

COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

Meeting

Monday, January 27, 2020
5800 West Tenth Street, Room 801
Little Rock, AR 9:00 a.m.

MINUTES

Members present: Amy Lance, Andrea Wilson, Carla Jones, Tonya Boydston, Lois Ware, Candace Kenyon

Also present - Chuck Thompson, Attorney; Kelli Kersey

Presiding - Lois Ware
Called to order at 9:00 a.m.

Call to order

Roll call

Approval of minutes moved by Wilson, seconded by Boydston, approved

Vote for travel reimbursement and stipends - moved, seconded, and approved

Approval of Paid Violations moved by Boydston, seconded by Wilson, approved

Meeting adjourned for hearings 9:10 a.m.
Proceedings continued at 12:45 p.m.

Program updates

Chuck Thompson - rules - anything that goes through ADH has extra steps to get approval. The rules are moving along in the process. They have been to the Board of Health, waiting for next level of review, then to legislature.

Meeting adjourned at 12:50 p.m.

ARKANSAS STATE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

HEARING - RE:

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

V.

A NEW YOU

RESPONDENT

MONDAY, JANUARY 27, 2020
Commencing at 12:30 p.m.
5800 West 10th Street, Room 801
LITTLE ROCK, ARKANSAS

ADAM JACKSON, ESQ., Hearing Officer

COMMITTEE MEMBERS PRESENT:

Lois Ware, Chair
Amy Lance
Andrea Wilson
Carla Jones
Tonya Boydston
Candace Kenyon

ON BEHALF OF THE Cosmetology TECHNICAL ADVISORY
COMMITTEE:

Charles 'Chuck' Thompson, Esq.
Arkansas Department of Health
4815 W. Markham, Slot #31
Little Rock, AR 72205

Reported and Transcribed by Stephanie G. Branton, CCR
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1 PROCEEDINGS - 12:30 p.m.

2 MR. JACKSON: My name is Adam Jackson. I'm
3 assistant attorney general and the hearing officer today in
4 the matter of Arkansas Department of Health versus A New You,
5 Inc. The number is 155047, which is to be heard before the
6 Cosmetology Technical Advisory Committee.

7 Today's date is January 27, 2020. Will the respondent for
8 A New You, Inc. please identify yourself for the record and
9 have a seat at the table? Is anyone here for A New You, Inc.?

10 Let the record reflect I'm going to the hallway to yell for
11 them.

12 Let the record reflect that I have gone to the hallway and
13 announced this hearing for A New You, Inc. I have not
14 received any response for this matter. So we will proceed to
15 the hearing.

16 This hearing is held under the Administrative Procedures
17 Act, which means that the rules of evidence do not apply, and
18 the parties will be given latitude in introducing evidence.

19 To ensure the efficiency of the proceedings, I will grant
20 objections -- but since there are no parties here, that kind
21 of rule is moot. But I would grant objections when necessary.

22 If you have for the board to consider, please present it
23 here today. And the proceedings are governed by the Freedom
24 of Information Act, which means all parts of the hearing,

1 including the deliberations of the board, are open to the
2 public.

3 For those of you who are going to be a witness here today,
4 please raise your right hands to be sworn in.

5 [witnesses swore to tell the truth in these proceedings]

6 MR. JACKSON: Are there any preliminary matters?

7 MR. THOMPSON: Judge, I'd like to ask to be entered
8 into evidence what will be identified as Department's Exhibit
9 1, which includes page 1 and 2, which is a notice of hearing.
10 It includes page 3 which includes the green certified copy --
11 certified mail green receipt, showing it was delivered and
12 received and signed for.

13 The page four includes the timeline of events, as well as
14 violations and proposed penalty, which I'm going to discuss
15 when I get to Kelsey -- I'm sorry, Kelli -- Kelli Kersey.

16 Page six is the violation notice. Page 7 and 8 is a
17 printout of the data base. Page nine is the inspection
18 report.

19 Page ten is a picture of a cute little dog. Page 11 is a
20 cute little dog behind a fence.

21 MR. JACKSON: It will be admitted.

22 MR. THOMPSON: I'd like to first call Teri Dwyer.

23 MR. JACKSON: And let the record reflect Ms. Dwyer
24 was sworn in at the beginning of the proceeding.

1 EXAMINATION OF TERI DWYER

2 BY MR. THOMPSON:

3 Q. Ms. Dwyer, I'd like to direct your attention to
4 Department's Exhibit 1. Are you familiar with this packet?

5 A. Yes.

6 Q. Did you compile this packet?

7 A. Yes.

8 Q. Did you send this packet to A New You, Inc. at 11524
9 North Rodney Parham Road?

10 A. Yes, certified and regular.

11 Q. Did you -- are you familiar with page three of the
12 packet?

13 A. Yes.

14 Q. And what does that show?

15 A. That's the certified receipt that was signed by them.

16 MR. THOMPSON: Thank you, ma'am, that's all I have.

17 MR. JACKSON: Does the board have any questions for
18 this witness? Seeing as there are no questions, call your
19 next witness?

20 MR. THOMPSON: Yvonne Smith.

21 EXAMINATION OF YVONNE SMITH

22 BY MR. THOMPSON:

23 Q. Would you state your name, and title, for the record,
24 please?

1 A. Yes -- Yvonne Smith, Cosmetology and Massage Therapy
2 inspector.

3 MR. JACKSON: And let the record reflect she was
4 sworn in earlier in the proceeding.

5 Q. Ms. Smith, can I direct your attention to Department's
6 Exhibit 1, page nine.

7 A. Okay.

8 Q. Can you identify that document?

9 A. This is the inspection sheet.

10 Q. Is that -- and that's for A New You, Inc.?

11 A. Yes.

12 Q. And did you prepare this inspection sheet?

13 A. Yes sir.

14 Q. So you were the inspector that day on 11-19-2019?

15 A. Yes.

16 Q. Did you find any violations that day?

17 A. Yes, I did. There was an animal, a dog, in the salon.

18 Q. And is a picture of that dog reflected on page 10 and
19 11?

20 A. Yes, it is.

21 Q. Did you inform the appropriate -- appropriate people at
22 the salon about the violation?

23 A. I did. It wasn't the owner. It was a cosmetologist
24 there.

1 Q. It was one of the cosmetologists there.

2 A. Yes.

3 Q. Did they have any response to you on that, regarding
4 that?

5 A. No, she didn't.

6 Q. And then after you prepared this -- well, first of all
7 -- I'm sorry. And are animals in the cosmetological
8 establishment -- is that a violation of our rules?

9 A. Yes, it is.

10 MR. THOMPSON: That's all I have.

11 MR. JACKSON: Does the board have any questions of
12 this witness? Seeing as there are no questions --

13 MR. THOMPSON: Kelli Kersey, please.

14 MS. KERSEY: Kelli Kersey, Arkansas Department of
15 Health, Cosmetology and Massage Therapy Section, section
16 chief.

17 MR. JACKSON: Let the record reflect this person has
18 been sworn in.

19 EXAMINATION OF KELLI KERSEY

20 BY MR. THOMPSON:

21 Q. Ms. Kersey, may I direct your attention to page one to
22 Department's Exhibit 1.

23 A. Yes.

24 Q. Can you identify that?

1 A. This is the notice of hearing that states the
2 allegations of facts and the statement of laws.

3 Q. Did you sign this document?

4 A. Yes sir.

5 Q. So you're familiar with this document, and agree with
6 it?

7 A. Yes sir.

8 Q. You have nothing to add or remove from this document?

9 A. No sir.

10 Q. And can you -- before the recommendation, could you
11 explain to us -- well, is there any point -- is there any
12 place on the premises of a cosmetological establishment where
13 an animal could be?

14 A. No sir.

15 Q. So what is it -- what constitutes a cosmetological
16 establishment?

17 A. Any building, premise or part of a building that
18 cosmetological branches are practiced.

19 Q. And is that found in a law or rule in Arkansas?

20 A. Yes sir.

21 Q. Is it found in the law?

22 A. It's found in the law and the rules, yes.

23 Q. And do you have a code citation for that law?

24 A. I do. 17-26-101. And it's number two.

1 Q. And could you read that reference, please?

2 A. Sure. Cosmetological establishment means a premise,
3 building, part of a building, or above a salon in which it's
4 practiced a branch or combination of branches of cosmetology
5 or the occupation of cosmetologists.

6 Q. And so the -- does the department interpret that as to
7 be anywhere on the premises, within the building where the
8 cosmetological activities are taking place?

9 A. Yes sir.

10 Q. And in this --

11 A. And this -- I'm sorry.

12 Q. Go ahead.

13 A. Also on 17-26-405, it says that no person having charge
14 of a cosmetological establishment, nor a salon or school of
15 cosmetology, whether as an owner or an employee shall permit
16 any room or part thereof in which any of the branches or
17 practices of cosmetology are conducted, practiced or taught to
18 be used for sleeping, for residential purpose, or for any
19 other purpose that would tend to make the room unsanitary.

20 Q. Did you talk with anyone from the salon regarding this?

21 A. I did. We called -- and my apologies -- Mr. Lish
22 [phonetic spelling], I believe is their last name?

23 Q. And can you identify what his relationship is to the
24 salon?

1 A. Yes sir. He is the owner.

2 Q. He is the owner.

3 A. Uh-huh.

4 Q. And what did your discussion entail?

5 A. He stated that the room that the inspector went in, he
6 made me believe that the door was shut, and that the inspector
7 opened the door and went in and started looking through his
8 files.

9 And I tried to explain to him the law about that the whole
10 building is the salon. Because he stated that his dog had
11 just been there just for a minute, and it's not usually there.
12 But -- and it only weighs two and a half pounds, and it's not
13 going to hurt anybody.

14 And then I received the pictures, which clearly show that
15 the dog -- she did not open the door, the door was already
16 open, and the dog was behind a dog gate.

17 Q. And you're talking -- and the pictures that you're
18 referring to are pages 10 and 11 of Department's Exhibit ?

19 A. Yes sir.

20 Q. And that's the little dog in the sweater?

21 A. Yes sir, the two and a half pound dog.

22 Q. Nonetheless, though, animals are a violation of health
23 and safety regarding a place of cosmetology, correct?

24 A. Correct, unless it's a service animal. And this was

1 identified as not a service animal.

2 Q. There was no indication that this was a service animal
3 as defined?

4 A. No.

5 Q. It's never been certified?

6 A. No, he did not even say that on our phone conversation.
7 I will say too, after our conversation, we mailed him a copy
8 of the rules and the laws, and we highlighted everything that
9 has to do with animals, what an establishment is, and -- I
10 mean, everything that I read to y'all. We highlighted that
11 and sent it to him.

12 Q. Have you heard back from him after you sent it to him?

13 A. He requested a hearing after that.

14 Q. He requested a hearing after that?

15 A. Uh-huh.

16 Q. And he is not here today?

17 A. And he --

18 Q. And you don't see him in the room today?

19 A. No sir.

20 Q. And one more thing before we get to the recommendation.
21 If you look at page 4 of 11 of Department's Exhibit 1, it
22 shows violation and proposed penalty.

23 Do you have an amendment to the recommendation?

24 A. Yes -- \$250, because he did request the hearing.

1 Q. So we would ask the court, the board, to reflect an
2 amendment to that document, showing our recommendation is the
3 \$250 violation. He did in fact ask for a hearing off the
4 initial violation.

5 A. Correct.

6 MR. THOMPSON: I will ask that the record reflect
7 that, and that's all I have.

8 MR. JACKSON: Okay. Would you like a closing
9 statement?

10 MR. THOMPSON: I think this one, we'll waive. It's
11 self-explanatory and I'm going to shut up and move this along.

12 MR. JACKSON: At this time we will go off the record
13 and the board will recess for deliberations regarding the
14 finding of fact and conclusions of law and any penalties to be
15 handed down.

16 Once the board reaches its decision, we'll go back on the
17 record. We're off the record.

18 [Whereupon parties went off the record at 12:40 p.m.]

19 [Back on the record at 12:45 p.m.]

20 MR. JACKSON: We are back on the record in the matter
21 of Arkansas Department of Health versus A New You, Inc.

22 MS. LANCE: I make a motion that in the matter of
23 Arkansas Department of Health versus A New You, Inc., we find
24 that the allegations of fact is true and violate the law.

