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ARKANSAS DEPARTMENT OF HEALTH
COSMETOLOGY SECTION
COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

BE IT REMEMBERED that on Monday, the 22nd day of January 2018, 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:

- LOIS WARE, Chair
- TONYA BOYDSTUN
- CARLA JONES
- DANIEL 'REX' PAXTON
- ANGELA WILSON

REPORTED BY:

SUSAN B. WHITSON, CCR
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CTAC, JANUARY 22, 2018

1 APPEARANCES:

2 ON BEHALF OF THE COMMITTEE:

3 VICKI PICKERING, ESQ.
4 Arkansas Department of Health

5 HEARING OFFICER:

6 JAMIE EWING, ESQ.
7 Office of the Attorney General
8 323 Center Street, Suite 200
9 Little Rock, Arkansas 72201

9 STAFF MEMBERS PRESENT:

10 Kelli Kersey, Section Chief
11 Connie Melton, Branch Chief
12 Krista Wells, Inspector Supervisor
13 Teri Preachers, Health Program Specialist II
14 Amanda Weeks, Administrative Specialist III
15 Yvonne Smith, Inspector
16 Vera Wood, Inspector
17 Lavonne Lester, Inspector
18 Jaclyn Knopp, Inspector

15 ALSO PRESENT:

16 Worren Kissire
17 Lindsey Davenport

18 COURT REPORTER:

19 Susan B. Whitson, CCR
20 Arkansas Supreme Court Certificate No. 158

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1 The meeting of the Department of Health
2 Cosmetology Technical Advisory Committee was
3 called to order by Lois Ware, Chair of the
4 Committee, at 9:03 a.m. Committee members
5 present are Lois Ware, Chair, Tonya Boydston,
6 Carla Jones, Andrea Wilson, Daniel 'Rex'
7 Paxton.

8 Motion was made by Tonya Boydston to
9 approve the minutes from the last meeting;
10 second by Daniel 'Rex' Paxton; passed
11 unanimously.

12 Motion was made by Andrea Wilson to
13 approve the paid violations; second by Tonya
14 Boydston; passed unanimously.

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P R O C E E D I N G S

HEARING OFFICER: All right. Good morning.

My name is Jamie Ewing and I'm the Hearing Officer today In The Matter of the Arkansas Department of Health versus Worren's Salon; and this is heard before the Cosmetology Technical Advisory Committee.

So the hearing concerns the matters specified in the Order and Notice of Hearing; and today is January 22, 2018.

I ask everyone to either turn your cell phones off or place them in silent mode. Make sure my own is in silent mode.

And so would the Respondent, please, identify yourself for the record?

Ma'am, are you -- is there a representative in -- oh, I'm sorry. Sir?

MR. KISSIRE: I'm Worren Kissire.

HEARING OFFICER: Okay. Why don't you have a seat at the table, please.

Susan, do you need him to repeat his name?

COURT REPORTER: No, I have his name.

HEARING OFFICER: Okay. Sir, I just ask you to, please, be sure to, when we -- to speak

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1 up so the court reporter can hear you as we
2 proceed.

3 MR. KISSIRE: Sure.

4 HEARING OFFICER: Okay. Are you
5 represented by counsel today?

6 MR. KISSIRE: No. I am not.

7 HEARING OFFICER: Did you -- or were you
8 aware of the fact that you could have counsel
9 here present?

10 MR. KISSIRE: No, I wasn't.

11 HEARING OFFICER: Would you like to
12 continue to proceed?

13 MR. KISSIRE: Sure.

14 HEARING OFFICER: Okay. At any time you
15 don't understand the proceeding, you can ask
16 questions. As they just stated, we are pretty
17 informal here so we are getting all of this on
18 the record but we are -- we are pretty
19 informal, so if you need to ask a question
20 about the proceeding, I would rather you be
21 able to understand what we are doing here today
22 before we proceed with any confusion.

23 Do -- did you receive a copy of the Order
24 and Notice of Hearing?

25 MR. KISSIRE: Yes. Yes, I did. Several.

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1 HEARING OFFICER: Thank you.

2 The Board's counsel, will you please
3 identify yourself for the record.

4 MS. PICKERING: Yes. Vicki Pickering.

5 HEARING OFFICER: Okay. Thank you.

6 Okay. Sir, for your benefit and for
7 anyone here today that has not appeared in an
8 administrative hearing, this committee will
9 base its decision based solely on the evidence
10 presented here today.

11 This hearing is held pursuant to the
12 Administrative Procedures Act, which means that
13 the strict rules of evidence do not apply and
14 the parties are given latitude in introducing
15 evidence. This is to promote a fair hearing
16 and to provide the Board with adequate
17 information to make a decision.

18 The administrative adjudicatory process
19 should be more expeditious and less expensive
20 for all the parties than a judicial proceeding;
21 the hearing should be much less formal,
22 consistent with the fundamentals of fairness,
23 impartiality, and thoroughness. The Hearing
24 Officer's goal is to develop a fair, accurate,
25 and intelligible record that can be reviewed.

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1 To ensure efficiency of this proceeding, I will
2 grant objections or caution the parties only as
3 necessary.

4 If there is anything you have in your
5 possession that you want the Board -- the
6 Committee to consider, you must offer it into
7 evidence today.

8 All participants in the hearing should be
9 aware that these proceedings are subject to the
10 Freedom of Information Act, and as such all
11 parts of the hearing, including the
12 deliberations of the Committee, are open to the
13 public.

