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ARKANSAS DEPARTMENT OF HEALTH
COSMETOLOGY SECTION
COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

BE IT REMEMBERED that on Monday, the 17th day of November 2014, 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:

- WENDY SULLIVAN, CHAIR
- TRISH ANDERSON (not present)
- KIMBERLY FORD
- CYNTHIA STEELE
- JESSICA PECK
- ANGELA JACKSON
- ADRIAN TABB (not present)

REPORTED BY:

SUSAN B. WHITSON, CCR
Arkansas Supreme Court Certificate No. 158
9810 Woodland Drive
Mabelvale, Arkansas 72103
(501) 455-1170
WhitsonCCR@aol.com

1 APPEARANCES:

2 ON BEHALF OF THE COMMITTEE:

3 ELIZABETH PITMAN, ESQ.

4 HEARING OFFICER:

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

8 Staff Members Present:

9 KELLI KERSEY - Section Chief
RENEE MALLORY, ADH Branch Chief, Health Systems Licensing
10 and Reg
TERI PREACHERS - Administrative Specialist
11 CHRISTINE CHILDRES, Administrative Specialist
KATHRYN KERSEY
12 AMANDA WEEKS, Exam Coordinator
13

14 Inspectors Present:

15 LAVONNE LESTER
VERA WOOD
16 SONDRA JONES
CHRISTOPHER NICKLAUS
17 ROSELYN SMITH

18 ALSO PRESENT:

19 Lam Nguyen
20 Scottie Burchett
21 Jessica Matthews
22 Kristi Hyde

23 Court Reporter:

24 Susan B. Whitson, CCR
Arkansas Supreme Court Certificate No. 158
25

I N D E X		
	AGENDA ITEM	PAGE
1		
2		
3	Call to order - Roll Call	5
4	Approval of the minutes from the previous meeting	5
5	Approval of Paid Violations	5
6	Administrative Hearings	
7	KREATION'S HAIR SALON	6
8	WITNESSES:	
9	ROSELYN SMITH	
10	Direct by Ms. Pitman	15
11	KELLI KERSEY	
12	Direct by Ms. Pitman	21
13	KRISTI HYDE	
14	Direct testimony	25
15	Examination by the Committee	32
16	Closing by Ms. Hyde	37
17	KELLI KERSEY recalled	
18	Direct by Ms. Pitman	38
19	Examination by the Committee	39
20	Board's Exhibit Packet received	14
21	Motion by the Committee	41
22	PB NAILS	43
23	WITNESSES	
24	ROSELYN SMITH	
25	Direct by Ms. Pitman	48

1	KELLI KERSEY	
2	Direct by Ms. Pitman	51
3	QUANG NGUYEN	
4	Examination by the Committee	54
5	Board's Exhibit Packet received	46
6	Motion by the Committee	57
7	ENVY NAILS	59
8	WITNESSES	
9	CHRIS NICKLAUS	
10	Direct by Ms. Pitman	61
11	KELLI KERSEY	
12	Direct by Ms. Pitman	65
13	Examination by the Committee	67
14	Closing by Ms. Pitman	70
15	Board's Exhibit Packet received	60
16	Motion by the Committee	72
17	Meeting minutes	76
18	Reporter's Certificate	78
19		---
20		
21		
22		
23		
24		
25		

1
2
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P R O C E E D I N G S

The meeting was called to order by
Chairman Sullivan. Members present at this
time are Wendy Sullivan, Kimberly Ford, Jessica
Peck, Cynthia Steele.

Ms. Ford made a motion that the minutes
stand approved; second by Ms. Peck; unanimous
vote to approve.

Ms. Peck made a motion that the paid
violations be approved; second by Ms. Ford;
unanimous vote to approve the paid violations.

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Salon present today?

MS. HYDE: I am.

HEARING OFFICER: Okay.

MS. HYDE: Kristi Hyde.

HEARING OFFICER: Are you represented by
counsel, ma'am?

MS. HYDE: (Shaking head from side to
side.)

HEARING OFFICER: Okay. I mean some --
sometimes -- sometimes the respondents are
represented by counsel.

MS. HYDE: No. I actually am not here to
dispute my fines. I -- Kelli and I spoke. I
take complete responsibility for the violations
that I have. The concerns that I have is
that --

HEARING OFFICER: Well, I tell you what,
let's get into this, because there is -- so
this is ultimately, I guess, the board is going
to make a decision about -- I mean it's been --
I guess you've been accused of operating
without a valid license?

MS. HYDE: Yeah. Well, I mean, that's a
little --

HEARING OFFICER: Well, so -- so here

1 is -- so here is the order of it today.
2 We'll -- the -- the Board has a packet. You've
3 seen that package. Did you get notice of it?

4 MS. HYDE: Yes, sir.

5 HEARING OFFICER: Okay. And so that will
6 be introduced and then, you know, the State
7 will put on, you know, whatever witnesses they
8 have and then you will have a chance to speak,
9 I guess is what I'm trying to get to, you'll
10 have a chance to speak and then tell the board,
11 and give the board anything that you want to
12 give them, say anything to the board that you
13 want to say and then the board will make a
14 decision about, you know, what action to take
15 on your packet.

16 MS. HYDE: Okay.

17 HEARING OFFICER: So that's the -- that's
18 the order that we go through, but I just wanted
19 to make sure, but come on and have a seat at
20 the table and -- and I'll -- I got a little
21 thing here I'll read to you that sort of sets
22 out, you know, what it's going to look like
23 today.

24 So would you please introduce yourself for
25 the record.

1 MS. HYDE: I'm Kristi Hyde, owner of
2 Kreation's.

3 HEARING OFFICER: Okay. And you did
4 receive a copy of the Notice of Hearing?

5 MS. HYDE: I did.

6 HEARING OFFICER: All right. Counsel, for
7 the State, would you please introduce yourself
8 for the record.

9 MS. PITMAN: Yes, Elizabeth Pitman, Deputy
10 General Counsel for the Department of Health.

11 HEARING OFFICER: Okay. And so at this
12 point I'll explain some things for -- for your
13 benefit and anyone else who may not have
14 appeared in an administrative proceeding like
15 this before.

16 The Board will base its decision solely on
17 the evidence presented here today; this
18 includes any sworn testimony or other evidence
19 which may be admitted. The hearing is held
20 under the Arkansas Administrative Procedures
21 Act, and therefore the strict rules of evidence
22 don't apply; this means that as a hearing
23 officer I have some latitude that may allow the
24 introduction of some evidence and no -- you
25 know, allow hearsay or photocopies, things that

1 might not make it into a court of law. And,
2 let's see, this is our court reporter over
3 here, Ms. Susan Whitson. Everything that we
4 say is being typed up by her, and for that
5 reason, if anyone who speaks on the record
6 needs to speak clearly and slowly enough for
7 her to take that down. And the board members
8 themselves, they don't know anything about the
9 case except, you know, what's in this packet
10 today, you know, the package that you've
11 already seen; so if you have anything that you
12 want them to consider, you know, you will need
13 to introduce that and -- and present it to
14 them. If you gave anything to the staff, any
15 paperwork to the staff or anything like that,
16 make sure that that gets to the board for them
17 to consider it. Again, these proceedings are
18 subject to the Arkansas Freedom of Information
19 Act and -- and all parts of the hearing,
20 including the deliberations of the board, are
21 open to the public.

22 So anybody that's going to be a witness
23 today, could you please stand and raise your
24 hand to be sworn by the court reporter.

25 COURT REPORTER: You swear them.

1 HEARING OFFICER: I swear them?

2 COURT REPORTER: (Nodding head up and
3 down.)

4 HEARING OFFICER: All right. State, do
5 you have any witnesses?

6 MS. PITMAN: Yes. Roselyn and Kelli.

7 HEARING OFFICER: Y'all stand and raise
8 your right hand. All right. You're going to
9 be a witness, too?

10 MS. HYDE: Yes.

11 HEARING OFFICER: Okay.

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

14 HEARING OFFICER: Okay. All the witnesses
15 have been sworn.

16 Are there any other preliminary matters or
17 exhibits to be discussed or offered at this
18 time?

19 MS. PITMAN: Yes, sir. There is a packet
20 behind the Kreation's Nails -- Kreation's Hair
21 Salon tab, it's a total page number of 24, I
22 believe, a 24-page packet, the first 13 pages
23 are our documents, the State's documents, the
24 remaining ten are pictures that were submitted
25 by the salon owner.

1 HEARING OFFICER: Okay.

2 MS. PITMAN: And we would ask that those
3 be introduced.

4 HEARING OFFICER: Okay. Do you -- have
5 you seen those?

6 MS. HYDE: I -- I did, but, I mean, and I
7 don't mean to disrespect, but I'm not here
8 to -- to dispute any of this.

9 HEARING OFFICER: Okay.

10 MS. HYDE: I mean I just -- my thing is,
11 is that I just want to know how to fix it,
12 because like on these pictures, they had been
13 like that forever, and then somebody comes in
14 and I get nailed with all this stuff, and I
15 actually -- and when I say this -- I knew I
16 would do this -- I actually live where I work.
17 Okay? And it's not a house, you have to be
18 there. It's very much salon.