1 The penalty will be \$250.

2 MS. BOYDSTUN: I'll second.

3 MS. WARE: All in favor.

4 BODY: Aye.

5 MR. JACKSON: The vote was unanimous. So let the
6 record reflect the decision is unanimous. Please reduce the
7 board's decision to writing, and make or attempt service on
8 all parties. For the benefit of the record, if the respondent
9 cares to appeal the decision, appeal can be taken under any
10 specific provisions related to the board or in the
11 Administrative Procedures Act, at Arkansas Code Annotated 25-
12 5-201 et seq.

13 If there are no other questions, comments, this
14 hearing is concluded and the record is closed in this matter.

15 [concluded at 12:50 p.m.]

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CERTIFICATE

STATE OF ARKANSAS]

COUNTY OF PULASKI] ss

I, Stephanie G. Branton, an Arkansas Certified Court Reporter and Notary Public in and for the aforesaid county and state, do certify that a verbatim record of these proceedings were taken, by me, and reduced to typewriting by me; that this transcript is a true and correct record of the proceedings, to the best of my knowledge and belief. I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action; I am not a relative or employee of any attorney or counsel employed by the parties, nor financially or otherwise interested in the outcome of this action; that I have no contract with the parties, attorneys, or any person with an interest in this action that would affect impartiality. WITNESS MY HAND AND SEAL as court reporter on this 25th day of May, 2020.

STEPHANIE G. BRANTON, CCR

ARKANSAS STATE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

HEARING - RE:

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

V.

COZY NAILS AND SPA

RESPONDENT

MONDAY, JANUARY 27, 2020
Commencing at 9:10 a.m.
5800 West 10th Street, Room 801
LITTLE ROCK, ARKANSAS

ADAM JACKSON, ESQ., Hearing Officer

COMMITTEE MEMBERS PRESENT:

Lois Ware, Chair
Amy Lance
Andrea Wilson
Carla Jones
Tonya Boydston
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ON BEHALF OF THE COSMETOLOGY TECHNICAL ADVISORY
COMMITTEE:

Charles 'Chuck' Thompson, Esq.
Arkansas Department of Health
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1 PROCEEDINGS - 9:10 a.m.

2 MR. JACKSON: Okay, my name is Adam Jackson. I'm
3 with the attorney general's office, and I'm the hearing
4 officer today in the matter of the Arkansas Department of
5 Health versus Cozy Nails and Spa, which is to be heard before
6 the Cosmetology Technical Advisory Committee.

7 Today is January 27, 2020. Please silence your cell phones
8 now. Would the respondent, Cozy Nails and Spa, please
9 identify yourself for the record?

10 MR. TRAN: My name is Quoc Tran and I'm a managing
11 member of that Cozy Nails.

12 MR. JACKSON: And are you represented by counsel?

13 MR. TRAN: No sir.

14 MR. JACKSON: Were you aware that you have the right
15 to get, or that you could be represented by counsel if you
16 choose?

17 MR. TRAN: Yes sir.

18 MR. JACKSON: Now, did you receive a copy of the
19 order and notice of hearing concerning today's hearing?

20 MR. TRAN: Yes sir.

21 MR. JACKSON: Are you ready to proceed?

22 MR. TRAN: Yes, I am.

23 MR. JACKSON: And can the board's counsel please
24 identify yourself for the record?

1 MR. THOMPSON: Chuck Thompson, Arkansas Department of
2 Health.

3 MR. JACKSON: For the benefit of the record and for
4 anyone present here today who has not appeared in an
5 administrative hearing, the board will base its decision
6 solely on the evidence presented here.

7 The hearing is held under the Administrative Procedures
8 Act, which means that the strict rules of evidence do not
9 apply, and the parties will be given latitude in introducing
10 evidence.

11 This is to promote a fair hearing and to provide the board
12 with adequate information to make its decision.

13 To ensure the efficiency of the proceedings, I will grant
14 objections or caution parties only as necessary. If there is
15 anything that you have in your possession that you want the
16 board to consider, you must offer it into evidence today.

17 All participants to the hearing should be aware that these
18 proceedings are subject to the Freedom of Information Act, and
19 all parts of the hearings, including the deliberations of the
20 board, are open to the public.

21 It's important that all persons necessary for the hearing
22 are in the room during the hearing, and the party, or attorney
23 or board member that needs to take a break or leave the room,
24 please advise me, and we'll take that break.

1 For those of you who may be a witness here today, please
2 raise your right hand to be sworn in.

3 [witnesses swore to tell the truth in these proceedings]

4 MR. JACKSON: Are there any preliminary matters that
5 need to be discussed before this hearing begins? Okay.
6 Counsel, are you ready to proceed?

7 MR. THOMPSON: Yes, Judge. Teri Dwyer, who I was
8 going to call first, she's actually -- she's an administrative
9 specialist with the Cosmetology Section. Her car broke down
10 and she's waiting on a tow truck right now.

11 But since Mr. Tran has appeared, I'm going to ask that --
12 ask that the notice of appeal and hearing, the packet that Mr.
13 Tran received and he noted that he received, be introduced
14 into evidence as Exhibit 1 -- Arkansas Department of Health's
15 Exhibit 1.

16 MR. JACKSON: Do you have any objection to the notice
17 of hearing being admitted?

18 MR. TRAN: No, no objection.

19 MR. JACKSON: Then it will be admitted.

20 MR. THOMPSON: And I'd like to call Ms. Vera Wood,
21 please.

22 MR. JACKSON: Ms. Wood.

23 [Whereupon Vera Wood, who previously swore to tell the truth
24 in these proceedings, testified as follows:]

1 EXAMINATION OF VERA WOOD

2 MR. JACKSON: Ms. Wood. And let the record reflect
3 that Ms. Wood was sworn in at the beginning.

4 BY MR. THOMPSON:

5 Q. Would you please state your name, for the record?

6 A. Vera Wood.

7 Q. And what is your -- and who do you work for, and what is
8 your job title?

9 A. I'm with the Arkansas of Health, Cosmetology/Massage
10 Therapy.

11 Q. And Ms. Wood, you have in front of you the notice of
12 hearing and a packet, Department of Health Exhibit 1. Within
13 that packet I want to call your attention to the inspection
14 report, the second to the last page -- no, third to the last
15 page in your packet -- the inspection report dated 9-19 of
16 '19.

17 Did you fill that report out?

18 A. Yes sir.

19 Q. And you inspected Cozy Nails and Spa on that date?

20 A. Yes sir.

21 Q. Can you tell me what you found?

22 A. I found that they had a wax pot, that it was hot, which
23 means that it probably was being used. And there was no one
24 on the premises that had a license to do so. You have to get

1 an aesthetician or a cosmetologist --

2 Q. So that the fact that that -- so that it's clear, the
3 fact that that wax pad [sic] was hot and that's -- and is that
4 -- is a picture of that wax pod -- is that the second to the
5 last page, behind your inspection report?

6 A. Yes sir.

7 Q. And you took that picture?

8 A. Yes sir.

9 Q. And in your experience as an inspector, that indicates
10 to you that it is being used for -- and help me with the
11 terminology. It's being used in -- as an aesthetician, or as
12 an aesthetician would be using that?

13 A. Or a cosmetologist.

14 Q. Or a cosmetologist.

15 A. Uh-huh.

16 Q. And you stated that in order to do that, under -- in
17 order to do that, you have to either have a cosmetology or an
18 aesthetician's license?

19 A. Yes sir.

20 Q. And that's pursuant to the rules of cosmetology?

21 A. Yes sir.

22 Q. And did you talk with anybody at the spa about this?

23 A. I spoke to them and said you have to have a license to
24 be able to wax. The pot was on, therefore we assumed they

1 were using it.

2 Q. Was -- and did they respond to you?

3 A. Not really.

4 Q. Also I'm looking at the inspection report. And there's
5 also a line checked -- rule -- and I'm sorry, I forgot my
6 reading glasses.

7 Rule 6 -- item one, most recent inspection sheet posted in
8 the reception area -- checkmark. what does that mean?

9 A. It wasn't posted anywhere where I could see it.

10 Q. And that's required under the rules?

11 A. Yes sir.

12 Q. Were those the only violations you found for Cozy Nails
13 and Spa that day?

14 A. Yes sir.

15 MR. THOMPSON: That's all I have. I'll pass the
16 witness.

17 MR. JACKSON: Mr. Tran, would you like to question
18 the witness?

19 MR. TRAN: I really don't have any questions for
20 her. But I'm here to address those two allegations.

21 MR. JACKSON: You -- once the Department of Health
22 rests their case, then you'll be able to -- be given the
23 opportunity to present your side of the case. But -- so right
24 now it's just do you have any questions for this witness?

1 MR. TRAN: No, I don't.

2 MR. JACKSON: Does the board have any questions for
3 this witness?

4 MS. BOYDSTUN: Is there anybody that works in that
5 salon that had a license posted anywhere that is a
6 cosmetologist that wasn't there that day?

7 THE WITNESS: Not to my knowledge, no.

8 MS. BOYDSTUN: Okay.

9 MR. JACKSON: Are there any other questions for this
10 witness -- by the board? Seeing as there are no questions,
11 Counsel.

12 MR. THOMPSON: I call Kelli Kersey, please.
13 [Kelli Kersey, having been previously sworn to tell the truth,
14 testified as follows:]

15 EXAMINATION OF KELLI KERSEY

16 BY MR. THOMPSON:

17 Q. Ms. Kersey --

18 A. Kelli Kersey, Arkansas Department of Health, Cosmetology
19 and Massage Therapy section chief.

20 Q. And Ms. Kersey, I'm going to call your attention to the
21 department's Exhibit - the notice of hearing. Statement of
22 laws -- if you could recite the grounds for disciplinary
23 action that the department is seeking.

24 A. Arkansas Code 17-26-05 -- failure of a person or

1 corporation operating a cosmetological establishment or school
2 of cosmetology, or engaged in the practice of cosmetology or
3 of its branches to comply with the requirements of this
4 chapter and the regulations of the Cosmetology Technical
5 Advisory Committee.

6 Q. And could you tell us the health and safety rules that
7 the department believes Cozy Nails had violated?

8 A. 5.1 -- health and safety rules -- A -- enforcement --
9 allowing a person to engage in or attempt to engage in the
10 occupation of the cosmetologist, manicurist, electrologist,
11 aesthetician, in or about an establishment, or allowing a
12 person to engage in or about a school or cosmetology or
13 without a current Arkansas license shall be grounds for
14 disciplinary action.

15 And B -- consumer information -- a copy of the most recent
16 inspection sheet shall be posted in a conspicuous area.

17 Q. And so did you see -- did Ms. Wood submit her inspection
18 report to you, and did you review it?

19 A. Yes sir.

20 Q. And in accordance with that, you believe the health and
21 safety rules were violated by Cozy Nails?

22 A. Yes sir.

23 Q. And then did you sign the notice and order of hearing to
24 that effect?

1 A. Yes sir.

2 Q. Do you have any recommendation regarding the violations?

3 A. It's on page four. Our proposed penalty would be \$600.

4 Q. And how does that break down?

5 A. We given them -- when we send them the violation letter,
6 we give them a chance to pay the \$250 and the \$50.

7 Q. And I'm sorry, let me call your attention to -- and
8 that's my fault. I'm sorry. I haven't had enough coffee this
9 morning.

10 Page six -- let me call your attention to page six. Did
11 you -- do you have approval over these letters?

12 A. Yes sir.

13 Q. Such as that. And what is this letter, dated October 7,
14 2019?

15 A. This is the violation letter that we send to anyone that
16 gets a violations from one of the inspectors inspecting a
17 salon.

18 Q. And so this was sent pursuant to Ms. Woods' inspection
19 of Cozy Nails?

20 A. Correct.

21 Q. And has the department received any payment on the
22 violations?

23 A. No sir.

24 Q. And so the department's current recommendation is on

1 page four of Exhibit 1. And that"s for violation of 5186
2 \$250, and for violation of 51B1, which is the lack of license
3 in a conspicuous place, \$50 -- is that correct?

4 A. Correct.

5 Q. And then what is the other \$300 for?

6 A. Well, they -- generally when they don"t pay, we penalize
7 again, for not paying.

8 Q. So it"s the failure to pay?

9 A. Failure to pay, yeah -- it"s doubled.

10 MR. THOMPSON: Pass the witness.

11 MR. JACKSON: Mr. Tran, do you have any questions for
12 this witness?

13 MR. TRAN: No.

14 MR. JACKSON: Seeing as there are no questions, does
15 the board have any questions of this witness? I see no
16 questions for this witness from the board.