14 So for those of you who will be witnesses
15 in the matter today, please raise your right
16 hands to be sworn in. Sir, that includes you
17 and any witnesses you brought.

18 Okay.

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

21 HEARING OFFICER: All right. Thank you.

22 So are there any preliminary matters to be
23 discussed or offered at this time?

24 MS. PICKERING: No. I don't have any.

25 HEARING OFFICER: Okay. Do we have any

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1 objection -- not objections.

2 Do you have any exhibits that you would
3 like to --

4 MS. PICKERING: Yes.

5 HEARING OFFICER: -- publish to the Board?

6 MS. PICKERING: Yes. I have a packet that
7 consists of the Notice of Hearing, the consent
8 order that was submitted to the Respondent, the
9 inspection sheet from the inspection, and some
10 photographs.

11 HEARING OFFICER: Okay.

12 MS. PICKERING: And I would like to
13 introduce that as Exhibit 1.

14 HEARING OFFICER: Sir, have you received a
15 copy of this packet?

16 MR. KISSIRE: I received all four notices
17 that -- is that what you mean?

18 HEARING OFFICER: The exhibits that she
19 just identified, did you receive --

20 MR. KISSIRE: Oh, the photos? Yes, I have
21 them here.

22 HEARING OFFICER: The photos and the copy
23 of the inspection report, I think there is a
24 copy of the Order and Notice of Hearing?

25 MR. KISSIRE: Yes.

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1 HEARING OFFICER: Okay. So you've
2 received them.

3 Do you have any objection to entering
4 those into evidence before the Committee today?

5 MR. KISSIRE: No.

6 HEARING OFFICER: Okay. Then that -- we
7 will publish those to the Board and they will
8 be admitted.

9 (WHEREUPON, Exhibit No. 1 was received in
10 evidence.)

11 MS. PICKERING: Okay.

12 HEARING OFFICER: Does the Board want to
13 take a brief recess to examine the exhibits, or
14 shall we proceed with testimony?

15 MS. KERSEY: Proceed.

16 HEARING OFFICER: Okay. All right.
17 Counsel, are you ready to proceed?

18 MS. PICKERING: Yes, ma'am.

19 HEARING OFFICER: You may go ahead.

20 MS. PICKERING: Okay. I'll call the
21 inspector.

22 WHEREUPON,

23 YVONNE SMITH,

24 having been called for examination, and having been first
25 duly sworn by the Hearing Officer, was examined and

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1 testified, as follows:

2 DIRECT EXAMINATION

3 BY MS. PICKERING:

4 Q Would you state your name and occupation.

5 A Yvonne Smith, Cosmetology Inspector and Massage
6 Therapy Inspector.

7 Q Okay. Did you conduct an inspection on Worren's
8 Salon?

9 A Yes, I did.

10 Q Okay. Would you tell the Committee about your
11 inspection?

12 A It was just a routine inspection and I, basically --
13 the pictures that I've taken is what I, basically, seen
14 on the inspection.

15 Q Okay. And what day -- what day did you conduct the
16 inspection?

17 A September 20, 2017.

18 Q Okay. And let's go through the pictures and explain
19 to the Committee what -- what you saw and what the
20 violations are, as you -- as you saw them. Start with
21 the first picture.

22 A Yes.

23 Okay. Well, on the first picture, there were used
24 combs and brushes -- well, not brushes -- combs, a lot of
25 wax -- not wax, I'm sorry. A lot of buildup in the

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1 shampoo bowls. That's, basically, what was on this one.

2 Q Okay. And the next picture?

3 A The second one was the used color bowl, clips,
4 buildup.

5 Q Okay. And then the next one?

6 A Thirteen, there was visible hair from, I guess, the
7 shampoo that was still in the bowl.

8 Q Okay. And then Page 14?

9 A Fourteen was wax buildup on the wax pot -- 14 and
10 15, and the lids were off.

11 Q Okay. So you issued an inspection report as a
12 result of that --

13 A Yes.

14 Q -- finding violations?

15 A Yes.

16 Q And that -- is that on Page 10?

17 A On Page --

18 MS. KERSEY: Eleven -- I mean 9.

19 THE WITNESS: -- 9.

20 BY MS. PICKERING:

21 Q Nine? I'm sorry.

22 A Yes.

23 Q And would you tell the Committee what violations you
24 found?

25 A Well, one, the license -- the salon license were not

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1 posted, so I had to call the office to verify the
2 license, the expiration date, things like that.

3 And then the shampoo bowl, that (17)(b), the shampoo
4 bowl was not clean after the use; and (c) was the wax
5 heaters and the pots, they were not covered and they were
6 dirty.

7 Q Okay. Anything else you would like to tell the
8 Committee about your inspection at this time?

9 A Let's see. There was -- I went throughout the salon
10 and there was visible dust throughout the salon, and I
11 wrote on the inspection sheet to "dust were needed." And
12 I wrote on there too, "post inspection sheet." And I
13 just wrote on there, basically, the things that I had
14 found, where I put on there that the shampoo bowls needed
15 to be clean and there was visible buildup in two bowls.
16 And that's, basically, it.

17 MS. PICKERING: Okay. Thank you.

18 I have no further questions.

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

21 MR. KISSIRE: No.

22 HEARING OFFICER: Does the Committee have
23 any questions for this witness?

24 MS. WARE: Yes. The declutter, what --
25 what were you talking about on this?

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1 THE WITNESS: Well, there were papers and
2 just stuff throughout the salon that was just
3 kind of cluttered.