19 We bought the Ford dealership in Lonoke.
20 And so where the car dealership, like where
21 they displayed cars -- thank you -- that is
22 where my salon is. Then it's all shut off to
23 my house. So a lot of times, you know, I don't
24 have to go to a break room or, you know, I
25 don't -- I may not clean until the end of the

1 night, you know. My girls, you know -- I mean
2 I'm not disputing that, but like --

3 HEARING OFFICER: Yes, ma'am. I -- I tell
4 you what, let's -- so, I guess --

5 MS. HYDE: I mean like --

6 HEARING OFFICER: I want to -- I want to
7 give you --

8 MS. HYDE: Besides this stick -- besides
9 this stick here.

10 HEARING OFFICER: I want to get to
11 you telling your story, ma'am, I want to get to
12 you telling your story, but we've got to go
13 through -- we've got to go through this
14 procedure first.

15 MS. HYDE: Okay.

16 HEARING OFFICER: But you're going --
17 you're going to get to it, trust me, you're
18 going to get to tell your story.

19 MS. HYDE: Okay.

20 HEARING OFFICER: But what I'm asking now
21 is have you seen --

22 MS. HYDE: Okay.

23 HEARING OFFICER: -- do you have any
24 objections to any of these pictures or anything
25 being admitted into evidence?

1 MS. HYDE: (Shaking head from side to
2 side.)

3 No.

4 HEARING OFFICER: Do you have anything
5 that you want to submit right now?

6 MS. HYDE: (Shaking head from side to
7 side.)

8 HEARING OFFICER: Okay. The -- the
9 State's packet will be admitted at this time.

10 (WHEREUPON, State's Exhibit No. 1 was
11 received in evidence.)

12 MS. PITMAN: Also, that they take notice
13 of the rules and regulations governing
14 cosmetology and the cosmetology act.

15 HEARING OFFICER: Okay. All right. All
16 right. So do you need to me -- I mean do you
17 need me to take notice of that or is it that
18 the board takes notice of that?

19 MS. PITMAN: Yes, that it's part of the
20 record that they take notice.

21 HEARING OFFICER: Okay. That's -- all
22 right, that's part of the record.

23 Okay. Do you wish to make an opening
24 statement?

25 MS. PITMAN: No. No.

1 HEARING OFFICER: Okay. Call your first
2 witness.

3 MS. PITMAN: Call Roselyn Smith.

4 THE WITNESS: Yes.

5 WHEREUPON,

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

10 DIRECT EXAMINATION

11 BY MS. PITMAN:

12 Q Okay. Sorry, Roselyn.

13 Please tell us your full name and where you work.

14 A Roselyn Smith, Department of Health, cosmetology.

15 Q Okay. And are you an inspector for the cosmetology
16 section?

17 A Yes.

18 Q And did you do an inspection of Kreation's Hair
19 Salon?

20 A Yes.

21 Q What day?

22 A June 5, 2014.

23 Q Okay. And was that a routine inspection or was it a
24 result of a complaint?

25 A Just a regular inspection.

1 Q Okay. You go out on those every six months; is that
2 right?

3 A Yes, ma'am.

4 Q Okay. What did you find on June 5th, when you
5 went out to Kreation's Hair Salon?

6 A The -- the first thing that I see on the inspection
7 sheet is that the salon licenses weren't current, and
8 then there was a practitioner license that wasn't current
9 but she wasn't working that day.

10 Q Okay.

11 A And --

12 Q And Roselyn, before we continue, are you on Page 7
13 of the hearing packet?

14 A Seven.

15 Q Okay. Thank you. Sorry for interrupting you. Go
16 on.

17 A And then there was a wax stick, used wax stick in
18 the wax, and there was combs and brushes that was out
19 that weren't covered.

20 Q Okay. And did you take pictures that day?

21 A Yes.

22 Q All right. Can you tell us, I believe your pictures
23 start on Page 11?

24 Can you tell us what we're looking at here on
25 Page 11?

1 A It -- it's a container with the combs and pumps. I
2 don't know if they are clean or dirty, I just assumed
3 that they were clean, but they weren't covered.

4 Q And is it a rule that they have to be covered, that
5 these things have to be covered?

6 A Yes. If it's clean it has to be in a closed
7 container; if it's dirty, it has to be in a labeled
8 container.

9 Q Okay. Thank you.

10 What's on Page 12?

11 A It's a station that just got a lot of brushes and
12 combs laying out. She's -- the young lady, when I asked,
13 she said that this was someone else's station that wasn't
14 there that day.

15 MS. HYDE: That would be my station.

16 THE WITNESS: But she was using it, so --

17 BY MS. PITMAN:

18 Q Who was using it?

19 A The lady that I spoke to, and I don't remember her
20 name. I don't know if that was the one that signed it,
21 she said she was working there at that station. I don't
22 know if it was Ms. Debbie, I don't -- I'm not sure.

23 MS. HYDE: We all have our own stations.

24 I mean, there -- there was --

25 HEARING OFFICER: You'll -- yeah, you'll

1 get -- so here is -- here is how it will flow.
2 You will get a -- she will ask questions and
3 then when she's done you'll get a chance to ask
4 any questions of her, you know, any questions
5 that you want of this witness, and then the
6 board will get to ask any questions of this
7 witness, but -- and I'll -- I'll tell you this,
8 I don't know if you brought a notepad with you
9 or something, but if you -- while we're going
10 through this process, if you have any -- if you
11 have anything that you want to clarify, you
12 hear something that one of the witnesses says,
13 and you can't clarify it through the witnesses
14 or some testimony of theirs that you want to
15 rebut ultimately when you testify, you know,
16 make a note of that so you'll remember it and
17 you can get to it later, but you will get to
18 ask this witness any questions that you want
19 after the State's -- after the State is done
20 with her.

21 BY MS. PITMAN:

22 Q Okay. Now, you said the lady that was working that
23 day was working at the station that's shown on Page 12?

24 A That's what she said.

25 Q Okay. And then what's Page 13?

1 A It's -- I guess it's the wax area. It has a -- a
2 wax stick in the wax pot and it's also the -- the clean,
3 like rollers and stuff, it's not covered.

4 Q Okay. But this picture here is also showing, it's
5 that the used wax stick is -- is that -- what violation
6 is this showing?

7 A That would be 20 -- 22 -- 21.

8 Q Okay.

9 A All used instruments that cannot be disinfected are
10 disposed immediately after use.

11 Q And then going back to Page 12, I don't think I
12 asked, what violation is this showing us?

13 A You said 12? That would be 22.

14 Q The brush and comb not covered, is that what you
15 have there?

16 A Yes.

17 Q Okay. And then you also stated that their license
18 was expired, the salon license?

19 A Yes.

20 Q What day did it expire?

21 A Oh, 12/13 -- 12/31/13.

22 Q Okay. And did you call the office to verify that it
23 had not been renewed?

24 A Yes.

25 Q Okay. And it looks like it was Ms. DePriest, Debbie

1 DePriest, that signed for the inspection sheet that day.
2 Did she offer any statements or explanations for these
3 violations?

4 A Not that -- not that I -- no.

5 Q Okay. And, Ms. Smith, did you do anything after
6 June 5, 2014, after your inspection that day to follow
7 up?

8 A No. I have not been back.

9 MS. PITMAN: I don't have any other
10 questions.

11 HEARING OFFICER: All right. Ma'am, do
12 you have any -- any questions for this witness?

13 MS. HYDE: I don't have any questions, I
14 mean --

15 HEARING OFFICER: Okay. Okay. Okay.
16 Board, do you have any questions of this
17 witness?

18 No questions from the board. Okay. You
19 can call your next witness.

20 MS. PITMAN: Call Kelli Kersey.

21 THE WITNESS: Kelli Kersey, Arkansas
22 Department of Health, Cosmetology Section,
23 Section Chief.

24 WHEREUPON,

25 KELLI KERSEY,

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

4 DIRECT EXAMINATION

5 BY MS. PITMAN:

6 Q Now, Ms. Kersey, you're aware of the inspection that
7 Ms. Smith did on June 5th?

8 A Yes, ma'am.

9 Q Okay. And did you go through those violations on
10 that sheet with her?

11 A I did.

12 Q Okay. First, what is the recommended penalty for
13 today?

14 A \$350.

15 Q Can you tell us what -- how you arrived at that
16 penalty?

17 A Her salon license wasn't current so that's 250; all
18 supplies and instruments that can't be disinfected is
19 \$50; and disinfected instruments stored in a clean
20 covered place is \$50.

21 Q Okay. The practitioner's license not current is not
22 listed on here. Why is that?

23 A Because she wasn't working that day.

24 Q Okay. Is there anything else marked on this sheet
25 that's not listed on your amount?

1 A All posted license are not current is not listed
2 because if they -- if they don't have a current license,
3 we don't give them that violation.

