
10 anything to do with why you didn't get your license renewed
11 when it expired for your establishment at the end of last year,
12 why didn't you do that?

13 Was it just the same reason that you had for not paying
14 your installment penalties for violating your practitioner
15 license, you just failed to do it? Is that the reason?

16 A I'm -- I was telling you that I sent -- when I first got
17 this establishment I sent in a check. I sent in that check and
18 I guess, I don't know what period it is that you have to -- say
19 my license -- say my birthday is tomorrow, okay, in three
20 months prior, I wanted to go on while I'm sending in the
21 license to have my business, my business license, say I send
22 that in, I'm sending -- also sending in to have my personal
23 license renewed as well. They didn't check -- they didn't
24 accept it because it wasn't due so they sent the money order
25 back, so that's what confused me.

1 Q So in November you tried to get, even though it wasn't
2 until January that you agreed to pay the penalty, are you
3 saying you tried to renew your establishment license in
4 November when she cited you for a violation of the
5 practitioner's license?

6 A When I opened up my business in June.

7 Q You said you opened up this business in June of last year?

8 A In June, yes.

9 Q So that's six months. You had -- your license didn't
10 expire for another six months. Are you saying that because
11 they sent a check --

12 A Exactly.

13 Q -- back to you in June of last year --

14 A I totally forgot.

15 Q -- you decided that there wasn't need -- there was no need
16 for you --

17 A I didn't say that.

18 Q -- no need for you to get your license renewed?

19 A I'm saying I forgot, that's what I'm saying.

20 Q You just forgot?

21 A Because I had send it in and I just forgot. It's my
22 fault, I forgot.

23 MR. HOGAN: Okay. Good enough.

24 Okay. I have no further questions.

25 HEARING OFFICER JONES: Board members, questions

1 for this witness?

2 CHAIRMAN FORD: Yes.

3 HEARING OFFICER JONES: Go right ahead.

4 CHAIRMAN FORD: So are your establishment
5 license, are they current at this time?

6 THE WITNESS: I -- and that's something also I
7 want to say. As soon as she told me that I didn't,
8 that they were expired because it was stolen so, you
9 know, she said that for now on I will get a renewal
10 in the mail. I haven't received a renewal in the
11 mail at all, you know.

12 CHAIRMAN FORD: Okay. But do you have your old
13 license, your old establishment license?

14 THE WITNESS: No, because -- the establishment
15 license is the license for the salon, right?

16 MS. LESTER: (Nodding head up and down.)

17 CHAIRMAN FORD: Right.

18 THE WITNESS: No, that's gone, that was stolen.
19 However, I sent in a money order, once she told me
20 that -- I'm sorry, not a money order, a check. I
21 still haven't received anything back from y'all guys.

22 CHAIRMAN FORD: Okay. Do you understand that on
23 the 4th of January in 2012, you signed and dated
24 requesting and agreeing to an agreement for your
25 fines and fees for your individual license and also

1 your establishment license.

2 THE WITNESS: What --

3 CHAIRMAN FORD: It's in the packet, ma'am.

4 THE WITNESS: No. What I'm saying to you is,
5 there is a fine for 193 and there is a fine for \$275.

6 CHAIRMAN FORD: Correct.

7 THE WITNESS: This is separate from when she
8 just left a couple of months ago. It's -- it's
9 not -- it's not the same case. We're not talking
10 about the same thing.

11 CHAIRMAN FORD: Okay. But in order for us to be
12 able to renew anything, you must have everything that
13 you owe to the cosmetology section brought up and
14 current and paid in full, because with the agreement
15 that you signed in January, the 4th of January,
16 2012, you did not meet that. You did not keep that
17 agreement.