4 MS. WARE: Uh-huh.

5 HEARING OFFICER: Any further questions
6 from the Committee?

7 Okay. None at this time?

8 None at this time. Then, thank you,
9 ma'am. You can be excused as a witness.

10 THE WITNESS: Okay.

11 HEARING OFFICER: Do you have any more
12 witnesses?

13 MS. PICKERING: No further witnesses.

14 HEARING OFFICER: No other witnesses from
15 the Department.

16 Sir, at this time, if you would like to
17 make a statement, you can. If you have any
18 witnesses, we will let you -- you can let them
19 go first, if you would like to, and then you
20 can make a statement; but at this time,
21 Ms. Pickering will have an opportunity to ask
22 you questions and the Committee will have an
23 opportunity to ask you questions; so --

24 MR. KISSIRE: Okay.

25 HEARING OFFICER: -- proceed as you would

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1 like.

2 MR. KISSIRE: First of all, I wasn't there
3 that particular day, Lindsey was, and I'll let
4 her speak first.

5 WHEREUPON,

6 LINDSEY DAVENPORT,
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 TESTIMONY

11 THE WITNESS: So she came in --

12 HEARING OFFICER: Wait a minute, ma'am.

13 Please identify yourself for the record
14 and then we'll let you proceed.

15 THE WITNESS: Lindsey Davenport.

16 She came in on a Wednesday. And
17 Wednesday, for 34 years he's never worked on a
18 Wednesday, no one is there at the salon, so I
19 think that's important to know. I was there at
20 the time because sometimes on Wednesdays I go
21 for an hour or two.

22 So the first thing about the license, in
23 his defense, so if you will notice, she came
24 in, when, 9/20 and license expires 9/30. He
25 had put it in his book on his day off, because

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1 he had already filed for a new one. He wasn't
2 time lapsed, it's all current, it just wasn't
3 posted that day because he's taking care of
4 business.

5 And then second of all, the No. 11 is my
6 personal sink over in my area that a chair is
7 not pushed to so no head goes to it, and it is
8 not dirty. As you can see, it's scratches
9 because that bowl is 20-something years old and
10 it's black gloss.

11 If you will look at my combs and my color
12 brushes, they are clean they are just drying
13 because that day we used it to clean stuff.
14 They are not dirty.

15 Number 12, again that's the same bowl,
16 just down in the bowl, and there is no color on
17 that bowl or clippie, it was drying because I
18 had just washed it.

19 BY MR. KISSIRE:

20 Q There's some scratches and stuff?

21 A And there is scratches. Like, that's what she's
22 calling buildup, it's visible scratches.

23 So 13, yes, that's stuff down in there, but it's not
24 hair. It's plants because Warren has several plants at
25 the salon, and he had come in that morning and watered

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1 the plants. That is not how that bowl is normally. The
2 white stuff, again, is scratches; but down in there is,
3 on his day off he was watering the plants, and he always
4 sticks them down in that sink and he will clean them the
5 night of. And, again, no one is even washed at that
6 bowl. That's a bowl that doesn't even have shampoo or
7 anything back to it. So I wish you could see, like, more
8 of the broad picture of that.

9 And then as far as the wax pots, yeah, that's just
10 what it is.

11 Q There is currently covers on that?

12 A Yeah. We changed the lips around them, we do that
13 often, but now we've added lids to it.

14 The reason why we didn't have lids on it is because
15 we do keep them running and we thought fire hazard -- we
16 didn't know that that was a code -- but that's what it
17 is. But the shampoo bowls are a different story.

18 HEARING OFFICER: Okay. Ms. Pickering, do
19 you have any questions?

20 MS. PICKERING: I don't have any
21 questions.

22 HEARING OFFICER: Does the Committee have
23 any questions of Ms. Davenport?

24 MS. BOYDSTON: How many shampoo bowls do
25 you have in your salon?

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1 MR. KISSIRE: Three or four? Three?

2 THE WITNESS: Four -- five.

3 MR. KISSIRE: No, there is five.

4 THE WITNESS: Five. Five.

5 MS. BOYDSTON: Okay.

6 THE WITNESS: We only use two.

7 MR. KISSIRE: Well, three.

8 THE WITNESS: As a backup, yeah. Two to
9 three at all times, but two main ones.

10 MS. BOYDSTON: Do you have a dispensary
11 area at all in your salon or is this your
12 only --

13 THE WITNESS: For coloring? Is that --

14 MS. BOYDSTON: For mixing chemicals or
15 cleaning utensils?

16 THE WITNESS: He -- yes. He has a color
17 room, but he's the owner, we all rent our
18 spaces. So me, I have to do -- that's why we
19 left this shampoo bowl when we remodeled and
20 it's by my color cabinet, but no chair is
21 pushed to it. There is no shampoo, I don't
22 wash anybody in that. It's -- we saved it so I
23 could wash my color bowls and let them dry.

24 MS. WARE: So you just always leave them
25 right there, you don't, like, spread them out

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1 to let them dry?