4 Q Okay.

5 A Because, obviously, it can't be posted if they don't
6 have a current one.

7 Q Okay. And then the \$250 violation would have
8 covered that?

9 A Right. Yes.

10 Q Did you send Ms. -- and I'm sorry.

11 MS. HYDE: Kristi Hyde.

12 MS. PITMAN: I'm sorry? Hyde?

13 MS. HYDE: Kristi.

14 BY MS. PITMAN:

15 Q Did you send Ms. Hyde the Notice of Hearing?

16 A We did.

17 Q What day?

18 A July 10th.

19 Q Okay. Did she sign for it?

20 A She did.

21 Q And is that -- that's on Page 4?

22 A Yes.

23 Q Well, no, that notice of violation --

24 A This is -- yeah, sorry. We -- we sent one and she
25 signed for it and requested a hearing on July 30th.

1 Q Okay.

2 A And then she couldn't come in September, so we
3 postponed it until this month.

4 Q Okay. And you sent her an Order and Notice -- and
5 Notice of Hearing for today's hearing; is that correct?

6 A Yes, that's what she signed.

7 Q And that's what she signed for on Page 4?

8 A Yes.

9 Q Okay. And that Order and Notice of Hearing tells
10 her to be here today at 9:00 a.m. at the Freeway Medical
11 Building?

12 A Correct.

13 Q And it lists out the violations that you have
14 covered?

15 A Yes.

16 Q Do you have anything else you would like us to know
17 about this case, Ms. Kersey?

18 A I want to point out with the pictures that -- that
19 you can see, that says in "inspector pictures" and "salon
20 pictures," she sent in pictures. And the two stations
21 that were in the pictures are two different stations, so
22 I'm confused on whose station is what. On Page 14 is one
23 station, and on 15 is a different station, because it's
24 by a window, but on 14 is not by a window, so I was a
25 little confused by those pictures of which station we

1 were talking about. So, 17, obviously, the wax had been
2 cleaned up, you know, the wax had been taken out. And I
3 believe that's all.

4 Q Okay. And these pictures came from Ms. Hyde,
5 correct, the pictures that are on Page 14, I believe?

6 A Correct.

7 Q Okay.

8 A Yes.

9 MS. PITMAN: I don't have any other
10 questions.

11 THE WITNESS: Oh, I'm sorry, one more
12 thing. She did renew, she has renewed her
13 license before she got the violation, so the
14 license has been renewed.

15 MS. PITMAN: Okay.

16 HEARING OFFICER: Okay?

17 MS. PITMAN: No other questions.

18 HEARING OFFICER: All right. Ms. Hyde, do
19 you have any questions for this witness?

20 MS. HYDE: No.

21 HEARING OFFICER: Okay. Board, do you
22 have any questions for the -- for the witness?

23 All right. Call your next.

24 MS. PITMAN: No other witnesses.

25 HEARING OFFICER: All right. Ms. Hyde,

1 that's what I've tried to tell Kelli. Kelli,
2 tell me what to do, because, okay, like this
3 was my station that she took a pictures of. We
4 all have our own stations. There was
5 absolutely not one reason why anybody would
6 have been working at my station, period. Why
7 they were there, I have absolutely no idea.

8 You know, the reason why I took a picture
9 of both of these is because Crystal and I are
10 the two that don't have stations. There is --
11 and Kelli is really not there that much. Cat,
12 she -- her trolley cart closes, has a door on
13 it. These two stations do not have a door on
14 it, but they have a table top on it, which,
15 when you shut the drawers, they are covered, if
16 you want to get really technical about
17 everything, you know. Now, my dad is in the
18 process of building a station which won't be a
19 problem ever again. What I have done to this
20 is I've taken the drawers out, I've gotten the
21 little shoebox that has the lids, I've put my
22 brushes in it, put the lids on it, and put it
23 back in the trolley cart until I can get the
24 stations, and it's just money that I haven't
25 done that, you know.

1 Like I said, I actually live there, so,
2 you know, we are extremely busy, like most
3 salons are. You know, I mean, I'll be honest
4 with you, I don't put my drawers -- my brushes
5 between customers, and anybody in this room
6 that is a hairdresser would know, we don't
7 clean up our station before the next one comes
8 in, if everybody just wants to get honest
9 around here. We -- every one of us. And, you
10 know, and a lot of times we don't have time to
11 clean up for the next one. It's not that we're
12 nasty or that we're dirty or, you know, I mean,
13 if I had a case, which is -- I can, in my 27
14 years on this hand how many head lice -- I stop
15 all production and everything gets cleaned
16 before my next one sits in my chair. So there
17 are times that I do say, we got to take a break
18 and I've got to get this done. But I can't get
19 anybody to tell me what to do different.

20 Now, since -- since this has happened in
21 the picture of this, my dad has put drawers --
22 doors on every one of this, on every one of
23 these cabinets there are doors where everything
24 is covered now. There is nothing -- you know,
25 now if I wash a bowl, I'll put it back on the

1 counter and cover it with a towel, you know,
2 but I can't get anybody to tell me how to have
3 that perfect salon so that when -- when the
4 inspector walks in -- you know, they nailed me
5 for this, this, and this this time, okay, but
6 what's next time? If you don't tell me what to
7 do, I can't change it, because I've done the
8 same thing for 27 years.

9 And my other -- I have two girls that have
10 done hair for over 30 years, they have done the
11 same thing, we're doing the same thing every
12 day that we have for years. And so I've asked
13 Kelli, you know, I would welcome my shop to be
14 something that -- you know, nobody has this
15 time, but to come in and do like a -- a perfect
16 salon and shoot pictures and let us do a small
17 ten minute video that when I renew my license
18 that I have to check that video out, show it,
19 sign for it, and when you come in and nail me
20 for this, I'm -- I'm guilty, other than my shop
21 license. And if y'all knew everything that has
22 gone into my life, I'm going through a divorce,
23 all of this stuff, which Kelli is aware of, you
24 know, I've just built this house, you know,
25 everything, and I don't want to lose all of

1 that, and now I've gotten nailed with a \$400
2 fine. I mean it's just like everything is
3 caving in. But I do want my salon to be
4 perfect. I mean, everybody's come to work for
5 me, you know, and I don't want to lose them for
6 the fact of, you know, Kelli --

7 (Angela Jackson joined the proceedings.)

8 THE WITNESS: -- one of the girls who
9 worked for me, her life was in shambles, you
10 know, she probably didn't even realize she had
11 a cosmetology license, you know, which she
12 doesn't work that much. So it is renewed,
13 Kelly's license is renewed. You know, mine, I
14 was building a house, I was -- you know, no
15 excuses, I take full responsibility for those
16 things. But I don't know what she's going to
17 come in and find next, because I'm not doing
18 anything any different besides putting the
19 doors on the cabinet, my dad is going to build
20 the -- the -- my thing so everything is under
21 drawers. You know, I mean, I'm doing that, but
22 if I don't know -- you know, I'm telling you
23 that dish drain, which that was, I think, your
24 first or second time that you had been there.
25 I mean, I'm not saying anything against you at

1 all. I'm just -- this is more for the State
2 Board of Cosmetology, that, you know, that dish
3 drain had been there for two years. And prior
4 to that I had another shop that had a dish
5 drain that also that's where I put all the
6 clean stuff and it was never covered, but
7 nobody had ever said anything. You know, and
8 so then, and of course these pictures are as
9 big as life, you know, so when I get these
10 pictures in it's a lot worse than --

11 You know, that stick being in there,
12 Crystal had just walked away from it. Just
13 walked away. Am I going to use that on
14 somebody else? Absolutely not. Did you know
15 that? Probably in your mind you knew it but,
16 you know, I mean I have a big old box of sticks
17 there, it was obviously that that was not the
18 only stick in the place. You know, but I -- I
19 can't charge those girls for that, you know. I
20 mean I just want to know how to fix it so that
21 when you come back in it's not -- you know, why
22 couldn't -- if y'all are going to get tough,
23 hey, you know, there are salons out there that
24 need to be tough and I, obviously, am one of
25 them if there is things that are wrong, but why

1 can't we all have a warning, you know? You --
2 I -- this is the way it's supposed to be, you
3 know, and you've got 30 days to -- to present
4 that it's right. You know, be it picture or --
5 you know, I know that she doesn't have time to
6 come back to every salon that's wrong, but give
7 us an opportunity to get it right before we get
8 nailed with these.

9 I mean, I'm just like everybody else in
10 this room. \$400? Ladies and gentlemen, that's
11 a lot of money to every one of us. You know,
12 and so we're just -- I mean I'm just trying to
13 offer a service out there, but give us a
14 chance, give us a warning and give us 30 days
15 to fix it, you know, or ten days. Give me two
16 days and I'll have it fixed. I mean, it took
17 me two seconds to be on the phone with Kelli
18 and say, Kelli, you know, tell me how to fix
19 this because if it's not this it's going to be
20 something else.

21 How many -- I mean, we've had roll abouts
22 for years. Everybody puts their perm rods in
23 roll abouts, and then we take the drawer out,
24 we use it, we wash them, we put it back in the
25 roll about, we put it back in there, and now

1 we're -- we're not supposed to have roll
2 abouts?