18 THE WITNESS: Right.

19 CHAIRMAN FORD: So, because you did not keep
20 that agreement --

21 THE WITNESS: Uh-huh.

22 CHAIRMAN FORD: -- everything, the 193, the 275,
23 you owe both of those things --

24 THE WITNESS: Uh-huh.

25 CHAIRMAN FORD: -- first and foremost --

1 THE WITNESS: Uh-huh.

2 CHAIRMAN FORD: -- before any type of renewal on
3 anything, individual or establishment can even be
4 considered.

5 THE WITNESS: And that's what I tried to pay
6 today and they wouldn't allow me to.

7 CHAIRMAN FORD: Okay. So and what you're saying
8 is you know that those things are due?

9 THE WITNESS: Yes.

10 CHAIRMAN FORD: And you agree to them?

11 THE WITNESS: Uh-huh.

12 CHAIRMAN FORD: Thank you.

13 HEARING OFFICER JONES: Further questions from
14 the board members?

15 Okay. Mr. Hogan, anything in closing?

16 MR. HOGAN: No. I'll waive closing.

17 HEARING OFFICER JONES: Ms. Jones, closing
18 statement?

19 MR. JONES: Huh-uh.

20 HEARING OFFICER JONES: Okay. At this time I'll
21 make the record closed and complete except for the
22 board's recess for deliberations. Once the board
23 reaches a decision we will go back on the record.

24 (WHEREUPON, the Committee retired to deliberate,
25 off the record, from 1:23 p.m. to 1:24 p.m., and

1 returned with the following decision:)

2 CHAIRMAN FORD: We'll go back on the record,
3 please.

4 HEARING OFFICER JONES: Go ahead.

5 MS. DAVIS: I'll make a motion that the fines
6 stand at 100 and -- where are they?

7 MR. HOGAN: 193 and 275.

8 MS. DAVIS: At 193 and 275.

9 MS. BONDS: I second it.

10 CHAIRMAN FORD: So, at this time the motion has
11 been seconded and we need to take a vote.

12 All in favor of the 193 and the 275 fine
13 standing?

14 COMMITTEE MEMBERS: Aye.

15 CHAIRMAN FORD: All opposed?

16 It's unanimous, the fines will stand, 193 and
17 275.

18 HEARING OFFICER JONES: Let the record reflect
19 that the board's decision is unanimous. Please
20 reduce the decision to writing and make or attempt
21 service upon all parties. If the respondent cares to
22 appeal the decision -- this decision, an appeal may
23 be taken under Arkansas Code Annotated 25-15-201, or
24 any specific provisions of this board. At this time
25 this hearing is concluded and the record is closed.

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Thank you.

(WHEREUPON, at 1:25 p.m., the above-entitled
proceedings were concluded.)

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1 ADMINISTRATIVE HEARING

2 ADH

3 v.

4 A TOUCH OF FAITH, OWNER, JASON AKINS

5 HEARING OFFICER JONES: My name is Kendra Akin
6 Jones, and I'm the Hearing Officer today in the
7 matter of A Touch of Faith, Violation 12-242, to be
8 heard before the Cosmetology Technical Advisory
9 Committee.

10 The owner of Touch of Faith is Jason Akins.
11 Please note for the record Mr. Akins was called and
12 he is not here to be present for the hearing.

13 Today is September 17, 2012. The respondent is
14 not here.

15 Mr. Hogan, if you would please identify yourself
16 for the record.

17 MR. HOGAN: Rick Hogan, General Counsel for the
18 Health Department.

19 HEARING OFFICER JONES: For the benefit of those
20 present who may not have appeared before in an
21 administrative hearing, the board will base the
22 decision solely based on evidence presented here
23 today. The hearing is being held under the
24 Administrative Procedures Act, the strict rules of
25 evidence do not apply. The board members know of

1 this case only as it appears and is set forth in the
2 Order and Notice of Hearing. Anything to be
3 considered by them today needs to be submitted into
4 evidence. This hearing is open to the public under
5 the Freedom of Information Act, and that does include
6 the board's recess for deliberations.

7 For those of you who are going to be witnesses
8 in today's matter, please raise your right hand and
9 by sworn.

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

12 HEARING OFFICER JONES: Very well. Preliminary
13 matters, Mr. Hogan.

14 MR. HOGAN: Yes. At this time I would ask that
15 the nine-page document be admitted as Board's Exhibit
16 No. 1, that includes the Notice of Hearing and the
17 inspection report of Ms. Morgan.

18 And we would also ask that the board's rules and
19 regulations be admitted as Board's Exhibit No. 2, and
20 that the committee be able to take notice of statutes
21 controlling cosmetology and their related
22 occupations.

23 HEARING OFFICER JONES: Those will be admitted
24 as Board's Exhibit No. 1 and 2, and the rules and
25 regulations will be so noted.

1 (WHEREUPON, Board's Exhibits Nos. 1 and 2 were
2 received in evidence.)