17 MR. THOMPSON: The department rests, Judge.

18 MR. JACKSON: Actually, at this time I need a point
19 of clarification. I need to ask you about. You referred to
20 this whole packet as Exhibit 1 when you made your motion
21 earlier.

22 Did you mean the whole packet?

23 MR. THOMPSON: I did mean the whole packet. I"m sorry
24 if I misspoke.

1 MR. JACKSON: Let me clarify that. When we -- at the
2 outset of the hearing, he -- counsel moved to admit -- at the
3 time he said the notice of hearing. And there were no
4 objections to that. But what he meant was the whole packet.

5 So I'm going to back up one step. Do you have any
6 objections to the packet being presented as Exhibit 1?

7 MR. TRAN: Say that one more time.

8 MR. JACKSON: At the outset of the hearing, when
9 counsel moved to admit, he apparently meant the packet, but he
10 said it was just the notice of hearing.

11 What he said was the notice of hearing, which would just be
12 the first couple of pages, rather than the whole packet.

13 So I was actually going to back up and give you a chance to
14 object to the packet as a whole, or can the packet as a whole
15 be admitted as Exhibit 1?

16 MR. TRAN: I have no objections.

17 MR. JACKSON: Well, let the record kind of clarify
18 that the packet as a whole was admitted as Exhibit 1.

19 MR. THOMPSON: My apologies, Judge.

20 MR. JACKSON: Okay. Did you say you rest?

21 MR. THOMPSON: Yes.

22 MR. JACKSON: At this point, since the board's
23 attorney for the Department of Health has rested, now is your
24 opportunity to present your side of the case.

1 TESTIMONY OF QUOC TRAN

2 MR. TRAN: Well, the allegations of the salon did
3 not have copies of the most recent inspection sheet in a
4 conspicuous place, on that allegation I'll take full
5 responsibility for it.

6 Because on that day, it was -- it was my fault on that day
7 when the inspector came in. We did not have that sheet posted
8 in a conspicuous place. So for that one, I'll take the
9 responsibility.

10 On allegations -- on the allegations of the salon allowed
11 people to work in the salon without an Arkansas license, I
12 completely disagree with the allegations, because all the
13 people who work in the salon are licensed.

14 When I was -- I wasn't there on that day when the inspector
15 came in. And I spoke with her on the phone. And I told her
16 that all the people who work in there are licensed to do -- a
17 manicurist license.

18 But the -- the wax, the wax pot was on because -- I really
19 don't know why it was on. But we did not provide any service,
20 any waxing service, to any clients on that particular day.

21 Or never have we provided any service to -- any waxing
22 service, to be specific -- to any client. Because we knew
23 that we are not licensed to do wax services at all.

24 So I -- that's why I disagree with the allegation on the --

1 the allegation on the working there without a license.

2 MR. JACKSON: Counsel, do you have any questions of
3 this witness?

4 MR. THOMPSON: I don't have any questions for Mr. Tran
5 at this point, I don't think.

6 MR. JACKSON: Okay. Does the board have any
7 questions for this witness?

8 MS. BOYDSTUN: Do you have anybody that works in your
9 salon ever that is a cosmetologist?

10 MR. TRAN: Yes. In the past, prior to the
11 inspections, we had one employee, one associate that is an
12 aesthetician. But then she left the salon to go somewhere
13 else.

14 So we do have all of the equipments in the salon. However,
15 since her departure from the salon, we did not and we have no
16 intention to provide any waxing service to any clients.

17 MS. BOYDSTUN: How long ago did she leave?

18 MR. TRAN: She left about two months ago, two or
19 three months ago.

20 MS. WILSON: The inspection was done in September.

21 MR. TRAN: I'm sorry, she left about August. I
22 can get the information to you. I can provide her license
23 number and her personal, relevant information to the board.

24 MR. JACKSON: Any other questions for the board from

1 this witness? If there are no further questions, do you have
2 anyone else you would like to call as a witness?

3 MR. TRAN: Not today, sir.

4 MR. JACKSON: Do you rest your case at this time?

5 MR. TRAN: Yes sir.

6 MR. JACKSON: Would either side like to make a
7 closing argument?

8 MR. THOMPSON: Just briefly. Ultimately what it boils
9 down to is the inspection -- Mr. Tran does admit as to the
10 inspection report. There was a wax pot on, it was obviously
11 on.

12 And Ms. Woods, an inspector, saw that it was on. She made
13 the -- she assumed in her experience that means that services
14 were being performed, and that no one could explain to her
15 satisfaction why it was on, when she explained what was going
16 on.

17 No one had an explanation for it. So I think Ms. Woods
18 cited them for -- cited them when they could not produce
19 anyone with a cosmetology or an aesthetician's license on that
20 day on the premises.

21 MR. JACKSON: Do you have any closing argument you
22 would like to make?

23 MR. TRAN: No.

24 MR. JACKSON: At this time, we will go off the record

1 for the board"s recess for deliberations and a decision
2 regarding the findings of fact and conclusions of law or any
3 penalties.

4 Once the board reaches the decision, we"ll go back on the
5 record. So at this time we"ll be off the record.

6 [Whereupon parties went off the record at 9:25 a.m.]

7 [Back on the record at 9:30 a.m.]

8 MR. JACKSON: We are back on the record in this
9 matter for a vote.

10 MS. BOYDSTUN: I make a motion that the Cozy Nails and
11 Spa is in fact in violation of Act 17-26-401 -- let"s see --
12 51B. And the fine should be \$550, which will be double the
13 violation of the -- for the wax pot and \$50 for the non-
14 posting of the report, the inspection report.

15 MS. WILSON: I second.

16 MS. WARE: All in favor?

17 BODY: Aye.

18 MS. WARE: Any opposed?

19 MR. JACKSON: I want to make a clarification. Has
20 there been an vote as to allegations of fact?

21 MS. BOYDSTUN: We find that the allegations of fact
22 to be true.

23 MR. JACKSON: Is that a motion?

24 MS. BOYDSTUN: I make a motion on that.

1 MS. JONES: Second that motion.

2 MS. WARE: All in favor?

3 BODY: Aye.

4 MR. JACKSON: Let the record reflect that the
5 decision is unanimous as to the allegations of fact, statement
6 of law, and to the penalty.

7 The board"s attorney will reduce the decision to writing
8 and make an attempt of service upon all parties. If the
9 respondent cares to appeal this decision, the appeal can be
10 taken under any specific provisions relating to this board
11 under the Administrative Procedures Act found in Arkansas Code
12 Annotated 25-15-201 et seq.

13 If there are no other questions or comments, this hearing
14 is concluded and the record is closed as to the matter of
15 Arkansas Department of Health versus Cozy Nails and Spa.
16 [Whereupon the proceeding concluded at 9:35 a.m.]

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CERTIFICATE

STATE OF ARKANSAS]

COUNTY OF PULASKI] ss

I, Stephanie G. Branton, an Arkansas Certified Court Reporter and Notary Public in and for the aforesaid county and state, do certify that a verbatim record of these proceedings were taken, by Stenomask, and reduced to typewriting by me; that this transcript is a true and correct record of the proceedings, to the best of my knowledge and belief. I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action; I am not a relative or employee of any attorney or counsel employed by the parties, nor financially or otherwise interested in the outcome of this action; that I have no contract with the parties, attorneys, or any person with an interest in this action that would affect impartiality. WITNESS MY HAND AND SEAL as court reporter on this 20th day of April, 2020.

STEPHANIE G. BRANTON, CCR

ARKANSAS STATE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

HEARING - RE:

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

V.

SOLAR NAILS (Hot Springs)

RESPONDENT

MONDAY, JANUARY 27, 2020
Commencing at 10:55 a.m.
5800 West 10th Street, Room 801
LITTLE ROCK, ARKANSAS

ADAM JACKSON, ESQ., Hearing Officer

COMMITTEE MEMBERS PRESENT:

Lois Ware, Chair
Amy Lance
Andrea Wilson
Carla Jones
Tonya Boydston
Candace Kenyon

ON BEHALF OF THE COSMETOLOGY TECHNICAL ADVISORY
COMMITTEE:

Charles 'Chuck' Thompson, Esq.
Arkansas Department of Health
4815 W. Markham, Slot #31
Little Rock, AR 72205

Reported and Transcribed by Stephanie G. Branton, CCR
Gibson-Branton Reporting Service, 501-960-6313

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1 PROCEEDINGS - 10:55 a.m.

2 MR. JACKSON: We're going to go ahead and go into the
3 next hearing. And it's going to be the second Solar Nails,
4 115731.

5 Okay, my name is Adam Jackson. I'm assistant attorney
6 general. And I'm the hearing officer today in the matter of
7 the Arkansas Department of Health versus Solar Nails, Number
8 115731. I believe this is the Hot Springs location. This is
9 going to be heard before the Cosmetology Technical Advisory
10 Committee.

11 Today is January 27, 2020. Will the respondent who is here
12 for Solar Nails please identify yourself for the record and
13 have a seat at the table?

14 Please identify yourself, for the record.

15 MR. NGUYEN: My name?

16 MR. JACKSON: Yes.

17 MR. NGUYEN: My name is Sang Nguyen.

18 MR. JACKSON: Spell that --

19 MR. NGUYEN: S-a-n-g -- N-g-u-y-e-n.

20 MR. JACKSON: And are you represented by counsel?

21 MR. NGUYEN: Yes.

22 MR. JACKSON: You're represented by counsel?

23 MR. NGUYEN: I am.

24 MR. JACKSON: Are you represented by an attorney

1 here?

2 MR. NGUYEN: No.

3 MR. JACKSON: And are you aware that you have the
4 right to have counsel, if you so choose?

5 MR. NGUYEN: Yes.

6 MR. JACKSON: At any time that you don't understand
7 the proceedings, just let me know. Did you receive a copy of
8 the order and notice of hearing to be here today?

9 MR. NGUYEN: Yes.

10 MR. JACKSON: Are you ready to proceed on this
11 matter?

12 MR. NGUYEN: Uh-huh.

13 MR. JACKSON: Will the board's counsel please
14 identify yourself for the record?

15 MR. THOMPSON: Chuck Thompson, Arkansas Department of
16 Health.

17 MR. JACKSON: And again I apologize, but I do need to
18 go through this same script. For the benefit of anyone
19 present today who may not have appeared in an administrative
20 hearing, the board will base its decision solely on the
21 evidence presented here today.

22 This hearing is held under the Administrative Procedures
23 Act, which means that the strict rules of evidence do not

1 apply, and the parties will be given latitude in introducing
2 evidence. This is to promote a fair hearing and to provide
3 the board with adequate information to make a decision.

4 To ensure the efficiency of the proceedings, I will grant
5 objections and caution parties only as necessary. If there is
6 anything that you have in your possession that you want the
7 board to consider, please present it here today. It's
8 essential that you offer it here today.

9 For all participants to the hearing -- all participants to
10 the hearing should be aware that the proceedings are subject
11 to the Freedom of Information Act, and as such all parts of
12 the hearing, including the deliberations of the board, are
13 open to the public.

14 It's important that all persons necessary to the hearing
15 are in the room while the hearing takes place. And if a party,
16 attorney or board member that needs to take a break or leave
17 the room, please advise me, and we'll take that break from the
18 hearing.

19 For those of you who are going to be witnesses here today,
20 please raise your right hands to be sworn in.

21 [witnesses swore to tell the truth in these proceedings]

22 MR. JACKSON: Are there any preliminary matters that
23 need to be discussed?

24 MR. THOMPSON: No, Judge.

1 MR. JACKSON: Is there any evidence that you wish to
2 be entered?

3 MR. THOMPSON: Yes, Judge, I would like to admit pages
4 1 through 25, the packet, which includes the notice -- the
5 order and notice of hearing, page 5 the certified mail return
6 receipt. Page 6 is a timeline of events, including the
7 allegations as well as the rule violations.

8 Pages 8 through 13 which are letters of support for Solar
9 Nails from, ostensibly, clients. Page 14, notice of violation
10 letter and page 15, a printout from the clip [phonetic
11 spelling] system, which is the system by which we track all
12 salon establishments.

13 Page 17 which is inspection report dated 8-23-2019. And
14 pages 18 through 25, which are the accompanying photographs to
15 the inspection report.

16 And I also have, which I can do as a separate exhibit, the
17 originals to those photographs, which could be Exhibit 2 if
18 anybody needs to see them if they think it would add clarity
19 to those photos.

20 So based on my cursory review, it's slightly clearer, but I
21 don't know how much it will help. But again, I've got those
22 available.