3 HEARING OFFICER: All right. Ms. Hyde, I
4 tell you what, I -- do you have any more
5 testimony or evidence you want to offer?

6 THE WITNESS: No, that's it, no.

7 HEARING OFFICER: Okay. So at this point,
8 the State, do you have any questions you want
9 to ask?

10 Board, do you have any questions you want
11 to ask of Ms. Hyde? Anything y'all want to
12 ask?

13 MS. STEELE: I do.

14 HEARING OFFICER: Okay.

15 MS. STEELE: Like you submitted some of
16 these photographs, and -- and first off, I'd
17 say -- tell you to just reread your rules and
18 regs and I think you'll -- a lot of things will
19 be covered in that. Now then, you know, I
20 think when you resubmitted some of your photos,
21 like on Salon's Picture No. 17, you've still
22 got open containers there.

23 THE WITNESS: No, no, that was that --
24 that was that day, I just wanted Kelli to
25 have -- I didn't realize -- I wasn't there when

1 the inspector came in, so I didn't know that
2 she took pictures. I took pictures of the way
3 things were and sent them to Kelli, you know,
4 saying, help me fix this.

5 MS. STEELE: That's what I'm saying, I
6 just --

7 THE WITNESS: That's what I did, tell me
8 what to do, here is these pictures, now tell me
9 what to do to make it right.

10 MS. STEELE: So on Page 17, Photo 17, you
11 should, you know, make sure that lid is covered
12 and -- and your containers need to be totally
13 closed up; and then on 18, those sticks, those
14 have to be kept covered, I mean, that's the --

15 THE WITNESS: Well, I just took the lid
16 off the sticks to show you that it was full of
17 sticks. You know, that's what I'm saying, you
18 know, I -- I think a lot of that -- I took
19 those pictures as is, you know, to say, okay,
20 Kelli, here is my station every day, you know,
21 tell me how to fix that station every day. I
22 mean, it's an open trolley cart, you know --

23 MS. STEELE: Okay. I --

24 THE WITNESS: -- but when I have the
25 drawer shut, it's closed, they are under that

1 table.

2 MS. STEELE: Then Inspector's Picture 12,
3 it looks like you've got a toothbrush there and
4 a phone jack and a --

5 THE WITNESS: Yeah, that's my station and
6 I was off and she -- you know, I mean --

7 MS. STEELE: That's just nasty, though,
8 stall and all.

9 THE WITNESS: You know, I mean --

10 MS. STEELE: And do they understand, in
11 Inspector's Picture 13, the dirty stick in the
12 pot, the wax pot?

13 THE WITNESS: Oh, absolutely. I mean she
14 had just walked -- she still had the customer
15 in her -- in her --

16 MS. STEELE: But you don't put it on a
17 clean --

18 THE WITNESS: Oh, it needed to be thrown
19 in the trash.

20 MS. STEELE: Yes.

21 THE WITNESS: You know, which is right
22 behind this trolley cart. You know, and why
23 she didn't do it, I don't know. I mean, we
24 always --

25 MS. STEELE: Because the wax strips are

1 thrown away somewhere and then --

2 THE WITNESS: Yes.

3 MS. STEELE: -- and or is that them on the
4 left?

5 MS. SMITH: That's them on the left.

6 THE WITNESS: That's them on the left.
7 Okay.

8 I mean, she -- you know, this is just
9 totally unacceptable and I will -- and I am
10 fine with that, I am completely -- I take full
11 responsibility for that, you know. But, you
12 know, some of that obviously I know how to fix,
13 and, you know, if somebody was working at my
14 station and shouldn't have been, you know, I
15 mean, I don't care if they work at my station
16 or not but, you know, if somebody is working
17 there, then that would have been why there was
18 stuff out on there.

19 MS. STEELE: And then --

20 THE WITNESS: You know, some of these
21 pictures are completely unacceptable, I -- I
22 totally, totally agree with you.

23 MS. STEELE: And then finally I would
24 suggest to you to -- if you can't clean up in
25 between your clients then you need to

1 reschedule your time between them. I mean it
2 has to be totally clean for the next person.

3 THE WITNESS: Okay.

4 MS. FORD: Should.

5 MS. STEELE: Should be.

6 That's all.

7 HEARING OFFICER: Any more questions? Any
8 more questions from the board?

9 MS. FORD: I would like to ask Kelli a
10 question, if I can, if we're done with
11 Ms. Hyde?

12 HEARING OFFICER: Well, I guess -- I guess
13 we -- once everybody has made -- before
14 deliberations, if you have a -- if they have
15 questions before they recess or whatever before
16 we go off the record, you can ask a question of
17 the board's attorney.

18 MS. FORD: Okay.

19 HEARING OFFICER: At this point, closing
20 arguments? Do you have any closing arguments
21 you want to make?

22 MS. PITMAN: I do not.

23 HEARING OFFICER: Okay. And when I say
24 closing arguments, if you just briefly want to,
25 you know, sum up what you're asking for, what

1 you're -- what you would like the board to
2 consider.

3 MS. HYDE: Okay. I just -- I just think
4 that we should be, as -- as cosmetologists that
5 are out there offering a service, if things are
6 going to change and we're going to make the
7 cosmetology board like it used to be or -- or
8 new or better or whatever, that, you know, give
9 us salons that -- you know, an -- an
10 opportunity to fix things that we've done like
11 we've done forever and ever and ever. I mean
12 some of these pictures I will tell you that,
13 you know, we've changed and we've covered and
14 we've made right, but I would have done that
15 from the very beginning had I known that it
16 would have been a problem. I mean I've worked
17 in salons and that's -- you know, give us the
18 opportunity to make it right before we get
19 hammered with 350, \$400 fines, you know.

20 HEARING OFFICER: Okay.

21 MS. HYDE: I mean that's -- that's all I
22 ask. I mean, I've asked Kelli, you know, let
23 me be a part of helping, you know, come up with
24 a plan to, you know, that we all -- every
25 cosmetology, not just me or not just Lonoke,

1 we're all on the same page.

2 HEARING OFFICER: All right. Does anybody
3 else have anything else they want to offer for
4 the record before we -- before we close for
5 deliberations?

6 MS. PITMAN: I think Ms. Kersey wanted to,
7 if we may, explain something else in the
8 packet.

9 HEARING OFFICER: Okay. Okay.

10 WHEREUPON,

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

15 DIRECT EXAMINATION

16 BY MS. PITMAN:

17 Q It's on Page 10.

18 A On Page 10, she did get a violation on 10/1/2013 and
19 we waived that violation.

20 Q Do you know what that is for, Ms. Kersey?

21 A It was for, it was No. 22, I believe.

22 MS. HYDE: And that was my station. That
23 was my station, and I wasn't there, and they
24 went -- they went in my station and said I had
25 dirty clippers. I mean it was one thing -- you

1 know, that -- I mean it's so frustrating
2 because --

3 HEARING OFFICER: Did you say you waived
4 that violation though?

5 THE WITNESS: We did.

6 HEARING OFFICER: So that means it's not
7 being -- that violation is not being considered
8 today?

9 THE WITNESS: Exactly.

10 HEARING OFFICER: Okay. All right.
11 Ma'am, did you say you had a question for --
12 for the board --

13 MS. FORD: I did. You made -- you made a
14 statement that she did renew her license?

15 THE WITNESS: Uh-huh.

16 MS. FORD: And what date did she renew?

17 THE WITNESS: 6/10, I believe. I believe
18 it was 6/10. Yeah, 6/10.

19 MS. FORD: 6/10.

20 THE WITNESS: 2014.

21 MS. FORD: And this was done on 6/5?

22 THE WITNESS: Yeah.

23 MS. FORD: All right. That's what I
24 needed.

25 HEARING OFFICER: Okay. If no -- if no

1 one else has anything else to offer for the
2 record, then we are going to declare the record
3 to be closed and complete, and then the board
4 will recess and deliberate, and then we'll come
5 back on the record for the board's decision,
6 okay. So we're off the record at this point.

7 And, Ms. Hyde, you're welcome to stay, but
8 I will caution you about this, the board will
9 be discussing this openly, you know, on what to
10 do with your case and all that, and though you
11 may want to talk with them and interact with
12 them and try to influence their decision while
13 they are deliberating and talking, you know,
14 we're off the record, it's -- it's to be
15 decided now.

16 All right. We're off. I mean we're --
17 we're off record.

18 (WHEREUPON, the CTAC retired to
19 deliberate, off the record, from 9:35 a.m. to
20 9:40 a.m. and returned with the following
21 decision:)

22 MS. SULLIVAN: All right. Back on the
23 record.

24 HEARING OFFICER: Okay. We are back on
25 the record in the case of Arkansas Department

1 of Health versus Kreation's Hair Salon before
2 the Cosmetology Technical Advisory Committee.

3 I believe we have a motion so I'm going to
4 turn the hearing back over to the -- to the
5 Chairwoman, Ms. -- Ms. Wendy Sullivan, and if
6 you're ready to entertain a motion.