2 THE WITNESS: Oh, yeah, yes, ma'am. I,
3 like, let them dry and then I put them back in
4 my cabinet. I don't -- they are not in the
5 shampoo bowl 24/7. I have cabinets and bins
6 and --

7 MS. WARE: Yeah. So when she came you
8 just hadn't spread them out and --

9 THE WITNESS: I had literally just washed
10 them.

11 MS. WARE: Oh.

12 THE WITNESS: Yeah. I remember the day, I
13 was, like, really, no one is here. You know,
14 you just get that feeling of --

15 MS. WARE: So when were they used? Like,
16 that day or the day before?

17 THE WITNESS: That morning.

18 MS. WARE: They were used that morning?

19 THE WITNESS: Uh-huh.

20 MR. PAXTON: So is your Barbicide by the
21 shampoo bowls or where is that actually at?

22 THE WITNESS: Everyone has it on their
23 station. Mine is by my brush bin and combs.

24 MR. PAXTON: Okay.

25 THE WITNESS: Like, on a separate counter.

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1 MS. WARE: Now, on Page 13, you said this
2 is just dirt that's in here?

3 THE WITNESS: Yeah.

4 Okay. So that bowl is at the end of one
5 of our back bars, and he uses it and sets the
6 plants down in it and waters, he always cleans
7 it out, and it was just, that's his day off and
8 he comes in and he -- he will come in and out
9 on Wednesdays multiple times to do different
10 things because it's his day off.

11 MS. WILSON: So the wax pots, do they have
12 lids to them?

13 MR. KISSIRE: Yes.

14 THE WITNESS: Now.

15 MR. KISSIRE: Yes. Yes, they do now.

16 THE WITNESS: Yeah, since this now. But
17 we didn't even know that was a thing.

18 MR. KISSIRE: Honestly, I mean, we've had
19 wax pots for over -- well, at this location for
20 over 20 years and nothing has ever been, you
21 know, mentioned about having a cover. In fact,
22 you know, when I bought them, they don't come
23 with covers, and so we had to come up, you
24 know, with some covers for it because of the
25 new rules and regulations.

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1 MS. WILSON: So you guys are saying that
2 the license was current?

3 THE WITNESS: It is current. Yeah, it's
4 always been current.

5 MR. KISSIRE: What happened is I always
6 put the shop license in a -- in a clear stand
7 up, and when it was time to renew, I pulled it
8 out, I reviewed it. And I don't often review
9 the certificates and that sort of thing but at
10 this particular case I pulled it down, looked
11 at it thoroughly, and then went ahead and wrote
12 the check out, sent it back in, and for some
13 reason I just did not put it back in that
14 display.

15 And -- and I -- and I knew that it was,
16 the new one was going to be there in just a few
17 days. It was just a failure on my part to put
18 it back, you know, where -- where I found it,
19 where I have it.

20 MS. PICKERING: Can I ask a question then?

21 HEARING OFFICER: Yes, please.

22 CROSS-EXAMINATION

23 BY MS. PICKERING:

24 Q Okay. Did you guys say that you were closed on
25 Wednesday?

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1 MR. KISSIRE: No, I'm -- I'm off on
2 Wednesday but that's just my day off.

3 MS. PICKERING: But you're open for
4 business?

5 MR. KISSIRE: Right.

6 MS. PICKERING: Okay.

7 MR. KISSIRE: Well, I'm not open -- I'm
8 not there doing --

9 BY MS. PICKERING:

10 Q The salon is open?

11 A I'm the only one that will show up on a Wednesday,
12 and it's not all day. None of the other employees work
13 on Wednesday.

14 MR. KISSIRE: Right.

15 THE WITNESS: David, Tammy, you, nobody
16 else works on Wednesday. So it's not closed,
17 locked up for business, but no one operates but
18 me.

19 BY MS. PICKERING:

20 Q Do you-all know that you have a form with us that
21 says you're open Monday through Friday, 9:30 to 5?

22 MR. KISSIRE: Yes. Yes. That's just --

23 MS. PICKERING: Okay.

24 MR. KISSIRE: -- strictly a formality
25 that, you know -- I mean if -- if we have

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1 someone that has to come in, sure, I will come
2 in on that day, but I'm not there just -- it's,
3 basically, by appointment.

4 MS. PICKERING: Okay. I have no other
5 questions.

6 HEARING OFFICER: Any further questions
7 from the Committee?

8 THE WITNESS: How do we change the
9 Wednesday thing?

10 MS. PICKERING: You will have to get with
11 Ms. Kersey.

12 THE WITNESS: Okay.

13 MS. PICKERING: And she can -- she can
14 help you.

15 MR. PAXTON: But if you're going to be
16 working, it needs to be stated that you're open
17 then. It doesn't matter if the owner is there
18 or not.

19 My owner -- my owner only works in the
20 salon two days a week but we're open six days,
21 so it doesn't matter at all about the owner, it
22 doesn't matter at all about where the license
23 is or whatever; if you're open and you have a
24 shop, it has to be done, period. So doesn't
25 matter if the owner is present or not, so just

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1 keep that in mind.

2 Is there a -- behind the shampoo bowl is a
3 counter where I'm seeing on Page 11 or is that
4 just a tiny lift?

5 THE WITNESS: Yes, that's a granite piece.

6 MR. PAXTON: So I understand that -- that
7 you have a color cabinet that is close to the
8 shampoo bowl, and you're rinsing your things
9 out there because you don't have to have a
10 dispensary where you're going in and --

11 THE WITNESS: Uh-huh.

12 MR. PAXTON: -- you're mixing your color
13 and everything, you're pretty much right there,
14 is that kind of what I'm understanding you?