23 MR. JACKSON: Does anyone want to see the photos?

24 MR. THOMPSON: And again, Judge, for the record, there

1 are no differences. They are not different. They're just the
2 originals from pages 18 through 26 of the packet.

3 MR. JACKSON: Do you have any objection to either
4 Exhibit 1 or Exhibit 2?

5 MR. NGUYEN: No.

6 MR. JACKSON: No objection. All right, they will be
7 admitted. I'll hand these to the court reporter so she can
8 label them. And we'll just get them back from you if we need
9 to.

10 And Exhibit 1 and 2 will be admitted at this time.

11 Counsel, would you like to make an opening statement?

12 MR. THOMPSON: Briefly, committee members, this is
13 Solar Nails -- it has the same name as the prior salon. But
14 this is one in Hot Springs. And I will call Trinidad McFall
15 regarding her findings during the inspection.

16 In the packet which was just entered into evidence, you
17 will see that there is support among the clientele for Solar
18 Nails. But I'm going to show that regardless of the support,
19 there are still some violations that need to be corrected.

20 MR. JACKSON: Would you like to make an opening
21 statement or defer your opening statement to your
22 presentation?

23 MR. NGUYEN: We already see -- we already see
24 [unintelligible] -- we know how to now -- we operate from

1 Arkansas from state law -- [unintelligible] -- whenever she
2 come to our store [unintelligible] -- and then when we say we
3 don't know nothing [unintelligible] -- and then she say if you
4 don't sign [unintelligible] -- we come today and talk to every
5 one [unintelligible] -- and then she go [unintelligible] --
6 that why we come today to talk [unintelligible] --

7 MR. JACKSON: Counsel, would you like to present your
8 first witness?

9 MR. THOMPSON: Sure, I call Trinidad McFall.

10 MR. JACKSON: And let the record reflect that this
11 witness was sworn in.

12 EXAMINATION OF TRINIDAD MCFALL

13 BY MR. THOMPSON;

14 Q. Would you please state your name and title for the
15 record?

16 A. Trinidad McFall, Arkansas Department of Health,
17 Cosmetology and Massage Therapy Section.

18 Q. Ms. McFall, I'd like to call your attention to Exhibit ,
19 page 17. Can you tell me what that is?

20 A. The August 23 inspection.

21 Q. And did you perform that inspection?

22 A. I did.

23 Q. Can you tell me what you found?

24 A. I found excessive fumes and odors when I walked into the

1 salon. And I found dirty pedicure spa, wax heaters and pots
2 not clean and uncovered or dirty at all times.

3 I found all porous supplies or instruments that cannot be
4 disinfected shall be disposed of immediately after use. And
5 I found dirty drill bits, electrical instruments that were not
6 cleaned and disinfected with EPA-approved disinfecting. Non-
7 electrical instruments shall be cleaned and disinfected with
8 EPA-registered solution. Non-electrical instruments shall be
9 stored in a separate place from contaminated instruments.

10 Q. And they did not do that?

11 A. That's correct.

12 Q. And then let me -- let's go and make sure we're clear on
13 what you found. Are these the photos that accompanied your
14 inspection?

15 A. Yes sir.

16 Q. And what is page 18?

17 A. Page 18 is used foot slippers and toe separators.

18 Q. And what is page 19?

19 A. Page 19 are dirty drill bits.

20 Q. Are those the dirty drill bits that you described for us
21 in your report?

22 A. Correct.

23 Q. What's page 20?

24 A. Page 20 is the jets from the pedicure spa.

1 Q. And what -- looks like a residue there. What am I
2 looking at here?

3 A. It seems to be dirty or rusty.

4 Q. And so that -- and that does not -- that is not up to
5 par when it comes to the requirements of the pedicure spa?

6 A. No sir.

7 Q. What about page 21?

8 A. Page 21 is dirty wax pot.

9 Q. And then -- and so down there in the corner, that brown
10 -- around the open space down there in the right corner of the
11 photograph?

12 A. Correct.

13 Q. What's page 22?

14 A. 22 is buffers used.

15 Q. And what does that indicate?

16 A. That violates the all porous supplies or instruments
17 that cannot be disinfected shall be disposed of immediately
18 after use.

19 Q. So you need to throw those away or disinfect those?

20 A. No, they're not disinfectable.

21 Q. Oh, they're not disinfectable. They have to be the one-
22 time use.

23 A. Yes.

24 Q. Okay, thank you. What's page 23?

- 1 A. 23 is a dirty paraffin bin.
- 2 Q. And what is page 24?
- 3 A. 24 is dirty drill.
- 4 Q. And page 25?
- 5 A. 25 is dirty implements.
- 6 Q. And so on page 24 and 25 -- so on 24 does that need to
7 be disinfected or tossed?
- 8 A. Tossed.
- 9 Q. Tossed -- that's one-time use. What about page 25 --
10 does that need to be disinfected or tossed?
- 11 A. It can be disinfected.
- 12 Q. And then after you -- after you completed your
13 inspection, did you talk with anyone regarding the violations?
- 14 A. I did, the gentleman that's in front of me.
- 15 Q. And did you explain what those violations were?
- 16 A. I did.
- 17 Q. And what -- did he have a response?
- 18 A. He got a little upset and then his wife joined me, and I
19 went over the inspection again.
- 20 Q. You went over --
- 21 A. The violations.
- 22 Q. And then what -- did the wife indicate anything to you
23 about any action that they were taking?
- 24 A. The -- after the inspection was signed, she and I went

1 outside. She followed me outside and we spoke a few minutes
2 afterward, saying the things that they were going to take care
3 of, that they would be better next time.

4 Q. And did you submit this inspection report to your
5 supervisor?

6 A. Yes sir.

7 Q. Do you have anything else to add?

8 A. No sir.

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

10 MR. JACKSON: This is your opportunity to question
11 this witness. Do you have any questions?

12 MR. NGUYEN: Yes. We just want to know the law from
13 the state bar health department for any inspector, when the
14 come to my store, they park it outside, and they walk through.

15 And then they go and they check [unintelligible] for
16 temperature, and they ask for the [unintelligible] -- they
17 fill out [unintelligible] in my store.

18 That's the first time that the inspector I see -- I don't
19 see on the [unintelligible] -- how many -- and the second time
20 when she come [unintelligible] -- and she tell us about the
21 smell.

22 And then we got too many inspectors no smell or nothing.
23 But only her come and then we -- my wife has already
24 [unintelligible] -- we worked a lot today and [unintelligible]

1 -- and then we [unintelligible] --

2 MR. THOMPSON: Objection --

3 MR. JACKSON: What is the question for this witness?

4 MR. NGUYEN: We asked her [unintelligible] --

5 MR. JACKSON: Ask her one question. Whatever
6 question you ask, she's going to have to respond to. And the
7 court reporter is going to have to take down what you're
8 saying and what she's responding to. And the best way to do
9 that is one question at a time.

10 MR. NGUYEN: Oh, one question at a time?

11 MR. JACKSON: Yes.

12 MR. NGUYEN: Okay. the one question how the odor --
13 you know, you smell -- and then [unintelligible] -- the AC say
14 75. Why you come and you say [unintelligible] --

15 MS. MCFALL: Our procedure is when we walk in the
16 door that we identify ourselves as the Arkansas Department of
17 Health cosmetology inspector. That's the first thing we do
18 before we even walk into -- further into the salon, is we
19 identify ourselves. So I did that. That's the procedure as
20 soon as we walk into the door. We have to identify ourselves.

21 MR. NGUYEN: You asked [unintelligible] -- you asked
22 for the operator of the shop. When you come you look for who
23 the owner, who the operator [unintelligible] --

24 MR. THOMPSON: Asked and answered. She answered his

1 question.

2 MR. NGUYEN: [unintelligible]

3 MR. JACKSON: Hang on. Ask the question one more
4 time to the witness.

5 MR. NGUYEN: I just asking her that on how you say -
6 - when you find [unintelligible] -- the odor or the smell.

7 MS. MCFALL: What --

8 MR. NGUYEN: My wife say we got --

9 MR. JACKSON: Let her answer the question.

10 MS. MCFALL: When I walked in the door, I identified
11 myself and I smelled the odor of the acrylics in the salon,
12 throughout the whole salon. That's why I marked the excessive
13 fumes.

14 MR. JACKSON: What's your next question?

15 MR. NGUYEN: I said why after that we say the nail
16 salon that they smell the solution and then [unintelligible] -
17 - the air conditioner at 45 and we circulate, but not right
18 away. Why -- [unintelligible] --

19 MS. MCFALL: The fumes were still there; that's why
20 I marked it.

21 MR. NGUYEN: But we got the 45 -- we got the -- and
22 the circulation [unintelligible] -- after that. We already
23 tell you. When I told you [unintelligible] you say hey get
24 out. [unintelligible] --

1 MS. MCFALL: I didn't tell you to get out of your
2 salon. I did not say to get out, because it's his salon.

3 MR. NGUYEN: [unintelligible]

4 MR. JACKSON: What's your next question?

5 MR. NGUYEN: The next question, I'm go reply we
6 [unintelligible] -- not fair for us [unintelligible] -- we
7 clean up later. That's why we clean -- the EBI, the EPA --
8 [unintelligible] -- but she say no.

9 MR. JACKSON: And you'll get the opportunity in a
10 second to -- once the board rests their case, or the board's
11 attorney rests its case, you'll get an opportunity to present
12 your side of the argument and present your testimony.

13 This is your time to ask her questions. And I'm not -- I'm
14 not hearing any question there. And that's what I'm trying to
15 clarify to you.

16 MR. NGUYEN: Yeah, that way when I --
17 [unintelligible] -- I talk to [unintelligible] -- I already
18 asked you about what I -- [unintelligible] -- the first time
19 you come in and inspect my salon. The -- [unintelligible] --

20 MS. MCFALL: When I walked in the salon there was
21 bottles that were left that should have been -- the bottles
22 should have been immediately disposed of after use.

23 MR. NGUYEN: That's what it look like on page 19 --
24 on 25 look like -- [unintelligible] -- outside, uh-huh --

1 [unintelligible]

2 MR. JACKSON: What's your question for the witness?

3 MR. NGUYEN: The -- I tell her -- I talk to her --
4 [unintelligible] -- that's why we throw outside. That way we
5 -- [unintelligible] --

6 MR. THOMPSON: A suggestion -- maybe just -- I don't
7 know if Mr. Nguyen can get his wife on the phone, and swear
8 her in, and she could help interpret. Or I think there is a
9 language barrier here, and I don't know whether we're going to
10 be able to get where we need to be on questions and
11 understanding for the board.

12 MR. JACKSON: Could you have -- do you have the
13 ability to get your wife on the phone where we could allow her
14 to testify as well, and help you ask questions of this
15 witness?

16 Because I know you were referencing a conversation that you
17 wife had. I think that might provide some clarification.

18 MR. NGUYEN: [unintelligible] --

19 MR. JACKSON: This is your opportunity to ask
20 questions of this witness. And what I think I'm hearing from
21 you is more testimony. So I was giving you the opportunity if
22 you would like to call your wife, if she could also help with
23 kind of the questioning of this witness since she was there
24 with you.

1 And it would also provide some clarification to the board
2 because there is a bit of a language barrier.

3 MR. NGUYEN: Yeah, we can call her. Uh-huh, but --
4 [unintelligible] -- if the board don't believe me, the board
5 want to contact my wife, call her, and what's going on with
6 the inspector.

7 MR. THOMPSON: Mr. Nguyen, I'm speaking for the
8 department's standpoint here. I'm not speaking for the judge.
9 It's not a matter of belief; it's a matter of understanding.

10 So if we had your wife on the phone, maybe she could help
11 with some of the language -- a little bit of the language
12 barrier.

13 Because I'm only understanding partially what you're
14 saying. I'm not completely understanding all your questions.
15 So it's hard for me to talk to them. So maybe if your wife
16 was on the phone, you call her on your cell phone and put her
17 on speaker, and she could assist us with your answering the
18 questions, and maybe clarify some of the testimony.

19 MR. NGUYEN: Yes. Can I put the phone down.

20 MR. JACKSON: I'm going to move down here where I can
21 hear the witness better. Okay. Okay.

22 MS. TRAN: Hello.

23 MR. JACKSON: Hello, my name is Adam Jackson. I am
24 the hearing officer before the Cosmetology Technical Advisory

1 Committee board. This is in the matter of the Department of
2 Health versus Solar Nails.

3 The reason we called you to try to allow you to kind of
4 help clarify some stuff in this matter. Is your husband --
5 your husband is presenting, or is asking questions of the
6 witness, and we're trying to -- we're having some trouble with
7 the language barrier.