7 MS. SULLIVAN: Go back on the record. Do
8 we have a motion in this case?

9 MS. FORD: Yes. I would like to make a
10 motion that the salon license and the current
11 penalty of 250, and also on Rules No. 21 and
12 22, the 50-dollar fine separately, for a total
13 of \$350 is the fine.

14 MS. SULLIVAN: Do we have a second?

15 MS. PECK: I'll second.

16 MS. SULLIVAN: All in favor?

17 BOARD MEMBERS: Aye.

18 MS. FORD: She can't vote.

19 MS. SULLIVAN: All right. Any opposed?

20 All right. We have our motion and it's
21 second -- seconded.

22 HEARING OFFICER: Okay. Let the -- let
23 the record reflect that the motion was passed,
24 it will be reduced to writing. Is that -- is
25 that how we do it here?

1 MS. PITMAN: (Nodding head up and down.)

2 HEARING OFFICER: And service will be made
3 or attempted upon all parties. Ms. Hyde, if
4 you care to appeal this decision an appeal can
5 be taken under the Administrative Procedures
6 Act. If there are no other questions or
7 comments, then this hearing is concluded and
8 the record is closed.

9 All right. Seeing none, the record is
10 closed. That's it for this one.

11 (WHEREUPON, at 9:42 a.m., the
12 above-entitled proceedings were concluded.)

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1 ADMINISTRATIVE HEARING
2 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
3 IN THE MATTER OF:
4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER
5 v.
6 PB NAILS RESPONDENT

7 HEARING OFFICER: All right. Okay. I
8 understand we're going to go a little out of
9 order here, so the next case will be Arkansas
10 Department of Health versus PB Nails. Is
11 anyone from PB Nails here?

12 MR. NGUYEN: (Indicating.)

13 HEARING OFFICER: All right. So this is
14 a -- we're on the record.

15 MR. NGUYEN: I'm sorry, sir?

16 HEARING OFFICER: No, I was -- I was -- I
17 was going to say, we're on the record now,
18 before the Cosmetology Technical Advisory
19 Committee, it's November 17, 2014, and the time
20 is about 9:40 a.m. We're at the Freeway
21 Medical Building, Room 801, Little Rock,
22 Arkansas.

23 Again, this is in the matter of Arkansas
24 Department of Health versus PB Nails. The
25 board set a hearing for today concerning the

1 matters specified in the Notice of Hearing. My
2 name is Jake Jones, I'm an attorney and I will
3 serve as the Hearing Officer in this matter.

4 PB Nails is present. And you're -- you're
5 not represented by counsel today, are you?
6 You're don't have an attorney today?

7 MR. NGUYEN: No, sir.

8 HEARING OFFICER: Okay. And did you
9 receive -- could you please introduce yourself
10 for the record?

11 MR. NGUYEN: Yes, sir. Actually, I'm on
12 behalf of my dad, who is the owner. The reason
13 he is not here today, because he's got an
14 appointment with the doctor so he couldn't be
15 here today.

16 HEARING OFFICER: But you're
17 representing -- you're representing PB Nails --

18 MR. NGUYEN: Yes, sir.

19 HEARING OFFICER: -- before the board
20 today? Okay. Could you state your name for
21 the record?

22 MR. NGUYEN: My name is Quang, Quang
23 Nguyen.

24 HEARING OFFICER: Okay. And you did
25 receive notice of the hearing today?

1 MR. NGUYEN: Yes, sir.

2 HEARING OFFICER: Counsel for the State,
3 would you introduce yourself?

4 MS. PITMAN: Yes. My name is Elizabeth
5 Pitman and I am Deputy General Counsel for the
6 Department of Health.

7 HEARING OFFICER: Okay. Did -- were you
8 here -- did -- did you hear me explain sort of
9 the rules of the hearing in the -- during the
10 last hearing?

11 MR. NGUYEN: (Nodding head up and down.)

12 HEARING OFFICER: Do you need me to go
13 over any of that again?

14 MR. NGUYEN: No. That's all right.

15 HEARING OFFICER: Okay. All right. And
16 this is subject to -- to -- what do we need to
17 recognize, that all of this is -- what rules
18 and regulations?

19 MS. PITMAN: The Cosmetology Act and the
20 rules and regulations of the Cosmetology --

21 HEARING OFFICER: Okay. We'll take notice
22 that -- that this procedure is -- this
23 proceeding is subject to that.

24 Okay. Anybody that's going to be a
25 witness in this case, could you stand and we'll

1 swear you in.

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

4 HEARING OFFICER: Okay. All are sworn.

5 Are there any preliminary matters or
6 exhibits to be discussed or offered at this
7 time?

8 MS. PITMAN: Yes. Behind the PB Nails tab
9 in the booklet there is a packet of information
10 that's eight pages. I would like to have that
11 admitted.

12 HEARING OFFICER: Okay. And you've seen
13 that, you don't have any -- you don't have any
14 objections to any of that packet or anything
15 right now?

16 MR. NGUYEN: No, sir.

17 HEARING OFFICER: Okay. Do you have
18 anything that you want to offer?

19 MR. NGUYEN: No, sir.

20 HEARING OFFICER: Any documents or
21 exhibits or anything, nothing other than
22 testimony today?

23 MR. NGUYEN: No, I don't.

24 (WHEREUPON, Board's Exhibit No. 1 was
25 received in evidence.)

1 HEARING OFFICER: All right. And counsel
2 for the State, you're ready to proceed?

3 MS. PITMAN: Yes.

4 HEARING OFFICER: All right. PB Nails,
5 you're ready to proceed?

6 MR. NGUYEN: Yes, sir.

7 HEARING OFFICER: Okay. Does either side
8 wish to make an opening statement?

9 MS. PITMAN: No.

10 HEARING OFFICER: Do you wish to make any
11 kind of opening statement just -- and it's
12 not -- not necessarily testimony, but just sort
13 of what you -- what you expect to show or
14 tell -- what you expect to show the board
15 today.

16 MR. NGUYEN: Actually, I was going to be
17 here and take the full responsibility for --

18 HEARING OFFICER: Okay.

19 MR. NGUYEN: -- for the violation that
20 we -- that we did.

21 HEARING OFFICER: Okay. We -- okay.
22 Well, you'll get a chance. You kind of saw how
23 the other one went?

24 MR. NGUYEN: Yes, sir.

25 HEARING OFFICER: You'll get a chance to

1 do that in a little bit.

2 All right. Counsel for the State, would
3 you call your first witness?

4 MS. PITMAN: Call Roselyn Smith.

5 WHEREUPON,

6 ROSELYN SMITH,

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

10 DIRECT EXAMINATION

11 BY MS. PITMAN:

12 Q Tell us your name and where you work, Ms. Smith.

13 A Roselyn Smith, Arkansas Department of Health,
14 cosmetology inspector.

15 Q Okay. And, Ms. Smith, did you inspect PB Nails?

16 A Yes, I did.

17 Q Okay. When?

18 A It was October 3, 2014.

19 Q Okay. And was that a routine inspection or part
20 of -- or a response to a complaint?

21 A Routine inspection.

22 Q Okay. And what did you find on October 3rd when
23 you went out to PB Nails?

24 A On Page 6, I found used files and buffers in a
25 manicure table, drawer, and I think that's -- I don't

1 know if it was clean or dirty, but I asked and she said
2 it was just what it is.

3 Q Okay. Are you on Page 6, Roselyn?

4 A Six, yes.

5 Q Okay. And you don't know what is -- if -- if what
6 is clean or dirty?

7 A No.

8 Q Which? What thing on here?

9 A Well, we know that the files are used and the buffer
10 is used.

11 Q Okay.

12 A But I don't know if the -- this is dirty or clean or
13 what.

14 Q Okay.

15 A So it's marked off for separation of disinfected --
16 disinfected and contaminated instruments.

17 Q Okay. And Page 7?

18 A Pretty much the same thing.

19 Q Okay.

20 A Different drawer.

21 Q And, Ms. Smith, so that the record is clear and
22 Mr. Nguyen is clear, what are you looking for when it
23 comes to these matters, the files and the nail?

24 A Well, if it's used, it's, again, it's supposed to be
25 thrown away immediately after use, and if it's clean, it

1 should be, you know, in a clean, covered drawer.