3 HEARING OFFICER JONES: You may call your first
4 witness, or do you want an opening statement?

5 MR. HOGAN: No, we're going to call Ms. Morgan
6 to testify.

7 WHEREUPON,

8 BRENDA MORGAN,

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

12 DIRECT EXAMINATION

13 BY MR. HOGAN:

14 Q Brenda, state your name and your position with the
15 department.

16 A Brenda Morgan, Inspector for the Arkansas Cosmetology
17 Health Department.

18 Q Brenda, did you have occasion to investigate on February
19 the 1st, I believe of this year, an establishment or a salon
20 by the name of A Touch of Faith?

21 A Yes, sir. I did.

22 Q That's located here in Little Rock?

23 A Yes, sir.

24 Q And, according to your inspection report at that time,
25 tell the members of the committee what you found?

1 A I found a Kimberly Williams working that day. She
2 happened to be the only one working but there were no -- salon
3 license posted were not current -- or they were not posted and
4 they were not current.

5 Q So there was no salon license and --

6 A Well, no, I'm looking at it wrong.

7 "Salon license are not current today." They were posted
8 but they were not current.

9 Q Okay. Under Section 2B of your -- of your inspection
10 report, Paragraph 5, "All posted license are current" and you
11 checked that?

12 A Uh-huh.

13 Q So they were current but --

14 A They were not current.

15 Q They were posted but they weren't current?

16 A Yes.

17 Q Is that what that means?

18 A Yeah. That means that they were posted but they were not
19 current.

20 Q Okay. Now, you also said that the waste disposal was --

21 A Yes. Trashcans were overflowing that day, some of them
22 overflowing on the floor.

23 Q If it's a busy day, a lot of work going on, are they
24 expected to keep the trashcans clean?

25 A There was only one practitioner working that day. If

1 the -- the salon wasn't overflow with customers, just trash.

2 Q Okay. So did you have any discussions with the salon
3 owner or anything about that at the time?

4 A Salon owner was not there.

5 Q Well, did you have any discussions with Ms. Williams?

6 A Yes, I did.

7 Q And that what was the substance at that point?

8 A I just told her the violations, I always explain to the
9 person in charge there or whoever is there taking
10 responsibility, what I have marked and why I marked it.

11 Q Okay. Do you have anything further you want to make the
12 committee aware of?

13 A No, sir.

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

15 HEARING OFFICER JONES: Questions from the board
16 members for Ms. Morgan?

17 Very well, seeing none, Mr. Hogan, call your
18 next.

19 MR. HOGAN: We will call Ms. Kersey.

20 WHEREUPON,

21 KELLI KERSEY,

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

25 DIRECT EXAMINATION

1 BY MR. HOGAN:

2 Q State your name for the record, please, and your position
3 with the department.

4 A Kelli Kersey, Section Chief, Arkansas Department of
5 Health, Cosmetology Section.

6 Q Ms. Kersey, do you have custody and control of the records
7 of the cosmetology committee and the board of health?

8 A I do.

9 Q Did you search your records to determine if Touch of Faith
10 was currently a licensed salon in Arkansas as of the date of
11 the inspection?

12 A They were not as of the date of the inspection, but they
13 did renew on 3/5/2012.

14 Q So they currently are renewed and they are, as far as you
15 know, in good operating order as of this date. Right?

16 A Yes, sir.

17 Q And you're making a recommendation to the committee today
18 that they accept the penalty of \$134 for violation for failure
19 to have a current license, which -- let me make sure of this,
20 that license would have expired at the end of last year?

21 A Yes.

22 Q So they did not have a license from December 31st of
23 last year through at least, well, February 1st they didn't have
24 one and they did get renewed in March? Is that right?

25 A Yes, sir.

1 Q Okay. And you're recommending 13 --

2 A Four dollars.

3 Q \$134?

4 A Yes.

5 Q Anything further you want to make the committee aware of?

6 A Nothing.

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

8 HEARING OFFICER JONES: Board members, questions
9 for Ms. Kersey?

10 If there are none, Mr. Hogan, anything in
11 closing.

12 MR. HOGAN: No, ma'am.

13 HEARING OFFICER JONES: Okay. At this time the
14 record will be closed and made complete except for
15 the board's recess for deliberations. Once the board
16 reaches a decision, we will go back on the record.