8 So what I'm going to do is allow you to kind of help him
9 ask his questions of our witness. What is your name?

10 MS. TRAN: My name is Ngoc Tran.

11 MR. JACKSON: And we're going to deviate from
12 procedure just a little bit. Does the board have any
13 objections to swearing in this witness over the phone?

14 MR. THOMPSON: No, Judge.

15 MR. JACKSON: Ma'am, can you -- I'm about to swear
16 you in under oath.

17 [Whereupon Ms. Tran swore to tell the truth in these
18 proceedings.]

19 MR. JACKSON: And this point, the board has presented
20 its side and has asked questions of the witness. Your husband
21 is attempting to ask some questions of the witness. But we're
22 having some communication difficulty.

23 So I've brought you on the phone so that you can help him
24 ask these questions.

1 MS. TRAN: Okay, so what I can understand is that
2 you want me to ask my husband to ask his questions.

3 MR. JACKSON: Yes. Can you spell your name for the
4 court reporter?

5 MS. TRAN: My first name N -- like Nancy -- G -- like
6 gold -- O -- like octopus -- C -- like cat. And my last name
7 is T -- like Tom -- R -- like Rachel -- A -- like apple -- N
8 -- like Nancy.

9 MR. JACKSON: Now, at this point I'm going to let
10 your husband communicate with you about the questions he needs
11 to ask of this witness. So what question do you have of this
12 witness?

13 MS. TRAN: So the first question he would like to
14 ask you is the time she was into the shop and you know, how
15 she was -- and my husband is all excited and is busy, and you
16 know, she never said her name or anything.

17 And she said [unintelligible] -- and she just go in and
18 out, go around the shop, and she mark everything, and she take
19 a picture, and you know, and she go up to the front, and then
20 she want my husband to sign the letter, sign paper
21 [unintelligible] -- whatever in the paper she marked, we want
22 her to explain for us. That's why she want my husband to sign
23 his name.

24 She -- he wasn't agreeing with what she want him to sign.

1 So him saying he not going to sign. And then she
2 [unintelligible] -- my husband did not sign the paper that
3 day. [unintelligible]

4 MR. JACKSON: Ma'am -- there is going to be an
5 opportunity later on in the hearing to present your side of
6 the story. What's going on here is the inspector is -- this
7 is your opportunity to ask the inspector questions about what
8 happened that day, or about what her investigation or findings
9 were. There will be an opportunity later to testify from your
10 perspective of what occurred.

11 MS. TRAN: Yeah, so the first question was like when
12 I saw on the paper and she mark on the -- and I asked her why
13 you marking out there. So that's our question. And she told
14 me it was like it was because we did not have the ventilation
15 and it smelled the nails.

16 And then I say I don't -- we did not have the ventilation,
17 but we had the air purifier. And she said where was it, and I
18 show her, it's on the side. So it's hard to see. And she say
19 maybe you need a larger one. It wasn't large enough. And I
20 say can you unmark it because we had one, you know. So
21 that's our question.

22 And she say you have to take the paper. So that's our
23 question.

24 MR. JACKSON: Well, it's not the question that you

1 ask; it's the question that you ask the witness here right
2 now. So do you have any questions for this witness about what
3 she did that day?

4 MR. NGUYEN: I have to ask her about why she say
5 something like that, and then when we did talk with her and
6 [unintelligible] -- we did cooperate with her when she did
7 inspection.

8 MR. JACKSON: So your first question is?

9 MR. NGUYEN: About the odor.

10 MR. JACKSON: What was the odor?

11 MR. NGUYEN: Uh-huh.

12 MS. MCFALL: The odor was the acrylic nails that
13 were being done at the shop, the smell of the acrylic when I
14 walked in -- excessive odor.

15 MR. JACKSON: What was your next question?

16 MR. NGUYEN: The next question, we want to ask her
17 about some [unintelligible] -- dirty and the clean one.
18 [unintelligible] -- you just marked that --

19 MS. MCFALL: I could say that you could say boxes of
20 dirty and boxes of clean to separate your implements.

21 MR. NGUYEN: Yeah, that's why we -- what we do now.
22 Every inspector -- that's the problem. We -- seven years --
23 we do the same thing. But we don't hear nothing. But with
24 you, different. [unintelligible] -- put the clean -- put the

1 dirty -- cannot put outside. That's why we don't know your
2 rules. That's why. And the question, when you take the
3 picture, look like [unintelligible] -- not dirty -- the yellow
4 one -- and then you say not clean -- [unintelligible]

5 MS. MCFALL: I discussed the violation pictures with
6 you guys. I showed y'all the pictures.

7 MR. NGUYEN: The spa -- number 20 maybe.

8 MS. MCFALL: No, I discussed all the violations.

9 MR. NGUYEN: When you took the picture, you don't
10 see the -- something dirty. And then you still mark.
11 [unintelligible]

12 MR. JACKSON: You've got to ask questions. You'll
13 have an opportunity to present. But you need to ask questions
14 of this witness.

15 MR. NGUYEN: That's the question.

16 MR. JACKSON: I think the question is did you talk to
17 her?

18 MS. MCFALL: Yes, I went through all the pictures
19 and violations with you, and then also with your wife.

20 MR. JACKSON: Do you have any other questions of this
21 witness?

22 MS. TRAN: So one more question I want to ask is
23 compared to other state -- you were like -- other state give
24 us a chance to ask questions, and she give us a warning, what

1 she wants and what we did right.

2 And with her, with the new state -- I want to ask her why
3 you did not give us a chance and like even explain to us what
4 we do wrong or right or the way we do.

5 Because the whole time you were just taking pictures and
6 did not have a conversation with us.

7 MR. JACKSON: Did you understand the question?

8 MS. MCFALL: Yes. The -- my job is to go in,
9 inspect the salon, and write down what I see. And then also
10 speak to you about the violations that I do mark before you
11 sign the paper and walk out of the door. That is my job.

12 MS. TRAN: So you say what your job is, is to come
13 and take a picture and mark our violations and we sign, and
14 you go. And you don't give any explanation for us so next
15 time we can get better [unintelligible] -- but with you it was
16 different.

17 MR. JACKSON: Did you understand the question?

18 MS. MCFALL: I think I understand the question.

19 MR. NGUYEN: She don't want to understand. We
20 [unintelligible] after every inspector come and then
21 [unintelligible] -- but with this inspector, they just come
22 and take the picture and mark on there. Not her job -- her
23 job just come to take the picture and see -- [unintelligible]
24 -- that's it. But we want to know -- my wife, everyone from

1 the nail salon, we want to get -- [unintelligible] -- that's
2 why we come here, for hearing.

3 MR. JACKSON: At this point are there any other
4 questions for this witness, or do you want to turn this
5 witness over to the board to ask questions?

6 MR. NGUYEN: That's it.

7 MR. JACKSON: And she'll need to stay on the phone
8 for any further questions. Stay with us. Okay, does the
9 board have any questions of this witness?

10 MS. JONES: Ms. McFall, is it common practice that
11 when you go to inspect a salon that you go in and identify who
12 you are, and then go about your job?

13 MS. MCFALL: That is correct.

14 MS. JONES: So commonly, it's not required for you
15 to, once you've made a finding to discuss with the salon owner
16 --

17 MS. MCFALL: We do it -- we explain all the
18 violations before they sign the inspection sheet. We go
19 through all the pictures we've talked about to every
20 violation.

21 MS. JONES: So this gentleman -- did you explain to
22 him what his violations were?

23 MS. MCFALL: We did, and I had to explain it to his
24 wife also.

1 MR. JACKSON: Are there any other questions from the
2 board?

3 MS. WARE: Yes. Who did you state your name to?

4 MS. MCFALL: To the gentleman.

5 MS. WARE: Okay, you did?

6 MS. MCFALL: Yes.

7 MS. WARE: Okay.

8 MR. JACKSON: Any other questions? Seeing as there
9 are no other questions, are there follow-up questions?

10 MR. THOMPSON: Yes, Judge

11 BY MR. THOMPSON:

12 Q. Ms. McFall, is this the first time you had inspected
13 this salon, Solar Nails?

14 A. Yes.

15 Q. This was the first time. So it would have been a
16 different inspector prior?

17 A. Correct.

18 Q. How long have you been an inspector with the department?

19 A. Year and a half.

20 Q. Year and a half. And did you do anything different, or
21 deviate anything away from what you normally do in any of your
22 inspections?

23 A. No sir.

24 MR. THOMPSON: That's all.

1 MR. JACKSON: Any other questions from this witness,
2 based on what was just asked?

3 MS. TRAN: Yeah, I had one more question. This
4 question -- [unintelligible] -- and I have a question --
5 [unintelligible] -- like is it a rule that we have to have
6 some temperature. So I would like to know for next time to
7 keep the room temperature. Is it 70 or 75 or 78? You know,
8 because I would like to know to education myself, so I don't
9 get in any trouble.

10 MR. JACKSON: Did you understand the question?

11 MS. MCFALL: I did. There is not a specific
12 temperature that you have to have you thermostat on, no. I
13 took a picture of it because of the excessive fumes and the
14 degree that it was in the shop. That's the only reason that I
15 took a picture of the thermostat.

16 MR. JACKSON: Any further questions?

17 MR. NGUYEN: My wife say when [unintelligible] --

18 MS. TRAN: I have another question is that
19 [unintelligible] -- go to the back and talk to us --
20 [unintelligible] -- in front of the customers. And is it okay
21 to do that?

22 MS. MCFALL: If you remember, we actually spoke for
23 15 minutes after the inspection, outside.

24 MS. TRAN: Yes, after you [unintelligible] -- so

1 that's what I want to ask, like what -- like next time so we
2 can get better. [unintelligible] --

3 MR. THOMPSON: Judge, I think --

4 MS. TRAN: I mean, you --

5 MR. THOMPSON: We understand the respondent's point at
6 this point, but they're not questions.

7 MR. JACKSON: I'll sustain that objection. At this
8 point, not testifying, are there any actual questions about
9 the facts that occurred that day? Not testifying, but do you
10 have a question for what she did?

11 MR. NGUYEN: Okay -- testify today --

12 MR. JACKSON: You'll get to testify later in the
13 hearing. But right now it's just purely asking this witness
14 questions.

15 MR. NGUYEN: That's all we've --

16 MR. JACKSON: That's all your questions?

17 MR. NGUYEN: Yeah.

18 MR. JACKSON: Okay. Any further questions from the
19 board? Counsel, next witness.

20 MR. THOMPSON: I call Kelli Kersey.

21 MS. KERSEY: Kelli Kersey, Arkansas Department of
22 Health, Cosmetology and Massage Section, section chief.

23 EXAMINATION OF KELLI KERSEY

24 BY MR. THOMPSON:

1 Q. Ms. Kersey, I'm going to call your attention to
2 Department's Exhibit 1, pages through 4. Can you identify
3 that?

4 A. Yes. That is the notice of the hearing, and allegations
5 of fact.

6 Q. And statement of laws?

7 A. And statement of laws -- I'm sorry.

8 Q. On page 4, is that your signature?

9 A. Yes sir.

10 Q. So you are familiar with this document, and you signed
11 this document?

12 A. Yes sir.

13 Q. Do you agree with the contents therein?

14 A. Yes sir.

15 Q. Are there any amendments or any changes or anything that
16 we need to -- that you would like to mention regarding this
17 document?

18 A. No sir.

19 Q. So the -- so based on this, based on the inspection
20 sheet, based on the inspection sheet that you -- the
21 inspection report that was submitted to you that you've
22 reviewed -- correct?

23 A. That's correct.

24 Q. And based upon that, you prepared the notice of hearing,

1 which you signed, and what are the department's
2 recommendations?

3 A. The recommendation, the proposed penalty is \$800.

4 Q. And that would be -- and how does that break down? What
5 are the violations themselves?

6 A. The salon was not free of excessive fumes and odors; the
7 pedicure spa was dirty; the wax heater and pot was covered --

8 Q. I'm sorry, let me interrupt. I wasn't clear.

9 A. I'm sorry.

10 Q. So the actual monetary recommendation -- what is that
11 based on? So we have violation 400, proposed penalty 800.
12 Could you explain that?

13 A. The violations for 51C12, C17, C21, C22a, and C23 --
14 which go along with the inspection sheet -- and it's \$400, and
15 for not paying.