15 THE WITNESS: There is, like, a cabinet
16 and then this granite piece where I have a
17 little bit of space and then I have all of
18 these bins with clean brushes and combs and
19 clippies and all my supplies so I can grab from
20 all that. That's kind of like my little
21 station and then I move over to a separate area
22 to do hair and apply.

23 MR. PAXTON: Okay. I would probably put a
24 clean towel up there every time that you wash
25 and put your utensils on it instead of in the

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1 bowl to dry. And I would probably put your
2 Barbicide right there too, instead of at your
3 station, just -- or have another one there too.

4 That's all for me.

5 HEARING OFFICER: Anything further from
6 the Committee?

7 MS. WILSON: Can we ask anybody questions
8 or just them?

9 HEARING OFFICER: Well, let's finish with
10 those witnesses --

11 MS. WILSON: Okay.

12 HEARING OFFICER: -- and then we'll let
13 you have a chance to ask more questions.

14 MS. WILSON: Okay.

15 HEARING OFFICER: Okay. If there is
16 nothing further for these witnesses, would
17 either of you like to make a closing statement?

18 MR. KISSIRE: No.

19 HEARING OFFICER: Okay. Thank you.

20 Now, I believe you had a question for --

21 WHEREUPON,

22 YVONNE SMITH,

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

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1 MS. WILSON: I'm just confused about the
2 license part of it. Because it says she called
3 to verify, like, the expiration?

4 MR. PAXTON: I think because it wasn't
5 displayed she had to call in and verify that it
6 wasn't expired.

7 MS. WILSON: Okay. So the issue with the
8 license is that it wasn't displayed, not that
9 it wasn't current?

10 THE WITNESS: Right.

11 MS. WILSON: Okay.

12 MS. PICKERING: May I ask Ms. Smith
13 another question?

14 HEARING OFFICER: Yes. Please.

15 REDIRECT EXAMINATION

16 BY MS. PICKERING:

17 Q Ms. Smith, would you like to discuss the sinks in
18 response to what the Respondent's testimony was? As far
19 as what your observations were, would you like to respond
20 to that?

21 A Well, yes. Because there were, I guess, four or
22 five bowls, I could tell they were old, but I know I
23 focused on two for sure because there was buildup in two
24 of those bowls. And I think I wrote that down on here,
25 that two of them -- and they -- yeah, they had some age

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1 on them, but two definitely had visible buildup.

2 Q Okay. And then the sink with -- with the dirt, do
3 you remember seeing that and is it -- did you see that as
4 dirt or how did you see that picture on 13?

5 A I don't recall, but if I snapped it I'm thinking
6 that I thought it was hair.

7 Q Okay.

8 MS. JONES: (Inaudible.)

9 COURT REPORTER: I don't hear you. I
10 didn't hear you.

11 MS. JONES: Oh, just whether it was hair
12 or dirt, it's still unclean, unsanitized.

13 BY MS. PICKERING:

14 Q Anything further you would like to respond to the
15 photographs or what you observed that day?

16 A No. Not at this time.

17 MS. PICKERING: Okay. Thank you.

18 Nothing further.

19 HEARING OFFICER: Does the Committee have
20 any further questions before you go to your
21 deliberations?

22 Okay. If nothing further, do you -- do
23 you-all have anything further before the
24 Committee goes into deliberation?

25 WHEREUPON,

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1 WORREN KISSIRE,
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 TESTIMONY

6 THE WITNESS: Well, as far as this 13 that
7 she was referring to, these are, like,
8 woodchips, there are some orchids and orchids
9 require woodchips; and whenever you water them
10 then the woodchips kind of fall over into the
11 sink and usually I, you know, pick them up, put
12 them back in, you know, the plants, you know,
13 after they have been, you know, soaked. And
14 but these are woodchips in the bottom, not
15 dirt.

16 HEARING OFFICER: Did you have something,
17 Ms. Ware?

18 MS. WARE: Yeah. On Page 11 on that water
19 hose, is that just wear or the color or --

20 THE WITNESS: On 11?

21 MS. WARE: Yes. That brown on there, is
22 that just --

23 THE WITNESS: On the hose or --

24 MR. PAXTON: Looks like rust.

25 MS. WARE: It's rust? Okay.

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1 MS. DAVENPORT: On the hose?

2 MS. WARE: On the water hose, yes.

3 MS. DAVENPORT: That's stain from color.

4 MS. WARE: That's just stain?

5 MS. DAVENPORT: Yeah.

6 THE WITNESS: Sometimes we rinse our --
7 our hands off or gloves or whatever, and when
8 you're reaching for the hose it gets stained
9 and it's not easy to get off of the hose.

10 MS. BOYDSTON: I think my biggest question
11 is just showing concern, because there is no
12 way that an inspector can walk into a salon and
13 decide this shampoo -- this shampoo bowl is not
14 used for people, this one is, this one is not,
15 and this one is. So something has to be done
16 for distinction of no shampoo services are
17 provided there, and this --

18 THE WITNESS: You mean like a label or
19 something or --

20 MS. BOYDSTON: Something has to -- I mean,
21 in my opinion, something has to be shown,
22 because just the -- an inspector walking in, at
23 any time slide a shampoo chair -- or ours, you
24 can slide it over and shampoo somebody here or
25 you can shampoo somebody here, and we've done

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1 that when we had a shampoo chair break and we
2 had to -- actually, did move it back and forth,
3 but there is no way of them to really know that
4 when they come in to inspect.