17 (WHEREUPON, the Committee retired to deliberate,
18 off the record, from 1:33 p.m. to 1:34 p.m., and
19 returned with the following decision:)

20 MS. FORD: I have a motion we'll go back on the
21 record.

22 MR. BARNES: I make a motion to make accept the
23 motion of \$134.

24 MS. ARGUELLO: I second it, \$134. I second it.
25 I'm sorry.

1 CHAIRMAN FORD: Okay. At this time we'll take a
2 vote on the motion.

3 All in favor?

4 COMMITTEE MEMBERS: Aye.

5 CHAIRMAN FORD: All opposed?

6 The fine will stand at 134.

7 HEARING OFFICER JONES: Please let the record
8 reflect the decision of the board. Please reduce
9 that decision to writing, make or direct service upon
10 all parties, notifying them of their right to appeal
11 the decision, under Arkansas Annotated 25-15-201, et
12 seq., or any specific provisions of this board.

13 This record is closed and made complete.

14 (WHEREUPON, at 1:34 p.m., the above-entitled
15 proceedings were concluded.)

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1 ADMINISTRATIVE HEARING

2 ADH

3 v.

4 TOTAL IMAGE, OWNER, KETURAH REED

5 HEARING OFFICER JONES: Total Image. Ms.

6 Lester, back to you.

7 My name is Kendra Akin Jones and I'm the Hearing
8 Officer today in the Matter of Total Image, Violation
9 12-320, owner of the store is Keturah Reed. This is
10 to be heard before the Cosmetology Technical Advisory
11 Committee. Today is September 17, 2012, and we're at
12 the Freeway Medical Building.

13 Please note for the record that the Respondent,
14 Total Image, the owner, Keturah Reed, and no one from
15 there are present today.

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

18 MR. HOGAN: Rick Hogan, General Counsel,
19 Department of Health.

20 HEARING OFFICER JONES: For the benefit of those
21 present who may not have appeared before in an
22 administrative hearing, the board will base its
23 decision solely on the evidence presented here today.
24 This hearing is being held under the Administrative
25 Procedures Act, so the strict rules of evidence do

1 not apply. The board members know of this case only
2 as it appears and is set forth in the Order and
3 Notice of Hearing, anything for their consideration
4 needs to be presented into evidence today. All
5 participants in the hearing should also be aware that
6 it is open to the public under the Freedom of
7 Information Act, and that does include the board's
8 recess for deliberations.

9 For those of you who are going to be witnesses
10 in today's matter, please raise your right hand and
11 be sworn.

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

14 HEARING OFFICER JONES: Very well. Preliminary
15 matters, Mr. Hogan?

16 MR. HOGAN: We would ask that this packet
17 regarding Total Image be admitted as the Committee's
18 Exhibit No. 1, and also the rules and regulations be
19 admitted as 2, and that the committee be able to take
20 notice of their statutes concerning cosmetology and
21 related occupations.

22 HEARING OFFICER JONES: Those will be so
23 admitted as the Board's Exhibit 1 and 2, and the
24 committee may take notice of those statutes.

25 (WHEREUPON, Board's Exhibits Nos. 1 and 2 were

1 received in evidence.)

2 HEARING OFFICER JONES: Opening statement?

3 MR. HOGAN: I have no opening statement.

4 HEARING OFFICER JONES: Proceed with your first
5 witness.

6 WHEREUPON,

7 LAVONNE LESTER,

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

11 DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q Ms. Lester, state your name for the record and what your
14 position is with the department, please.

15 A Lavonne Lester, inspector.

16 Q Ms. Lester, did you have occasion to investigate the Total
17 Image? I believe it was located in Blytheville, Arkansas.

18 A I did.

19 Q And that was on February 29 --

20 A Yes, sir.

21 Q -- of 2012. Right?

22 A Correct.

23 Q Upon your inspection, what did find on that day?

24 A On that particular day the salon license had expired, she
25 hadn't renewed them.

1 Q Did you have any communication with Ms. Reed, I believe it
2 was, who was the salon representative who signed the inspection
3 report?

4 A Yes.

5 Q Was she the owner of the salon?

6 A She is the owner, yes.

7 Q What was her -- what was the substance of your
8 conversation with her?

9 A I just told her that her salon license were expired and
10 she needed to renew them.

11 Q Did she agree to do that?

12 A Yes.

13 Q Anything further you want to make the committee aware of?

14 A That I have been back there just last month and on that
15 particular day the salon was closed, so I haven't been in
16 there.