2 Q Okay. And were there any other violations at PB
3 Nails that day?

4 A No.

5 Q Okay. Was Mr. Nguyen, who is here today, was he
6 there that day as well?

7 MR. NGUYEN: No. I wasn't there that day.

8 THE WITNESS: I don't remember seeing him.

9 BY MS. PITMAN:

10 Q You don't remember seeing him? Okay. But you do
11 have his name listed here on Page 5; is that right?

12 A What was his name? I'm sorry.

13 MR. NGUYEN: Quang Nguyen.

14 BY MS. PITMAN:

15 Q Quang Nguyen?

16 A Yes, his name is listed.

17 Q Okay. So he does work in the salon?

18 A Yes.

19 Q And after October 3, did you go back out to PB
20 Nails, Ms. Smith?

21 A No, ma'am.

22 Q Okay. And the license was current and all --
23 everybody working that day had a current license; is that
24 right?

25 A Yes.

1 MS. PITMAN: Okay. No other questions.

2 HEARING OFFICER: Okay. Mr. Nguyen, do
3 you have any questions for this witness?

4 MR. NGUYEN: No, I don't.

5 HEARING OFFICER: Okay. Board, do you
6 have any questions for this witness?

7 All right. Seeing none, State, you can
8 call your next witness.

9 MS. PITMAN: Call Kelli Kersey.

10 MS. KERSEY: Kelli Kersey, Arkansas
11 Department of Health, cosmetology section,
12 section chief.

13 WHEREUPON,

14 KELLI KERSEY,

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

18 DIRECT EXAMINATION

19 BY MS. PITMAN:

20 Q Ms. Kersey, did you review the inspection sheet with
21 Ms. Smith after her October 3rd inspection?

22 A I did.

23 Q And you're aware of the violations listed on that
24 sheet?

25 A Yes, ma'am.

1 Q What is your recommended penalty for today?

2 A I believe it's \$100. Wait a minute, that's my
3 thing. It's \$100.

4 Q Okay. And what is that based on?

5 A The used files on No. 21, and separation of
6 disinfected and contaminated implements -- implements on
7 22.

8 Q Okay.

9 A Fifty-dollar fine each.

10 Q Thank you.

11 Did you send a violation notice in this case?

12 A We did.

13 Q Did you --

14 A No, we did not send a violation notice, we just sent
15 a hearing notice. Sorry.

16 Q And why was that?

17 A Because this was his third offense in a row for
18 violation of the same offense.

19 Q And you automatically bring it to hearing based on
20 what?

21 A The CTAC, Advisory Committee's recommendation of
22 when they are a repeater, they have to come to the
23 hearing on the third offense.

24 Q Okay. Thank you.

25 Have all previous violations been paid?

1 A They have.

2 Q Okay. So the only thing therefore are violations
3 found on October 3rd?

4 A Correct.

5 Q Okay. And did they receive Notice of Hearing?

6 A Yes.

7 Q Okay. Did they sign for it?

8 A It doesn't -- we don't have a signed copy, but it
9 was -- it shows when it was left on November 5, 2014.

10 Q And that's on Page 4?

11 A Yes.

12 Q Okay. And does that Notice of Hearing tell them to
13 be here today at nine o'clock, Freeway Medical Building?

14 A It does.

15 Q And does it tell them the violations that we've
16 talked about today?

17 A Yes, it does.

18 MS. PITMAN: No other questions.

19 HEARING OFFICER: Board, do you have any
20 questions for this witness?

21 Mr. Nguyen, do you have any questions for
22 this witness?

23 MR. NGUYEN: No, I don't.

24 HEARING OFFICER: Okay. Ms. Pitman, do
25 you have any -- do you have any other

1 witnesses?

2 MS. PITMAN: I do not.

3 HEARING OFFICER: Okay. At this time
4 Mr. Nguyen, you can call any witnesses that you
5 have, present any evidence or give any kind of
6 statement that you want to give.

7 WHEREUPON,

8 QUANG NGUYEN,

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

12 DIRECT TESTIMONY

13 THE WITNESS: I don't have any evidence or
14 anything at all.

15 HEARING OFFICER: Okay.

16 THE WITNESS: I just -- I been trying to
17 see, you know, is there any way that I can, you
18 know, improve, try to not let that happen
19 again, you know, anymore.

20 HEARING OFFICER: Okay. Okay. Board, do
21 you have any -- do you have any questions of
22 this witness?

23 MS. FORD: I do.

24 HEARING OFFICER: Okay. Ms. Pitman, do
25 you have any questions?

1 MS. PITMAN: I do not.

2 HEARING OFFICER: All right.

3 MS. FORD: Mr. Nguyen?

4 THE WITNESS: Yes.

5 MS. FORD: I see the buffers and the files
6 are consistent in all the -- well, the drawers,
7 two separate drawers that were pictured here in
8 this particular packet. Do you know the
9 importance of disposing of those item?

10 THE WITNESS: Yes, I do, ma'am.

11 Actually, after each client -- client, you
12 know, has been served, somebody had to go
13 through all the drawer and, you know, clean off
14 everything.

15 MS. FORD: But my -- my question would be,
16 do you know the importance of disposing of that
17 buffer and that file that are -- they cannot be
18 disinfected? Those can't be cleaned --

19 THE WITNESS: I understand.

20 MS. FORD: -- for use on another client,
21 do you understand?

22 THE WITNESS: Yes, I do.

23 MS. FORD: Okay.

24 MS. STEELE: And how do you clean your
25 implements? Like your nippers and your

1 clippers?

2 THE WITNESS: Actually we use a product
3 called Barbicide and we mix with some water and
4 then we put like after each client has been
5 served we put everything in that little
6 drawer -- little, what you call jar, and there
7 is a little lid and we close it and let it stay
8 for a few minutes and take it out and put it in
9 the -- a little light machine, a disinfectant
10 machine.

11 MS. STEELE: You put them in like a paper
12 package and then put them into the light
13 machine?

14 THE WITNESS: Yes. Yes, ma'am.

15 HEARING OFFICER: Any more questions for
16 this witness?

17 Okay. At this time does -- Ms. Pitman, do
18 you have any closing statements you want to
19 make?

20 MS. PITMAN: I don't.

21 HEARING OFFICER: Any -- any final thing
22 you want to say to the board, anything you want
23 to ask of them?

24 MR. NGUYEN: No, sir.

25 HEARING OFFICER: All right. Well, then

1 at this time we'll declare -- did anybody
2 else -- then anything else to offer for the
3 record before we go to deliberation?

4 Okay. Seeing nothing, we'll declare that
5 the record in this case is closed and complete,
6 except for the board's recess and their -- and
7 the deliberations and decision, so we're off
8 the record at this point.

9 (WHEREUPON, the CTAC retired to
10 deliberate, off the record, from 9:54 a.m. to
11 9:59 a.m., and returned with the following
12 decision:)

13 HEARING OFFICER: Okay. We'll be back
14 on -- back on the record in the case of
15 Arkansas Department of Health versus PB Nails.

16 I'll turn the -- turn it back over to
17 Ms. Wendy Sullivan, the Chairwoman, I believe
18 there is a motion.

19 MS. SULLIVAN: Yes, we have a motion in
20 this case.

21 MS. PECK: I would like to make a motion
22 that the fine for \$100 stand and reinspection
23 of 60 days.

24 MS. SULLIVAN: Do I have a second?

25 MS. FORD: I'll second that.

1 MS. SULLIVAN: All in favor?

2 BOARD MEMBERS: Aye.

3 MS. SULLIVAN: Any opposed?

4 Stands.

5 HEARING OFFICER: Okay. Let the record
6 reflect the decision is unanimous, it will be
7 reduced to writing and service will be made or
8 attempted upon all parties; if the respondent
9 cares to appeal this decision, you can appeal
10 it under the Arkansas Administrative Procedures
11 Act.

12 If there are no other questions or
13 comments, then this hearing will be concluded
14 and the record will be closed.

15 MR. NGUYEN: Okay.

16 HEARING OFFICER: Okay. All right. We're
17 off the record. That's it for this one.

18 (WHEREUPON, at 10:00 a.m., the
19 above-entitled proceedings were concluded.)

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1 ADMINISTRATIVE HEARING
2 BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
3 IN THE MATTER OF:
4 ARKANSAS DEPARTMENT OF HEALTH PETITIONER
5 v.
6 ENVY NAILS RESPONDENT

7 MS. SULLIVAN: We are back -- back on the
8 record, ready to start back with our meeting
9 and we're moving to the -- is it Envy Nails.

10 HEARING OFFICER: All right. All right.
11 We're back before the Cosmetology Technical
12 Advisory Committee, it's November 17, 2014,
13 it's about ten minutes after 10:00 a.m., we're
14 at the Freeway Medical Building, Room 801,
15 Little Rock, Arkansas, and we're on the record
16 in the matter of Arkansas Department of Health
17 versus Envy Nails.

18 Is there anyone from Envy Nails present
19 here today?

20 I guess y'all -- would you mind looking
21 out in the hall and just making sure there is
22 no one from Envy Nails out there standing
23 around, looking around?

24 MS. SMITH: No.

25 HEARING OFFICER: Okay. The -- the hall

1 has been sounded for anyone representing Envy
2 Nails and no one is present, so at this point,
3 counsel for State, would you introduce yourself
4 for the record?

5 MS. PITMAN: Yes. Elizabeth Pitman,
6 Deputy General Counsel, Department of Health.

7 HEARING OFFICER: Okay. And anyone who is
8 going to be a witness in this case, would you
9 stand and be sworn in.

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

12 HEARING OFFICER: Okay. Witnesses are
13 sworn.

14 Ms. Pitman, do you have any sort of an
15 opening statement you would like to make?

16 MS. PITMAN: No opening statement, I do
17 have a 27-page packet.

18 HEARING OFFICER: All right. Okay. Yeah.
19 Any -- any packet or exhibits that you have can
20 be discussed or offered at this time.

21 MS. PITMAN: Yes. It's behind the Envy
22 Nails tab, it's a 27-page packet of Notice of
23 Hearing and other documents.