5 THE WITNESS: When we remodeled the -- the
6 shop, I had all of these shampoo bowls that
7 I -- as far as remodeling goes, it looked very
8 pleasing to -- you know, to see everything, to
9 match and that sort of thing, and I didn't
10 realize a failure to realize that we needed,
11 you know, something else besides a shampoo
12 bowl; but, I mean, it -- it was hot and cold
13 water, it was a bowl and, you know, we used it
14 for, you know, cleaning our hands and watering
15 plants and that sort of thing.

16 MS. DAVENPORT: Is there something you
17 suggest? Because, like, I -- like, there is no
18 shampoo or anything back there so, I guess, in
19 our brain that was just kind of like, you know,
20 there -- it's clearly not a station -- you can
21 tell where we work. There is 18 -- if you've
22 ever done hair, there is 18 different shampoos
23 and conditioners and --

24 MS. BOYDSTON: Thirty-eight years. Never.

25 MS. DAVENPORT: Yeah, so that's just -- I

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1 mean, it's just like nothing over there, so I
2 guess, and that's what we think of is, you
3 know, where you work.

4 MS. WILSON: I would do what Daniel said
5 and take your implements and let them dry on a
6 flat surface, because if it's in the shampoo
7 bowl, you know, the assumption is that it was
8 used there.

9 MS. DAVENPORT: Uh-huh.

10 MS. WILSON: So kind of what you were
11 saying is if you put a towel out and lay them
12 out to dry there, then that says it wasn't part
13 of the shampoo bowl.

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

15 I have a question for the Board. When
16 you're washing bromes and -- brushes and combs
17 and that sort of thing, and we have a -- a
18 dirty container and a clean container, but at
19 some point you really have to set these out and
20 let them dry, particularly the brushes, I mean
21 is there a rules and regulations on what you
22 require that they have to be put up in a timely
23 manner? I mean that's what we're used to is
24 usually overnight they are -- you know, they
25 are dry and we can go ahead and put them up

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1 and, you know, start, you know, to use them
2 again?

3 MS. BOYDSTON: What we do at the school
4 and what we teach is they are -- they are laid
5 out -- or even if we have a draining basket,
6 because we have a dispensary, if they are
7 laying there draining, we put a towel over it
8 and just to keep them covered, and then when
9 they are dry we put them in an enclosed cabinet
10 or container.

11 THE WITNESS: Okay.

12 MS. DAVENPORT: So, basically, the sign of
13 denoting that is a towel? Like, that's going
14 to be our signal is towels?

15 MS. BOYDSTON: A coverage. Yeah.

16 MS. DAVENPORT: Okay.

17 WHEREUPON,

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

22 REDIRECT EXAMINATION

23 BY MS. PICKERING:

24 Q Ms. Smith, do you recall if there was a shampoo
25 chair in front of those bowls?

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1 A I don't remember.

2 Q Could you tell the difference as to what -- what
3 bowls were used for shampooing or --

4 A No.

5 MS. PICKERING: Okay.

6 MR. KISSIRE: Well, if I can -- if I can
7 say something about that, that each bowl has a
8 lot of shampoos and conditioners and that sort
9 of thing, and you will notice in this -- well,
10 that above this particular bowl, this -- the
11 one that looks -- that y'all said was dirty,
12 which is woodchips, there is no shampoo
13 anything there above it. So, clearly, we
14 wouldn't be using that unless we started
15 dragging out, you know, supplies from the
16 other, you know, shampoo bowl and that sort of
17 thing, but there is none ever there.

18 MR. PAXTON: Well, in my salon I'm at, we
19 have four shampoo bowls that are stand behind
20 and then the counter is behind that, and the
21 counter is a third as long on either side of
22 our shampoo bowls, so our shampoo is centered
23 because that's just the way the salon owner
24 wants; so we have to go to whatever shampoo and
25 conditioner they would want and come to our

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1 shampoo bowl. So I think that if there is a
2 shampoo bowl in the salon, it's assumed to be
3 used unless notated -- notated somehow.

4 So I understand what you're saying,
5 because you don't have the stand behind, yours
6 is there, the salon like that, but --

7 MR. KISSIRE: Right. These are very old
8 fashioned shampoo bowls.

9 MR. PAXTON: Yes. But I also understand
10 that an inspector can't come in and say, okay,
11 this isn't used because there is not shampoo
12 directly behind it, because in our salon that
13 would mean two of our shampoo bowls aren't
14 being used, but that's not the case at all,
15 they are all used, so there is that.

16 MR. KISSIRE: You know, under normal
17 circumstances I'm usually here whenever the
18 inspector comes in, and I do want to interact
19 with her because I think it's very important as
20 a salon owner, and to just merely, you know,
21 find out what's going on. Usually she's -- you
22 know, of course, I didn't see her that
23 particular day, but in -- in recent past, I was
24 able to talk with her and communicate.