17 Q Okay. Do they appear to be out of business or were they
18 just closed for the day?

19 A No. It was just closed that day.

20 MR. HOGAN: Okay. I'll pass the witness.

21 HEARING OFFICER JONES: Very well. Board
22 members, any questions for Ms. Lester?

23 If there are none, thank you, Ms. Lester.

24 Mr. Hogan, call your next.

25 WHEREUPON,

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

5 DIRECT EXAMINATION

6 BY MR. HOGAN:

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

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

11 Q And you have custody and control of the records of the
12 cosmetology committee and also the Department of Health
13 inspection cosmetology, correct?

14 A Yes, sir.

15 Q After reviewing the inspection report that was filled out
16 in February of this year, did you review the records of the
17 department to determine if there was a valid current license
18 for the salon of Total Image?

19 A Yes, sir. I did.

20 Q What did you find upon your review?

21 A They are not currently licensed.

22 Q Have they --

23 A Their license expired.

24 Q When did they expire? Would that have been in December of
25 last year?

1 A Yes, sir. 12/31/2011.

2 Q Did -- have they made any effort since the date of the
3 inspection to become currently licensed by the department and
4 the board?

5 A No, sir. I checked Friday, they were still not renewed.

6 Q So as far as you know --

7 A As far as I know --

8 Q -- as of today, there was no current salon license --

9 A Yes.

10 Q -- for Total Image --

11 A Yes.

12 Q -- as of today?

13 A Yes, sir.

14 Q Have you had any communications with Ms. Reed or anyone
15 from Total Image?

16 A No, sir.

17 Q Anything further?

18 I know that you have recommended to the committee that
19 they accept the penalty of \$206. Is that your recommendation
20 to the committee today?

21 A Yes, sir.

22 Q Anything further you want to make the committee aware of?

23 A No, sir.

24 MR. HOGAN: Pass the witness.

25 HEARING OFFICER JONES: Questions from the board

1 for Ms. Kersey?

2 Very well. Thank you, Ms. Kersey.

3 Mr. Hogan, anything further?

4 MR. HOGAN: We will rest.

5 HEARING OFFICER JONES: At this time the record
6 will be closed and made complete, except for the
7 board's recess for deliberations. Once the decision
8 is made, we'll go back on the record.

9 (WHEREUPON, the Committee retired to deliberate,
10 off the record, from 1:39 p.m. to 1:40 p.m., and
11 returned with the following decision:)

12 HEARING OFFICER JONES: We'll go back on the
13 record.

14 CHAIRMAN FORD: Go back on the record for a
15 motion.

16 MS. BONDS: I make a motion that the 206-dollar
17 fine stand as is.

18 MS. DAVIS: Second.

19 CHAIRMAN FORD: The motion has been seconded.
20 At this time we will take a vote. All in favor?

21 COMMITTEE MEMBERS: Aye.

22 CHAIRMAN FORD: All opposed?

23 It's unanimous, the fine will stand at \$206.

24 HEARING OFFICER JONES: Let the record reflect
25 the decision is unanimous, please reduce the decision

1 to writing and make or attempt service upon all
2 parties.

3 If the respondent cares to appeal the decision,
4 appeal may be taken under Arkansas Code Annotated
5 25-15-201, et seq., or any specific provisions of law
6 pertaining to this board.

7 This hearing is concluded and the record is
8 closed.

9 (WHEREUPON, at 2:41 p.m., the above-entitled
10 proceedings were concluded.)

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CERTIFICATE

STATE OF ARKANSAS)

COUNTY OF PULASKI)

I, SUSAN B. WHITSON, Certified Court Reporter and notary public in and for Pulaski County, State of Arkansas, do hereby certify that the hearings held before the Cosmetology Technical Advisory Committee, September 17, 2012, were taken by me in Stenotype and were reduced to computer-generated typewritten form by me or under my direction and supervision; that the witnesses were duly sworn by the Hearing Officer; and that the same is a true and correct reflection of the proceedings that occurred, to the best of my knowledge and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original transcript or copies of the transcript before it is

1 certified and delivered to the custodial attorney, or that
2 requires me to provide any service not made available to all
3 parties to the action.

4 SIGNED AND SWORN this _____ day of

5 _____.

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8 _____
SUSAN B. WHITSON, CCR, #158

9

NOTARY COMMISSION #12388076

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NOTARY PUBLIC IN AND FOR

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PULASKI COUNTY, ARKANSAS

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13 My Commission Expires: June 4, 2022.

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