16 Q. And so I'm going to just call your attention regarding
17 the non-payment on page 14 of Department's Exhibit 1. Can
18 you identify that?

19 A. Yes. That is the violation letter that was sent out
20 after the inspection on 8-23.

21 Q. And what's the date of that letter?

22 A. October 11.

23 Q. And then on page 15, can you tell me what that is?

24 A. That is the address report from our clip system.

1 Q. And would that -- and does that -- and does page 16 --
2 what is that?

3 A. Page 16 is our notes that we keep up with, and it just
4 shows is when the license was generated, and it starts in
5 2015. 2017, there was a violation. It was paid.

6 Q. So at the violation for the October 11 letter, for those
7 violations -- for the violations resulting out of Trinidad's
8 inspection, if it had been paid, that would have been
9 reflected on that document?

10 A. Yes sir.

11 Q. On page 6?

12 A. Yes sir.

13 Q. And so it does not reflect a payment?

14 A. Correct.

15 Q. And that's the other \$400 -- the failure to pay?

16 A. Correct.

17 MR. THOMPSON: Pass the witness.

18 MR. JACKSON: Do you have any questions of this
19 witness?

20 MR. NGUYEN: I had a question, you know it looked
21 like the violation from the state bar come out and sit
22 together and then we [unintelligible] -- when we come to the
23 hearing -- why they -- the state bar --

24 MS. KERSEY: That's our policy --

1 MR. NGUYEN: Looks like a violation. We don't pay
2 and hearing later -- we come but we get penalty --
3 [unintelligible]

4 MS. KERSEY: I understand that. They don't have to
5 impose that penalty. That's just our policy. That's just the
6 section's policy. But the committee doesn't have to -- they
7 don't have to go with our recommendation.

8 MR. NGUYEN: [unintelligible]

9 MS. KERSEY: So you -- I'm sorry, I can't understand
10 his question.

11 MR. JACKSON: Ask your question again so that there's
12 not any confusion.

13 MR. NGUYEN: We want to know finally, you know,
14 after meeting today, hearing today, the violations, we pay --
15 how much -- 400 or less than 400. We not agree to pay double
16 because the state bar say we don't pay. We pay, but before we
17 pay, we go to hearing today. After today, the decision what
18 going on. That's why we cannot pay [unintelligible]

19 MS. KERSEY: The \$400 is your actual penalty. And
20 you've contested it. And so you've contested it. We knew you
21 were not going to pay it. Is that what your question is?

22 MR. NGUYEN: Yeah. We'd like to know that.

23 MS. KERSEY: That's just our policy. It doesn't
24 mean it's going to be that way. They get to decide.

1 MR. JACKSON: Do you have any other questions?

2 MR. NGUYEN: No.

3 MR. JACKSON: Does the board have any questions of
4 this witness?

5 MS. WARE: About those pictures -- did you submit
6 those -- the clear ones?

7 MR. JACKSON: Those are down there. Do you have
8 another question?

9 MR. THOMPSON: Yes.

10 BY MR. THOMPSON:

11 Q. Ms. Kersey, when someone -- when someone is sent out a
12 letter, and they fail to pay, what happens next?

13 A. We send them a ten-day letter. I mean, if they -- his
14 is a little different because he did ask for the hearing. But
15 if someone doesn't pay, we send them a ten-day letter.

16 If they don't pay that, then we grant a hearing before the
17 committee.

18 Q. So but you did -- he did ask for a hearing.

19 A. He did request.

20 Q. He did request a hearing based off the October 11 --

21 A. Letter -- yes sir.

22 Q. Okay, and that's -- and so the policy recommends --

23 A. And that was on page -- where he asked for it -- is on
24 page seven.

1 Q. And so -- but the board doesn't have to go with the
2 recommendation on the total of the fine?

3 A. Correct.

4 MR. THOMPSON: Judge, can I confer with my witness?

5 MR. JACKSON: Yes. The counsel has asked for a brief
6 recess. We're going to take -- do you need a recess, or do
7 you need to confer with your witness?

8 MR. THOMPSON: I just need a -- just a three minutes,
9 two minutes.

10 MR. JACKSON: Okay, we're going to go off the record
11 for three minutes, five minutes. If anyone needs to take a
12 rest room break, you can do so.

13 [Whereupon parties went off the record.]

14 [Back on the record.]

15 MR. JACKSON: We're about ready to go back on the
16 record in this matter, in this matter, Department of Health
17 versus Solar Nails.

18 The counsel for the board was in the middle of asking
19 questions and I'm going to allow him to continue asking those
20 questions.

21 BY MR. THOMPSON:

22 Q. Ms. Kersey, can I direct your attention to page six of
23 25, that we were just discussing that, of our breakdown of the
24 -- of our recommendation on the violation.

1 Do we have an amended recommendation on violation regarding
2 the proposed penalty?

3 A. Yes -- \$400.

4 Q. \$400 for just the original violations -- correct?

5 A. Correct.

6 Q. So we'll make -- the record will note -- we make on the
7 record that our recommendation is based on the violation. Mr.
8 Nguyen had asked for a hearing based on the original
9 violations.

10 There's no -- it was not a matter of him not paying and us
11 bringing it back. It was a matter of he had a concern about
12 the initial, and he exercised his rights to due process.

13 And accordingly, the department is only recommending that
14 all that will be imposed is the original fine, based on
15 Trinidad's findings. And that's all I have, Judge.

16 MR. JACKSON: So my understanding is that -- are you
17 making a motion to amend, so that it doesn't -- to edit out
18 the double?

19 MR. THOMPSON: Correct, correct. I would ask that it
20 -- that the -- that page six of the record proposed penalty,
21 where it says \$800, that that just be -- that the \$800 be
22 struck, and that the proposed penalty be the \$400 original
23 violation.

24 MR. JACKSON: Do you have any objection to the

1 doubling provision being struck from the record so that the
2 only thing -- the only possible thing that you would face
3 would be \$400? Is that how I read it?

4 MR. THOMPSON: Correct.

5 MR. NGUYEN: Yeah, we --

6 MR. JACKSON: Well, my reading of this motion is
7 simply he's removing this line.

8 MR. NGUYEN: I know, but -- [unintelligible] --

9 MR. JACKSON: All he's doing right now is amending
10 the complaint so that instead of seeking \$800, they're
11 literally taking out -- there will be no doubling.

12 MR. NGUYEN: Okay.

13 MR. JACKSON: Do you have any objection to that?

14 MR. THOMPSON: If I may, Judge. Mr. Nguyen, we're
15 reducing the amount of money we're seeking from you. The
16 department is reducing the amount of money. We're cutting in
17 half what we are asking.

18 MR. NGUYEN: [unintelligible]

19 MR. THOMPSON: The amount in the original letter.
20 That's what we want now.

21 MR. NGUYEN: Yes -- thank you

22 MR. JACKSON: Well, we'll accept that amendment to
23 the complaint, and let it reflect that the Department of
24 Health is striking the proposed penalty of \$800. Do you have

1 any further --

2 MR. THOMPSON: That's all I have.

3 MR. JACKSON: At this time, the Department of Health
4 has rested. Is there any side of the case that you would like
5 to present that you haven't presented so far?

6 MR. NGUYEN: No.

7 MR. JACKSON: So there are no witnesses that you
8 would like to call?

9 MR. NGUYEN: No.

10 MR. JACKSON: At this time, then we're turn it over
11 for closing arguments.

12 MR. THOMPSON: Members, you've just heard us -- why we
13 struck that. We think that the other violations are there,
14 but we are not seeking double on that. Mr. Nguyen asked for a
15 hearing and that's what he had the right to due process.

16 And so we would stick with the original violations. And
17 that's all.

18 MR. JACKSON: Do you have anything else you want to
19 add for closing argument?

20 MR. NGUYEN: We get a letter for what we pay, right?

21 MR. JACKSON: At this time we'll go off the record
22 for the board's recess for deliberations and a decision
23 regarding findings of fact, conclusions of law, and penalties
24 to be handed down.

1 Once the board makes the decision, we'll go back on the
2 record.

3 [Whereupon parties went off the record at 12:05 p.m.]

4 [Back on the record at 12:08 p.m.]

5 MR. JACKSON: We are back on the record.

6 MS. WILSON: I make a motion that in the matter of
7 Arkansas Department of Health versus Solar Nails, 115731, we
8 find that all the allegations of fact to be true, and
9 violations. The penalty will be \$400 for the violations.

10 MS. WARE: Second the motion. All in favor?

11 BODY: Aye.

12 MR. JACKSON: Let the record reflect the decision was
13 unanimous. Please reduce the board's decision to writing and
14 make attempt of service upon the party. If you care to appeal
15 the decision, the appeal can be taken under any specific
16 provisions relating to this board under the Administrative
17 Procedures Act, found at Arkansas Code Annotated 25-15-201 et
18 seq.

19 If there are no other questions or comments, this hearing
20 is concluded and the record is closed in this matter.

21 [concluded at 12:10 p.m.]

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CERTIFICATE

STATE OF ARKANSAS]

COUNTY OF PULASKI] ss

I, Stephanie G. Branton, an Arkansas Certified Court Reporter and Notary Public in and for the aforesaid county and state, do certify that a verbatim record of these proceedings were taken, by me, and reduced to typewriting by me; that this transcript is a true and correct record of the proceedings, to the best of my knowledge and belief. I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action; I am not a relative or employee of any attorney or counsel employed by the parties, nor financially or otherwise interested in the outcome of this action; that I have no contract with the parties, attorneys, or any person with an interest in this action that would affect impartiality. WITNESS MY HAND AND SEAL as court reporter on this 19th day of May, 2020.

STEPHANIE G. BRANTON, CCR

ARKANSAS STATE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

HEARING - RE:

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

V.

SOLAR NAILS (Russellville)

RESPONDENT

MONDAY, JANUARY 27, 2020
Commencing at 9:35 a.m.
5800 West 10th Street, Room 801
LITTLE ROCK, ARKANSAS

ADAM JACKSON, ESQ., Hearing Officer

COMMITTEE MEMBERS PRESENT:

Lois Ware, Chair
Amy Lance
Andrea Wilson
Carla Jones
Tonya Boydston
Candace Kenyon

ON BEHALF OF THE COSMETOLOGY TECHNICAL ADVISORY
COMMITTEE:

Charles 'Chuck' Thompson, Esq.
Arkansas Department of Health
4815 W. Markham, Slot #31
Little Rock, AR 72205

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1 PROCEEDINGS - 9:35 a.m.

2 MR. JACKSON: Okay, my name is Adam Jackson. I'm
3 assistant attorney general. And I'm the hearing officer in
4 this matter of the Arkansas Department of Health versus Solar
5 Nails, Number 129925, which is to be heard before the
6 Cosmetology Technical Advisory Committee.

7 Today is January 27, 2020. Will the respondent, Solar
8 Nails, please identify yourself for the record and have a seat
9 at the table?

10 This is Russellville. It's Solar Nails Number 129925. The
11 number is in the body of the -- I believe this is -- is it
12 Russellville?

13 MR. THOMPSON: The mailing address to the owner is
14 Fort Smith, but the actual physical location is Russellville,
15 yeah.

16 MR. JACKSON: So can both of you identify yourself
17 for the record, so she can take your names down?

18 MR. B.BOYLAN: My name Bang Boylan [phonetic spelling]
19 -- B-o-y-l-a-n.

20 MR. JACKSON: Will you identify yourself for the
21 record?

22 MR. K.BOYLAN: My name is Kevin Boylan.

23 MR. JACKSON: Kevin?

24 MR. K.BOYLAN: Kevin Boylan.

1 MR. JACKSON: And are you represented by counsel?

2 MR. K. BOYLAN: No.

3 MR. B. BOYLAN: He going to help me.

4 MR. JACKSON: I understand that. Okay. Did you
5 receive a copy of the order and notice of hearing concerning
6 today's proceedings?

7 MR. B. BOYLAN: Yes.

8 MR. JACKSON: Are you ready to proceed on this
9 matter?

10 MR. B. BOYLAN: Yeah, yeah.

11 MR. JACKSON: The board's counsel, please identify
12 yourself for the record?

13 MR. THOMPSON: Chuck Thompson, attorney for the
14 Arkansas Department of Health.

15 MR. JACKSON: Okay. And again, I'll go through the
16 script. For the benefit of anyone present here today who may
17 not have appeared in an administrative hearing, the board will
18 base its decision solely on the evidence presented here.