25 One of the things that, prior to her, was

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1 something, and the inspector was really kind of
2 rude about, was talking about a -- trashcans,
3 all trashcans had to have covers; and, of
4 course, you know, some of them did, some of
5 them didn't, and so I would go out and I find
6 all covers for it, and -- and, like I said,
7 this was not this instructor -- I mean
8 inspector. But, anyway, it was a guy and he
9 came back, that was the only time that I ever
10 saw him again. And I said, "Well," I said,
11 "you know, we've got all the trash, you know,
12 with covers on it," he goes, "Oh, we don't even
13 care about that anymore." And I thought -- you
14 know, and after stopping and thinking about it,
15 I thought, you know, this was one of the most
16 important things that I think that -- that we
17 really should have because you don't really
18 notice the -- you know, the smells and that
19 sort of thing when they are uncovered. And,
20 you know, I thought it was a really important
21 rule. I didn't think very much of it until he,
22 you know, said that, "Well, we don't even care
23 about that anymore," and I thought about it,
24 and I thought, you know, this was -- this was a
25 really good, important thing, you know, to

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1 enforce.

2 So, I mean, you know, rules can change and
3 I understand that, as a salon owner, but it's
4 kind of hard whenever you're working behind a
5 chair and trying to keep up with all the rules
6 and regulations of exactly what you're supposed
7 to do. And I understand that, you know, the
8 Committee is very -- you know, they -- they
9 need to be aware of things that are not clean
10 and that sort of thing like that, but we -- I
11 think we do a great job of, you know --

12 MS. DAVENPORT: In, what, 34 or six years
13 now, this is the first time ever to --

14 MR. KISSIRE: Yeah. I mean 34 years and I
15 haven't had any complaints from -- from the
16 health department or anything, which, you know,
17 it -- she truly says that, you know, I comply
18 to, you know, all the rules. And I think
19 that's very important to say; thank you very
20 much.

21 MS. DAVENPORT: Uh-huh.

22 MS. PICKERING: Thank you.

23 HEARING OFFICER: So if there are not any
24 further questions or comments from the Board --
25 or from the Committee before you do your

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1 deliberations, do you want to, Ms. Pickering,
2 tell them what the question before them is
3 to -- to deliberate on and then we'll take a
4 recess for deliberations.

5 MS. PICKERING: Okay. The question is
6 whether the salon violated Rule No. 5, in
7 regards to the cleanliness of the shampoo bowls
8 and the wax pots. And I'll point out under
9 number -- Rule 5(17)(b), says "Shampoo trays
10 and bowls must be cleansed with soap and water
11 or other detergent before each service, kept in
12 good repair and in a sanitary condition at all
13 times," and it doesn't really distinguish
14 whether the bowls are being used at that moment
15 for shampooing or on that day.

16 And then waxing is referenced in (e)
17 Waxing equipment and supplies.

18 And then the failure to display the
19 cosmetology license. That is -- give me one
20 second.

21 MS. KERSEY: Rule 5.1.

22 MS. PICKERING: Okay. It's also in
23 Rule 5 --

24 MS. JONES: What page is that, please?

25 MS. PICKERING: Okay. Let me get to it.

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1 It's 5.1(2), on Page 10 of the rules and regs.
2 (B) (2) -- I'm sorry, that's on Page 11 and it's
3 (B) (2), "All establishments and schools of
4 cosmetology...cosmetology license,
5 practitioners licenses shall be conspicuously
6 posted in a designated place in the reception
7 area."

8 If there are no other questions, that
9 would be it.

10 HEARING OFFICER: Okay. At this time we
11 will go off the record for the Board to begin
12 their deliberations.

13 Thank you.

14 (WHEREUPON, the Committee retired to
15 deliberate, off the record, from 9:39 a.m. to
16 9:42 a.m., and returned with the following
17 questions.)

18 HEARING OFFICER: We're going to go back
19 on the record now for the Board to ask
20 questions.

21 So please proceed.

22 MS. BOYDSTON: Okay. All right. Because
23 we know that -- my question is, if we know that
24 we can have sinks for hand washing and for
25 cleaning and for things like that, we know that

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1 we have those, and -- but, basically, is
2 there -- I mean, if it is an old shampoo -- and
3 I'm having a crossover here, because it's,
4 like, okay, I understand that this is a shampoo
5 sink that is used for clients, but the problem
6 is our inspectors don't know that it's used for
7 clients. So, basically, is it that, just for
8 their future reference, that they would need to
9 label that as such? How would that work?

10 MS. PICKERING: Kelli, would you like to
11 comment on that?

12 Kelli is -- she is sworn, so she can
13 answer.

14 HEARING OFFICER: Yes. Just identify
15 yourself for the record.

16 WHEREUPON,

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

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

24 I think in the rules that -- I mean, at
25 that point it can be used for shampoo, you know

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1 what I'm saying --

2 MS. BOYDSTON: Uh-huh.

3 THE WITNESS: -- so it still has to be
4 clean. And I don't think the issue was of the
5 scratching and stuff, I don't think that that
6 was -- you know, that was brought up several
7 times. I feel like that it was dirty. I mean,
8 it had stuff in it.

9 MS. BOYDSTON: Stuff in it.

10 THE WITNESS: And if -- if a client did
11 come in and they needed to use that sink, it
12 was dirty; so --

13 MS. BOYDSTON: Okay. All right.

14 MS. PICKERING: And you -- as in the --
15 where it references shampoo bowls, it just
16 specifically says "shampoo trays and bowls must
17 be cleansed and kept in good repair, in a
18 sanitary condition at all times," it doesn't
19 specify that, you know, it has to be used for
20 shampooing. The fact that it can be used for
21 shampooing, I think, is the point.