24 (WHEREUPON, Board's Exhibits Nos. 1 were
25 received in evidence.)

1 HEARING OFFICER: Okay. And I'll also put
2 it on the record that this -- this proceeding
3 is subject to the rules and regulations of the
4 Arkansas Cosmetology Act.

5 Ms. Pitman you said you had no opening
6 statement?

7 MS. PITMAN: No.

8 HEARING OFFICER: All right. You can call
9 your first witness.

10 MS. PITMAN: I call Chris --

11 MR. NICKLAUS: Nicklaus.

12 MS. PITMAN: -- Nicklaus.

13 Sorry, bad with names.

14 WHEREUPON,

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

19 DIRECT EXAMINATION

20 BY MS. PITMAN:

21 Q Tell us your name and where you work.

22 A Chris Nicklaus, Arkansas Department of Health,
23 Cosmetology Section, Cosmetology Inspector.

24 Q And did you inspect Envy Nails?

25 A Yes.

1 Q Why did you go out to inspect Envy Nails?

2 A It was a 30-day follow up, I do believe.

3 Q Okay. Thirty-day follow up from what?

4 A Add to their prior violations.

5 Q Okay. And what day did you go out and inspect them?

6 A 10/24/14. Sorry.

7 Q Okay. And you said it's a 30-day follow up?

8 I think somewhere in this packet was the previous

9 order, found on Page 5. Is this what you're saying is

10 the 30-day follow up from?

11 A Yes.

12 Q Okay. On 10/24, what did you find?

13 A On 10/24, Kelli Kersey was with me and we walked in,

14 and the Vietnamese -- Vietnamese gentleman, who I've

15 caught last time, was performing a pedicure when we

16 walked in the door. When we walked in, announced who we

17 were, he got up and left, he exited the building out the

18 side door.

19 Q Okay. And you said the same gentleman that you

20 caught the previous time?

21 A Yes.

22 Q Okay. If you look at Page 16 of the hearing packet,

23 Mr. Nicklaus, is this your inspection sheet from that

24 previous inspection?

25 A Yes.

1 Q Okay. And when you said you caught someone working
2 without a license, what did you mark on that, on this
3 sheet, on that inspection?

4 A On this one? No. 6, allowing a person to work
5 without a current Arkansas license, an unlicensed person,
6 and allowing a person to work without an Arkansas
7 license.

8 Q Okay. And what did you mark on Page 4 from your
9 last inspection on 10/24?

10 A An unlicensed person, allowing a person to work
11 without an Arkansas license.

12 Q Okay. And what -- did you talk to anybody about the
13 man who got up and left?

14 A Yes. Kelli and I talked to Kim, and she stated that
15 the man that was performing the pedicure, his name was
16 Johnny, and we asked her, I think, one or two more times
17 about it, and then she changed his name to Charlie.

18 Q Okay. And that's why you have Johnny and then
19 Charlie written down here?

20 A Yeah.

21 Q Okay. And did she say he was or was not licensed?
22 Did she offer any information about that?

23 A She said that he wasn't doing anything. A pedicure.

24 Q Okay. What did you see him doing?

25 A He was performing a pedicure when we walked in the

1 door.

2 Q Okay. If you look back at this page on Page 16,
3 there is several things checked here from your July
4 30th inspection. Had those things been cleaned up?

5 A Yes.

6 Q Okay. So the only remaining violation on 10/24 was
7 Charlie or Johnny working without a license?

8 A Correct.

9 Q Okay. Is there anything else you would like
10 anyone -- the ladies here today to know about your
11 inspection?

12 A That's it.

13 Q And have you gone back out to Envy Nails since
14 10/24/14?

15 A No.

16 MS. PITMAN: No other questions.

17 HEARING OFFICER: All right. Board, do
18 y'all have any questions for this witness?

19 All right. Seeing no questions, you can
20 call your next witness, Ms. Pitman.

21 MS. PITMAN: Call Kelli Kersey.

22 THE WITNESS: Kelli Kersey, Arkansas
23 Department of Health, Cosmetology Section,
24 Section Chief.

25 WHEREUPON,

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

5 DIRECT EXAMINATION

6 BY MS. PITMAN:

7 Q Okay. Ms. Kersey, Mr. Nicklaus testified that you
8 went with him on his 10/24 inspection; is that correct?

9 A Yes, I did.

10 Q And is what he testified to what you remember
11 happening that day?

12 A Correct. We walked in, a gentleman was doing a
13 pedicure, as soon as he realized who we were, he -- he
14 very slowly and just nonchalantly walked out the side
15 door.

16 Q Okay.

17 A So -- I almost went after him and Chris held me
18 back.

19 Q Okay. And, Ms. Kersey, when you got back to the
20 office after 10/24, what did you do, regarding this
21 inspection?

22 A Right. Took the inspection sheet, we sent them a
23 Notice of Hearing, because it was 30-day follow up and
24 they still had issues.

25 Q Okay. And in the -- on the order from the last

1 hearing, I believe what it says is -- well, can you tell
2 me what it says regarding the reinspection, on Page 6?

3 A It says, "The penalty, a total of \$600 and a 30-day
4 reinspection. If the penalty is not paid and the
5 violations are found on the 30-day follow up, the license
6 will be suspended."

7 Q Okay. Going backward just a little bit, Ms. Kersey,
8 did you send an Order and Notice of Hearing to Envy
9 Nails?

10 A We did.

11 Q Did they sign for it?

12 A I don't believe so, but it -- it was left.

13 Q Okay. What address was it left at?

14 A It was left at Geyer Springs Road, Suite B. We
15 actually also send these, we send them regular and
16 certified, so they get them two ways. Even if they don't
17 ever sign for it, we send them regular mail too; so --

18 Q And is that Geyer Springs Road, Suite B address the
19 address of the salon?

20 A Yes, it is.

21 Q Okay. Ms. Kersey, what is your recommended penalty
22 today?

23 A Well, the penalty is \$500 for an unlicensed salon --
24 I mean, unlicensed person -- sorry. And the penalty from
25 before. I don't believe it's been paid. I'm not sure

1 about that, don't quote me.

2 Q It's \$500 for --

3 A Oh, 250. Sorry. I'm thinking about the person, the
4 actual person getting \$500.

5 Q Oh, okay.

6 A Sorry. Yeah, the salon gets 250.

7 Q Okay. So you're recommending a 250-dollar
8 violation?

9 A Correct.

10 Q Okay. And none of their previous violations have
11 been paid, but those have already been found?

12 A Correct.

13 Q Any other things you would like the Cosmetology
14 Technical Advisory Committee to consider?

15 A She -- well, she did -- the -- the girl did say he
16 was not doing a pedicure. She was working on some nails
17 at a manicure table, he was definitely sitting there
18 doing a pedicure on that client. She did get up and go
19 finish it, she left her nail client, she did go finish it
20 when he went out the side door, but he was definitely
21 working, doing the pedicure. So that's all.

22 MS. PITMAN: No other questions.

23 HEARING OFFICER: Board, do y'all have any
24 questions?

25 MS. STEELE: I do. Is it a normal

1 protocol for you to go out on a reinspection
2 type thing?

3 THE WITNESS: Well, we have not -- that
4 was the first time we have had -- had that
5 order.

6 MS. STEELE: Oh, okay.

7 THE WITNESS: And so I did go on all three
8 of the 30-day follow ups with him. Yeah, I
9 just -- I just felt like it would be, you know,
10 a little more valid, they wouldn't get mad at
11 him if they went back in 30 day -- you know,
12 it's just better if there is two of us, so I
13 did go with him.

14 MS. SULLIVAN: I have a question too. Do
15 you recommend the suspension of the license
16 along with that was recommended the last time,
17 that we -- or -- because it was the fine, and
18 upon the 30-day follow up, if the same
19 penalties, license will be suspended?

20 THE WITNESS: Yes, I believe so. I think
21 so.

22 MS. PITMAN: That's not what you said
23 earlier.

24 MS. SULLIVAN: Oh, did I read that wrong?

25 THE WITNESS: If it's not paid.

1 MS. SULLIVAN: Right.

2 THE WITNESS: Right.

3 MS. SULLIVAN: And it's not paid, is
4 that --

5 THE WITNESS: Right, is that what
6 you're -- I'm not -- I'm sure if it's paid or
7 not. I'm sorry.

8 MS. SULLIVAN: Oh, okay. And it says, if
9 penalty is not paid and violations are found at
10 the 30-day follow up, license will be
11 suspended.

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

13 MS. SULLIVAN: So there were violations
14 found?

15 THE WITNESS: Right.

16 MS. STEELE: Is anybody going to talk
17 about the complaint from the --

18 MS. SULLIVAN: That was last time.

19 MS. FORD: Previous.

20 MS. STEELE: Oh, that was the previous --
21 previous one?

22 MS. SULLIVAN: Yeah.

23 THE WITNESS: I will say, though, if you
24 suspend their license, they can't work so they
25 can't pay, you know, that's the catch 22 when

1 you do that, you know.