19 This hearing is held under the Administrative Procedures
20 Act, which means that the strict rules of evidence do not
21 apply, and the parties will be given latitude in introducing
22 evidence. This is to promote a fair hearing and to provide
23 the board with adequate information to make a decision.

24 To ensure the efficiency of the proceedings, I will grant

1 objections or caution parties only as necessary. If there is
2 anything that in your possession that you want the board to
3 consider, please provide it here today.

4 All participants to the hearing should be aware that these
5 proceedings are subject to the Freedom of Information Act, and
6 as such all parts of the hearings, including the deliberations
7 of the board, are open to the public.

8 It's important that all persons necessary for the hearing
9 are in the room during the hearing, and if the party, attorney
10 or board member that needs to take a break or leave the room,
11 please advise me, and we'll take that break.

12 For those of you are going to be a witness in this
13 proceeding today, please raise your right hands to be sworn
14 in.

15 [witnesses swore to tell the truth in these proceedings]

16 MR. JACKSON: Are there any preliminary matters that
17 need to be discussed?

18 MR. THOMPSON: No.

19 MR. JACKSON: Okay, is there anything that needs to
20 be offered into evidence at this time?

21 MR. THOMPSON: I do. I was going to call Teri Dwyer,
22 but -- so the department would like to offer into evidence
23 what we will call Department's Exhibit 1. And that consists
24 of the notice of hearing, which are pages one through four of

1 the packet.

2 And there's the green card and receipt with postal service,
3 certified mail, page five; a timeline, page six; page 7
4 through 39 which are inspection reports, notice of violations,
5 letters, and emails concerning complaints about Solar Nails.

6 I believe Ms. Dwyer would testify that she mailed these out
7 with the notice of hearing, to the respondents in the case.

8 MR. JACKSON: Do you have any objection to the packet
9 being introduced as Exhibit?

10 MR. B. BOYLAN: This?

11 MR. JACKSON: Do you have any objection? You do have
12 an objection or you don't?

13 MR. K. BOYLAN: We don't have an objection.

14 MR. JACKSON: No objection. All right, this -- the
15 packet will be admitted as Petitioner's Exhibit.

16 Would you like to make an opening statement?

17 MR. THOMPSON: Yes, Judge. Members, this one results
18 from -- it was brought to you because this is the third
19 violation. They did not receive the demand letter that we
20 normally send for the violation monies. On the third
21 violation, we generally -- when we don't receive payment on
22 the prior two, we normally bring the establishment before
23 y'all to enforce the rules.

24 Because at that point, we've found that our letters have

1 not done enough to emphasize to the salon that they need to
2 fix the violations.

3 So that's kind of where we're at. And I'm going to call
4 the inspectors first, from the first two. The inspector from
5 the first two inspections and then the third inspection -- two
6 inspectors. I'll call them and they'll be able to go over the
7 violations that they found.

8 And then I'll call Ms. Kersey to discuss the -- discuss our
9 recommendations, and then let y'all decide.

10 MR. JACKSON: Would the respondent like to make an
11 opening statement now, or hold their opening to the start of
12 the presentation of their case?

13 MR. K. BOYLAN: No.

14 MR. JACKSON: Wait until the start of your case?

15 MR. K. BOYLAN: Yes.

16 MR. JACKSON: Counsel, you may proceed.

17 MR. THOMPSON: The department would like to call Pam
18 Atherly.

19 MR. JACKSON: Let the record reflect Ms. Atherly was
20 sworn in.

21 EXAMINATION PAM ATHERLY

22 BY MR. THOMPSON

23 Q. Would you state your name and title, for the record,
24 please?

1 A. Pam Atherly, cosmetology inspector.

2 Q. And Ms. Atherly, I'm going to call your attention to
3 page 37 of 39 in the department's exhibit, your inspection
4 report, dated 3-6-2019.

5 And are you familiar with this inspection report?

6 A. Yes.

7 Q. Is this an inspection report you completed on the
8 inspection of Solar Nails at 106 Weir [phonetic spelling]
9 Road, Russellville, Arkansas?

10 A. Yes sir.

11 Q. Can you tell me what you found on your inspection?

12 A. I found that there were portions removed that's likely
13 contaminated with the foot scrub. And I also found that a
14 headrest was not covered for each client, which means there
15 was no towel at the pedicure chair.

16 Q. And are those requirements under the Arkansas rules of
17 cosmetology?

18 A. Yes sir.

19 MR. B. BOYLAN: [unintelligible]

20 MR. JACKSON: How this proceeding will go is he
21 board's counsel will ask questions first, since it's his
22 witness. At that point, they'll pass the witness to you and
23 then you'll get to ask questions of the witness.

24 And then after both of you have had an opportunity to ask

1 questions, then the board will ask questions.

2 BY MR. THOMPSON:

3 Q. So Ms. Atherly, on page 3 of 39, is that a picture of
4 what you observed during that inspection?

5 A. Yes sir.

6 Q. And is that a picture of the spoon in the foot scrub?

7 A. Yes sir.

8 Q. A violation?

9 A. Yes sir.

10 Q. Did you talk with anybody there that day about the
11 violations?

12 A. Yes sir.

13 Q. What was their response? Well, I'm sorry -- who did you
14 talk to?

15 A. The gentleman sitting there.

16 Q. Okay. Did he indicate whether -- did he have any
17 explanation on violations?

18 A. No sir.

19 Q. And so after -- after you completed your inspection
20 report, what did you do with the inspection reports -- send
21 them to your supervisor?

22 A. Yes sir.

23 Q. Ms. Atherly, when was your next encounter you had with
24 Solar Nails?

- 1 A. Okay, I had -- 8-15 of 2019.
- 2 Q. And is that page 32 of the packet, Exhibit 1?
- 3 A. Yes sir.
- 4 Q. Is that your inspection report?
- 5 A. Yes sir.
- 6 Q. And could you tell me what you found on that day?
- 7 A. On 8-15, I found that there were used foot files.
- 8 Q. Okay, let me interrupt. Can you tell me about page 32
9 of 39, that's dated 8-15-2019, time 9:10?
- 10 A. Yes sir. That is -- it was closed when I first went
11 there.
- 12 Q. And then it was closed when you first went there. So
13 what did you do?
- 14 A. I was -- I left there and received a call that they were
15 open. So at 9:36 I went back.
- 16 Q. Is that -- is that reflected on page 31 of 39?
- 17 A. Yes sir.
- 18 Q. And that's the inspection report for that day?
- 19 A. Yes sir.
- 20 Q. For when they were open?
- 21 A. Right.
- 22 Q. Can you tell me what you found on that day?
- 23 A. That was when I found the used foot files.
- 24 Q. And so could you explain what the used foot files --

1 what does that mean regarding health and safety?

2 A. Okay, this was a violation that the porous supplies or
3 instruments, they cannot be disinfected, so they have to be
4 disposed of after immediate use. So it's a
5 one-time use.

6 Q. And so you -- what you found indicated that they were
7 using them multiple times?

8 A. Exactly.

9 Q. Did you talk to anyone about the violations?

10 A. Yes sir, I talked to the gentleman across [indicating].

11 Q. Did he have any response?

12 A. No. He understood.

13 Q. Let me back up. At any time on these two inspections,
14 did they indicate that they -- any willingness to pay on the
15 violations?

16 Well, let me back up. I'm sorry. On any of those times,
17 did you explain that there were monetary violations that they
18 need to pay, or that they would receive notice of monetary
19 violations?

20 A. Well, I explained to them what their violation was.

21 Q. Okay, and --

22 A. So they were aware of what they were being fined for.

23 Q. And that they would -- that a letter would follow about
24 that?

1 A. Yes.

2 Q. Ms. Atherly, when was the next time you visited Solar
3 Nails?

4 A. I believe it was on a complaint. That date was on 11-13
5 of '19.

6 Q. And is that visit reflected?

7 A. Yes sir.

8 Q. And you said that was pursuant to a complaint?

9 A. Yes sir.

10 Q. Do you know the circumstances of the complaint, or were
11 you just informed there was a complaint, and went out there?

12 A. Well, we were sent out on a complaint for health and
13 safety violations.

14 Q. And when you say 'we were,' did someone else accompany
15 you?

16 A. Yes sir.

17 Q. And who was that?

18 A. Trinidad McFall.

19 Q. And so she accompanied you on the 11-13-2019 visit --

20 A. Yes.

21 Q. -- on a complaint?

22 A. Yes sir.

23 Q. And you all did the inspection together?

24 A. Yes sir.

- 1 Q. And the inspection report is reflected on page 8 of 39?
- 2 A. That's correct.
- 3 Q. Can you tell us what you found?
- 4 A. When we went, we found that they had storage in their
5 bathroom area, and we also found that their pedicure spas were
6 not disinfected after each one.
- 7 The paraffin wax was dirty. We found files, buffers and
8 toe separators that were used. The [unintelligible] had not
9 been disinfected.
- 10 Also the electrical instruments that were stored and
11 separated were contaminated after each use. And the
12 electrical instruments were not clean and disinfected with EPA
13 registered solution.
- 14 And also the infected implements stored in clean, covered
15 places were not being done and separated from any contaminated
16 instruments.
- 17 Q. And so -- all these were violations of the rules of
18 cosmetology?
- 19 A. Yes sir.
- 20 Q. Would you look at -- can you look at page 13 through 27
21 of the department's Exhibit 1?
- 22 A. Yes sir.
- 23 Q. And can you tell me what those pictures are?
- 24 A. Those are basically the same pictures that I just

1 explained the violations on.

2 Q. And so those are what you found -- those are pictures of
3 what you found that day?

4 A. Yes sir.

5 Q. Did you talk with anyone about those violations?

6 A. Yes sir. We did speak to the owner, or the gentleman
7 across from me was there. And we spoke with him.

8 Q. Did he indicate anything about understanding that they
9 were violations?

10 A. He did understand that they were violations, yes.

11 Q. All right, we'll -- pass the witness.

12 MR. JACKSON: Any questions of this witness?

13 MR. B. BOYLAN: You know something, I don't
14 understand -- I said thank you for coming to my shop, and if
15 something there you'll let me know, and thank you about that.
16 But if you want to come in, you say --

17 MR. JACKSON: Sir, this is an opportunity to question
18 this witness.

19 MR. B. BOYLAN: Yeah, okay.

20 MR. JACKSON: You'll get to present --

21 MR. B. BOYLAN: Okay.

22 MR. JACKSON: -- your case --

23 MR. B. BOYLAN: Okay, this -- I think you come in the
24 first time and you tell me that I [unintelligible]. I don't -

1 - this one -- the towel [unintelligible]. They tell me you
2 have to have the towel [unintelligible]. Someone tell me you
3 have to -- when you come in [unintelligible].

4 And that day you come in, we don't have any one customer in
5 shop. But you said you -- I just heard you say you don't saw
6 any towels on [unintelligible]. And I want to know now I have
7 to hang the towel on the chair first or what I do with the
8 towel?

9 Because I heard you say you come in the shop, you don't see
10 any towel. What I do with the towel? Can I have
11 [unintelligible] -- but this is not right.

12 If you come in and you tell me -- and this washer machine
13 [unintelligible] -- but you come in too many times. It's not
14 right.

15 The first time [unintelligible] -- the washer machine. If
16 I'm not doing it, you give me a ticket -- okay. But just to
17 say that my washer machine [unintelligible] -- nobody say.

18 And one more thing I want to add over here to -- yeah,
19 about the [unintelligible] -- and [unintelligible] -- over
20 here, page 33 -- 33 and 39 -- [unintelligible].

21 Yeah -- we didn't use -- we never use that again. And
22 [unintelligible] -- we use paper. We throw away paper. We
23 don't keep -- and I mop the floor. [unintelligible] --

24 MR. THOMPSON: Judge, I'm going to -- generally I give

1 a lot of latitude, because English is a second language.

2 But I would ask that we point to specific things that we
3 can actually ask questions about, regarding I need to ask what
4 he's asking about. And it kind of needs to be phrased as a
5 question.

6 MR. B. BOYLAN: Page 24 -- [unintelligible]

7 MR. JACKSON: I'm going to sustain that objection,
8 but just purely for the point of clarification. This is your
9 opportunity to ask questions of this witness. There will be a
10 separate time in a little bit where you will get to present
11 your case.