22 MS. BOYDSTON: Okay.

23 THE WITNESS: Yeah.

24 MS. BOYDSTON: That's what I wanted to
25 make sure.

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1 MS. WILSON: I mean, that was its intended
2 use, just as a fixture, that's its intended
3 use; so --

4 MS. PICKERING: Yeah. And can Kelli
5 respond to the -- since we're back on the
6 record, the licensing issue?

7 MS. WILSON: Uh-huh.

8 THE WITNESS: Okay. So at the point of
9 the inspection on 9/20, I mean, the -- the
10 9 -- the '17 license still should have been
11 posted. There should have -- there should have
12 been no reason for it to be down.

13 MS. WILSON: Uh-huh.

14 THE WITNESS: So he has renewed for '18,
15 but when she went in on the 20th, the
16 third -- that license, the '17 license should
17 have still been posted. There is no reason to
18 take that license down. They don't have to
19 send it in, they get a renewal notice. So it
20 not being posted, saying they took it down to
21 renew it --

22 MS. WILSON: Should have been --

23 THE WITNESS: -- I mean, because it's
24 still -- on that day his license was still
25 current for '17; so --

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1 MS. WILSON: Uh-huh.

2 THE WITNESS: Because it didn't expire
3 until 9/30 and that was on 9/20.

4 MS. JONES: Also we have the option of
5 renewing online, therefore you don't have to
6 take it down at all.

7 MS. WILSON: Right.

8 MS. JONES: You can just renew it online
9 and leave the license posted.

10 HEARING OFFICER: Do you have any
11 questions for Ms. Kersey while we're still on
12 the record?

13 MR. KISSIRE: No. Other than, you know,
14 the -- the license were due on the end of the
15 month, and I just -- periodically just, even my
16 personal hairdressers license, whenever --
17 before it's renewed, I just take it down and
18 look at it and I very seldom -- don't look at
19 it, you know, throughout the year and I just,
20 you know, wanted to take it out, renew it
21 before I sent the other one in and I just
22 failed to put it back. That's just all there
23 is to it.

24 MS. PICKERING: And again it's -- just to
25 clarify, it's not that the license wasn't

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1 current, it's just that it's a violation of
2 5(B)(2), which requires that a copy of the
3 license to be posted in a conspicuous area at
4 all times.

5 HEARING OFFICER: Okay. Is there anything
6 else that any party wants to put on the record
7 at this time before we go back off for
8 deliberations?

9 If not we're going to go back off the
10 record now for further deliberations.

11 Thank you.

12 (WHEREUPON, the Committee retired to
13 deliberate, off the record, from 9:46 a.m. to
14 9:52 a.m., and returned with the following
15 decision:)

16 HEARING OFFICER: We're going to go back
17 on the record now for the Board's decision.
18 Okay. Back on the record. Please proceed.

19 MS. WARE: Who will make a motion about
20 the fines?

21 MS. BOYDSTON: I'll make a motion that our
22 fines as we had -- as was already listed, 150
23 per license, \$50 for each additional fine,
24 because it is a little -- and so I make a
25 motion that those base fines stand.

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1 MS. JONES: Second the motion.

2 MR. PAXTON: Second it.

3 MS. WARE: All in favor?

4 COMMITTEE MEMBERS: Aye.

5 MS. WARE: We did it.

6 HEARING OFFICER: Okay. Do they need to
7 make a motion on the finding of fact to support
8 the fines?

9 MS. PICKERING: Do you usually do that?

10 MS. KERSEY: Do what?

11 HEARING OFFICER: A motion on the finding
12 of fact to state --

13 MS. PICKERING: Whether the statement of
14 the facts are correct on the notice?

15 HEARING OFFICER: To support their fines
16 that they --

17 MS. KERSEY: I think they do, they usually
18 make two motions.

19 MS. BOYDSTON: Yeah. So we need to make a
20 motion that the findings were factual?

21 HEARING OFFICER: Yes. You can make a
22 motion in the statement of fact -- that you
23 find the statement of facts are true.

24 MS. BOYDSTON: Okay. We -- I would like
25 to make a motion that the statement of facts

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1 are true as found and listed.

2 MR. PAXTON: Second the motion.

3 MS. WARE: All in favor?

4 COMMITTEE MEMBERS: Aye.

5 HEARING OFFICER: Okay. I think that
6 covers all the points.

7 At this time the Board has made a
8 unanimous decision, the Board's decision will
9 be reduced to writing and served on you, sir.
10 And if you wish to appeal this decision, you
11 may do so under the regulations governing this
12 committee and the Arkansas Administrative
13 Procedures Act.

14 Is there anything else before we conclude
15 this matter and go off the record?

16 Seeing nothing, this matter is concluded
17 and the record is closed.

18 (WHEREUPON, at 9:55 a.m., the
19 above-entitled hearing was concluded.)

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Kelli Kersey gave program updates;
awaiting approval from the governor regarding
the new rules and regulations before holding
the public hearing regarding the new rules.

Discussion was held regarding the new
rules about schools giving the licensing test.

The meeting was adjourned at 10:01 a.m.

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1 CERTIFICATE

2
3 STATE OF ARKANSAS)4 COUNTY OF PULASKI)
5

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 hearing
9 held before the Arkansas Department of Health,
10 Cosmetology Section, Cosmetology Technical Advisory
11 Committee, January 22, 2018, was taken by me in Stenotype
12 and was reduced to computer-generated typewritten form by
13 me or under my direction and supervision; that the
14 witnesses were duly sworn by the Hearing Officer; and
15 that the same is a true and correct reflection of the
16 proceedings that occurred, to the best of my knowledge
17 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

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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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