2 MS. SULLIVAN: And the salon was cleaned
3 up as far as all the other violations from last
4 time other than this --

5 THE WITNESS: Yes, it -- it looked very
6 good except for the guy was sitting there doing
7 a pedicure, so --

8 HEARING OFFICER: Okay. Any more
9 questions for this witness?

10 Seeing none, Ms. Pitman, any more
11 witnesses?

12 MS. PITMAN: No other witnesses.

13 HEARING OFFICER: Okay. Does anyone else
14 have anything to offer for the record?

15 Ms. Pitman, do you have any kind of
16 closing statement on this?

17 MS. PITMAN: I will just reiterate what
18 Ms. Kersey says, just sort of summarizing, this
19 is the second time we're back, and based on
20 your order of 30-day follow up, they had
21 cleaned everything up, but this guy was still
22 working, same guy, no license. So, I mean,
23 that's something they are still doing,
24 obviously. But like Ms. Kersey says, if they
25 can't earn a living, they can't pay fines so

1 just ask for the board to consider the fact
2 that they had cleaned and that they do have to
3 be able to pay the fines when they are making
4 their decision.

5 HEARING OFFICER: Okay. Anything else to
6 offer for the record before we close and go
7 into deliberations?

8 MS. FORD: I have one more question.

9 HEARING OFFICER: Okay.

10 MS. FORD: Ms. Kersey, on Rule No. 6,
11 allowing a person to work without an Arkansas
12 license or an unknown person, the proposed
13 penalty is \$250. What is the maximum on that
14 fine?

15 MS. KERSEY: All -- all fines are 1,000.

16 MS. FORD: Okay.

17 MS. KERSEY: The maximum for any fine is
18 1,000.

19 MS. STEELE: 1,000.

20 MS. KERSEY: Uh-huh.

21 MS. PITMAN: For the record, that's per
22 the statute, not per the regulations.

23 HEARING OFFICER: Okay. Did you get that,
24 Ms. Whitson?

25 COURT REPORTER: (Nodding head up and

1 down.)

2 HEARING OFFICER: All right. Any more
3 questions before we close the record?

4 Seeing none, the record in this case will
5 be closed for deliberations and we'll come back
6 on once there is a motion to be made.

7 (WHEREUPON, the Board retired to
8 deliberate, off the record, from 10:23 a.m. to
9 10:28 a.m., and returned with the following
10 decision:)

11 HEARING OFFICER: Okay. We're back on the
12 record in the case of the Arkansas Department
13 of Health versus Envy Nails. At this point
14 I'll turn the -- the proceeding over to
15 Ms. Wendy Sullivan, the -- the Chairwoman of
16 the committee.

17 MS. SULLIVAN: Do we have a motion in this
18 case?

19 MS. FORD: Yes. I would like to make a
20 motion on the violation of allowing a person
21 with -- with no license, a \$500 fine, and also
22 that all arrears be paid and license suspended
23 until these fines are paid.

24 MS. SULLIVAN: Do we have a second?

25 MS. STEELE: And a 30 day --

1 MS. PECK: I'll second that.

2 MS. STEELE: Do you want to add that? Do
3 you want to add that about the 30 days to your
4 motion?

5 MS. PITMAN: Call for a discussion after
6 your motion has been made and seconded.

7 MS. SULLIVAN: I may offer a discussion?

8 MS. PITMAN: After your motion has been
9 made and seconded you can call for discussion.

10 MS. SULLIVAN: Okay.

11 MS. FORD: Do you want me to redo that?
12 Would you like for me to restate that?

13 MS. SULLIVAN: I can offer a discussion
14 after she -- because she seconded -- did you
15 second?

16 MS. PECK: Uh-huh.

17 MS. SULLIVAN: All right. Is there any
18 discussion that needs to be made about this?

19 MS. STEELE: I think that like what --
20 along with what you are saying, the 500 and
21 then plus the arrears of 650 --

22 MS. FORD: Uh-huh.

23 MS. STEELE: -- and then maybe, are we
24 doing a reinspection?

25 MS. FORD: And by that time it will

1 probably be regular scheduled inspection time.

2 MS. STEELE: Okay. And then paid within
3 the 30 days? Are we saying that?

4 MS. PECK: I don't think they can do that.

5 MS. STEELE: We did last time.

6 MS. KERSEY: No, in the penalty is
7 not paid --

8 MS. FORD: The license is going to be
9 suspended until they pay it anyway, the salon
10 license, not an individual. So the individual
11 can go work, y'all, but that salon license is
12 going to be suspended, and that a -- that a
13 third row explanation is sent to them on --

14 MS. SULLIVAN: All right. Do we want to
15 withdraw the motion and then go back off the
16 record for deliberation again and then come
17 back to make a motion?

18 All right. We're going to go off -- oh,
19 is that okay to do that?

20 HEARING OFFICER: Okay. Yeah, maybe --
21 maybe withdraw your motion.

22 MS. FORD: Okay.

23 HEARING OFFICER: And then -- I mean
24 and -- and then we'll deliberate on that motion
25 again -- or deliberate on what a motion might

1 look like.

2 MS. FORD: Okay. I would like to withdraw
3 my motion of the \$500 and the arrears being
4 paid and the suspension of the license.

5 HEARING OFFICER: All right. Got a second
6 on that?

7 MS. SULLIVAN: Did we have a seconds?

8 HEARING OFFICER: Okay. Well, I mean, and
9 that's not necessary. Okay. We are -- we are
10 off the -- we are off the record for
11 deliberations again.

12 (WHEREUPON, the CTAC retired to
13 deliberate, off the record, from 10:31 a.m. to
14 10:33 a.m. and returned with the following
15 decision:)

16 HEARING OFFICER: All right. We're back
17 on the record in the case of the Arkansas
18 Department of Health versus Envy Nails.

19 At this time I'll turn the proceeding over
20 to Ms. Wendy Sullivan.

21 MS. SULLIVAN: Do we have a motion in this
22 case?

23 MS. FORD: I do. I would like to make a
24 motion that the \$500 fine -- a \$500 fine for
25 the person working without a license, and that

1 the 650 arrears all be paid, and that the
2 license be suspended, as said in a previous
3 order.

4 MS. SULLIVAN: Do we have a second?

5 MS. PECK: I'll second.

6 MS. SULLIVAN: All in favor?

7 BOARD MEMBERS: Aye.

8 MS. SULLIVAN: Any opposed?

9 It stands, motion stands.

10 HEARING OFFICER: Okay. Let the record
11 reflect the decision is unanimous and it will
12 be reduced to writing and service will be made
13 or attempted upon all parties.

14 If there are no other questions or
15 comments, then this hearing will be concluded
16 and the record will be closed.

17 All right, seeing none. The record is
18 closed.

19 (WHEREUPON, at 10:34 a.m., the
20 above-entitled proceedings were concluded.)

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1 What to do with the exhibit packets was
2 discussed.

3 Ms. Kersey gave a program update about the
4 inspection software.

5 Ms. Kersey gave an update about the ad hoc
6 committee and set the date for the next
7 meeting.

8 Update on braiding, stayed at this time,
9 pending the next legislative session.

10 There will be public comment regarding
11 post secondary education, Room 901, Freeway
12 Medical Towers, December 1, 2014, 9:00 a.m.

13 Next CTAC meeting will be January 26,
14 2015, at 9 a.m.

15 Adjourned.

16 (WHEREUPON, at 10:44 a.m., the
17 above-entitled proceedings were concluded.)

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3 CERTIFICATE

4 STATE OF ARKANSAS)

5 COUNTY OF PULASKI)

6 I, SUSAN B. WHITSON, Certified Court Reporter
7 and notary public in and for Pulaski County, State of
8 Arkansas, do hereby certify that the meeting and hearings
9 held before the Arkansas Department of Health,
10 Cosmetology Section, Cosmetology Technical Advisory
11 Committee, November 17, 2014, was taken by me in
12 Stenotype and was reduced to computer-generated
13 typewritten form by me or under my direction and
14 supervision; that the witnesses were duly sworn by the
15 Hearing Officer; and that the same is a true and correct
16 reflection of the proceedings that occurred, to the best
17 of my knowledge and ability.

18 I FURTHER CERTIFY that I am neither counsel
19 for, related to, nor employed by any of the parties to
20 the action in which these proceedings were taken; and,
21 further that I am not a relative or employee of any
22 attorney or counsel employed by the parties hereto, nor
23 financially interested, or otherwise, in the outcome of
24 this action; and that I have no contract with the
25 parties, attorneys, or persons with an interest in the

1 action that affects or has a substantial tendency to
 2 affect impartiality, that requires me to relinquish
 3 control of an original transcript or copies of the
 4 transcript before it is certified and delivered to the
 5 custodial attorney, or that requires me to provide any
 6 service not made available to all parties to the action.

7 SIGNED AND SWORN this _____ day of

8 _____.

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 SUSAN B. WHITSON, CCR, #158
 NOTARY COMMISSION #12388076
 NOTARY PUBLIC IN AND FOR
 PULASKI COUNTY, ARKANSAS

My Commission Expires: June 4, 2022.

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