12 MR. B. BOYLAN: [unintelligible]

13 MR. JACKSON: So do you have any questions of this
14 witness?

15 [inaudible simultaneous conversation]

16 MR. B. BOYLAN: Just something right here -- washing
17 machine.

18 MR. JACKSON: What page is that?

19 MR. B. BOYLAN: It's 24 and 39. [unintelligible] --
20 the mop -- in the bathroom -- and 35 [unintelligible] --

21 And one more thing I want to answer, right here. Because
22 let me know the towel that I have on the chair right now are
23 not -- [unintelligible]

24 MR. JACKSON: That's a question for the witness.

1 MR. B. BOYLAN: Yeah, can you tell me now?

2 MS. ATHERLY: The towels are supposed to be there
3 behind your client's head. So you're -- I mean, could I ask
4 him a question? No.

5 Okay. So at the time that I went in there, I believe that
6 -- on that particular inspection it was around 3:00. And your
7 -- I mean, I can remember clients there and there was no towel
8 behind their head.

9 MR. B. BOYLAN: [unintelligible] Because you know --
10 [unintelligible] -- when you come in, no customers in my shop.
11 I have to pick it up and when they come in -- [unintelligible]
12 --

13 MR. K. BOYLAN: He wants you to clarify whether or
14 not the towels have to be already on the chair before a
15 customer comes in to the shop. Or is the towel to be provided
16 as the customer comes?

17 MS. ATHERLY: Well, either way it would be the same
18 difference. I mean, you're going to have to put the towel
19 behind their head.

20 MR. B. BOYLAN: Thank you. [unintelligible]

21 MS. ATHERLY: Before starting the service, you would
22 need to have the towel behind their head.

23 MR. B. BOYLAN: Okay, thank you. You answer.

24 MS. ATHERLY: For their protection. So let me

1 clarify that, you're only going to get a violation if a client
2 is in the chair at the time of a service, and they did not
3 have a towel.

4 MR. K. BOYLAN: He wants to ask if the bathroom
5 violation -- he's just asking if he's being fined for the
6 bathroom violation, for the washing machine inside the
7 bathroom?

8 MS. ATHERLY: The picture, page 25 of 39 -- that
9 picture is just a reflection that's showing that that was the
10 rest room that we took the picture of in reference it being a
11 bathroom, the picture on page 24.

12 MR. B. BOYLAN: [unintelligible]

13 UNIDENTIFIED: And he want to know --

14 MR. JACKSON: Hold on -- what's your name, sir?

15 MR. SANG: Sang [phonetic spelling].

16 MR. JACKSON: And what's your connection?

17 MR. SANG: Nothing.

18 MR. JACKSON: Are you participating in this hearing?

19 MS. KERSEY: He's with the other Solar Nails.

20 MR. B. BOYLAN: [unintelligible]

21 MR. JACKSON: Are there further --

22 MR. K. BOYLAN: He wants to ask -- he's asking what
23 other places he could move it to. Because as it stands right
24 now, the bathroom was a previous storage area, and there's no

1 other place to put it at the front of the shop, and the only
2 other place that's left would be --

3 MS. ATHERLY: My response on that is that this is not
4 a mop in that picture. It was cotton that was used on your
5 clients.

6 MR. K. BOYLAN: Cotton?

7 MS. ATHERLY: Cotton. That needs to be closed
8 container.

9 MR. K. BOYLAN: On page 15, can you specify the
10 violation?

11 MS. ATHERLY: Page what?

12 MR. JACKSON: Did you say page 15?

13 MR. K. BOYLAN: Yes -- page 15.

14 MS. ATHERLY: Yes -- used files.

15 MR. K. BOYLAN: Used files. No further questions.

16 MR. JACKSON: Okay, no further questions from the
17 respondent. At this time, does the board have any questions
18 of this witness?

19 MS. WARE: For?

20 MR. JACKSON: For her -- yes.

21 MS. WARE: Could you clarify something for us. On
22 page 24, what is that?

23 MS. ATHERLY: That is actually a bag of cotton that
24 they use for their clients.

1 MS. WARE: And where was it located?

2 MS. ATHERLY: In a rest room.

3 MS. WARE: Okay, this bag of cotton was in the rest
4 room?

5 MS. ATHERLY: Yes ma'am.

6 MS. WARE: And on page 23, is that what's going on
7 here?

8 MS. ATHERLY: Page 23 of 39 was a bag of used
9 pedicure shoes.

10 MS. WARE: Used. Was -- this was out on the floor?

11 MS. ATHERLY: No, it was in a back room.

12 MS. WARE: And page 22.

13 MS. ATHERLY: That is paraffin wax that was used,
14 being re-used.

15 MS. WARE: Is that a container inside?

16 MS. ATHERLY: Yes.

17 MS. WARE: To dip the wax with, I guess?

18 MS. ATHERLY: Yes.

19 MS. WARE: But it didn't have a lid on it? It was
20 just open.

21 MS. ATHERLY: Yes. It did have a lid on it. We took
22 the lid off --

23 MS. WARE: Just took it off and that's what you
24 found?

1 MS. ATHERLY: You can see on page 21 --

2 MS. WARE: Oh, okay. So on 21, that's just like wax
3 on top of that?

4 MS. ATHERLY: Yes ma'am.

5 MS. WARE: And the containers on 18, are these the
6 ones that you're saying are not labeled?

7 MS. ATHERLY: On page?

8 MS. WARE: 18 of 39.

9 MS. ATHERLY: I believe in the -- on page 18 of 39,
10 there is, at the very right side, you see the foot scrub, it's
11 not labeled. And then on page 26, there's a container of --
12 also, that's not labeled.

13 MS. WARE: On 26?

14 MS. ATHERLY: Yes.

15 MS. WARE: Okay, container no labeled?

16 MS. ATHERLY: Yes ma'am.

17 MS. WARE: I think that's all that I have.

18 MR. JACKSON: Any other members of the board have any
19 questions? Are there any follow-up questions from the board's
20 attorney?

21 MS. WARE: I'm sorry, I do have one. Pam, maybe I
22 got confused about the washer and dryer. Was that something
23 that you said they wasn't supposed to have in there?

24 MS. ATHERLY: No, the washer and dryer didn't have

1 anything to do with our inspection at the time.

2 MR. THOMPSON: Just one follow-up.

3 BY MR. THOMPSON:

4 Q. So the picture -- the washer and dryer just happened to
5 be in the picture? So on page 25, you were trying to show
6 what room you were going in and taking a picture of?

7 A. Exactly.

8 Q. Is that why that's taken that way?

9 A. Yes sir.

10 Q. And then what did you find in there that was a concern,
11 just so we're clear for the record.

12 A. They had stored the cotton that they used on clients in
13 the bathroom.

14 Q. And you cannot -- and that's a violation to store that
15 cotton in the bathroom? So is there a health and safety
16 concern with storage of items used on clients in a rest room?

17 A. Yes sir.

18 Q. And that's reflected in our rules?

19 A. Yes sir.

20 MS. LANCE: Pam --

21 MR. JACKSON: Hold on, if you could allow counsel to
22 ask all of his questions, and I'll circle back to the board.

23 MR. THOMPSON: That's all I have. Thanks.

24 MR. JACKSON: Now do you have any follow-up questions

1 based on the board's questions?

2 MR. K. BOYLAN: I don't have anything.

3 MR. JACKSON: Does the board have any last questions?

4 MS. LANCE: One last question. On page 26, what's
5 in that picture?

6 MS. ATHERLY: That was an unlabeled container.

7 MR. JACKSON: Any more follow-up questions from the
8 board?

9 MR. THOMPSON: I call Trinidad McFall.

10 MR. JACKSON: And let the record reflect this witness
11 was sworn in at the outset of the proceeding.

12 EXAMINATION BY TRINIDAD MCFALL

13 BY MR. THOMPSON:

14 Q. If you could state your name and title, for the record,
15 please.

16 A. Trinidad McFall, Arkansas Department of Cosmetology and
17 Massage Therapy.

18 Q. And did you accompany Ms. Atherly on her 11-13-2019
19 inspection of Solar Nails?

20 A. Yes sir.

21 Q. You were in the room and you heard her testimony, Are
22 you familiar with the inspection sheet on page eight?

23 A. Yes sir.

24 Q. Did you -- do you agree with the contents of that

1 inspection sheet?

2 A. Yes sir.

3 Q. Did you help in compiling that inspection sheet?

4 A. Yes sir.

5 Q. Do you have anything to add, based on your observations
6 of Solar Nails that day, that we haven't already gone over?

7 A. No sir.

8 MR. THOMPSON: I pass the witness.

9 MR. JACKSON: Do you have any questions for this
10 witness?

11 MR. K. BOYLAN: No.

12 MR. JACKSON: No questions of this witness. Does the
13 board have any further questions of this witness? Seeing as
14 there are no questions of this witness, call your next
15 witness.

16 MR. THOMPSON: I call Kelli Kersey.

17 EXAMINATION OF KELLI KERSEY

18 MS. KERSEY: Kelli Kersey, Arkansas Department of
19 Health Cosmetology and Massage Therapy Section, section chief.

20 MR. JACKSON: And let the record reflect Ms. Kersey
21 was sworn in.

22 BY MR. THOMPSON:

23 Q. Ms. Kersey, I want to call your attention to
24 Department's Exhibit 1, order and notice of hearing, part of

1 Exhibit 1, the order and notice of hearing, which consists of
2 pages one, two, three, four, five -- well, four.

3 A. Uh-huh.

4 Q. And did you -- have you reviewed this notice of hearing?

5 A. Yes sir.

6 Q. Is that your signature on page four?

7 A. Ye sir.

8 Q. So did you approve of the allegations of fact and
9 statement of laws?

10 A. Yes sir.

11 Q. I am not going to have you read out every one of -- all
12 of the entire text that is coming in as a part of the exhibit.
13 I think appellate tribunals or courts would be able to review
14 it.

15 So you have nothing to add to or correct on anything
16 regarding these allegations of fact?

17 A. No sir.

18 Q. Or the statement of laws?

19 A. No sir.

20 Q. So I would like to go back and call your attention to
21 page 34 of -- hold on. So that letter of -- there's a letter
22 dated March 15, 2019 with your signature on it. Are you
23 familiar with that?

24 A. Yes

1 Q. And what is this letter?

2 A. This is a letter regarding the March 6 inspection for
3 violations -- the two violations that were found on March 6.

4 Q. So was that prepared pursuant to Ms. Atherly's
5 inspection report on that date?

6 A. Yes sir.

7 Q. Did the department ever receive payment for the
8 violations?

9 A. No sir.

10 Q. I'd like to call your attention to page 28 of 39.

11 A. Uh-huh.

12 Q. And that letter is dated October 11, 2019. But it's not
13 signed by anybody. Are you familiar with this letter?

14 A. Yes.

15 Q. And what is that letter?

16 A. This is the violation letter for the inspection on 8-15-
17 19.

18 Q. And do you direct that those be sent out for -- in your
19 job as section chief, do you direct that those letters be sent
20 out?

21 A. Yes sir.

22 Q. And do you have any indication that there was payment on
23 those violations?

24 A. No sir.

1 Q. So what we don't have is a third letter. Can you tell
2 me why we don't have a third letter for violations?

3 A. In our rules and regulations, it states that on the
4 third violation -- I mean, when they are cited for a third
5 violation, they do not get the chance to pay it; they have to
6 come directly before the committee.

7 Q. And that's why we're here today?

8 A. Correct.

9 Q. And I understand that the third -- the third violation --
10 - the third inspection was a result of complaint, is that
11 correct?

12 A. Yes sir, it's on page 12 of 39 in the complaint.

13 Q. And that's an e-mail complaint?

14 A. Uh-huh.

15 Q. Concerning the conditions in Solar Nails in
16 Russellville?

17 A. Yes sir.

18 Q. And did you direct that that inspection be done?

19 A. It's directed to the inspector that's in that territory
20 -- Crystal Wells [phonetic spelling].

21 Q. And who is Crystal Wells?

22 A. She is our inspector supervisor.

23 Q. Is she here today?

24 A. Yes sir.

1 Q. Can you point her out?

2 A. She's waving back there. She's in the black shirt, long
3 hair.

4 Q. Okay, I'm not going to call her unless it's necessary.
5 So we have -- is it fair to say that the first two violations
6 were -- I hate to use the term 'minor,' but there were a
7 minimal amount of violations the first two times.

8 A. Correct, you could say that, yes.

9 Q. Now, in your opinion as section chief and your knowledge
10 of -- how many years experience do you have in this field?

11 A. Ten years. Well, I have ten years in this position, but
12 I've been a cosmetologist for 32.

13 Q. For 32 years?

14 A. Uh-huh.

15 Q. So the third set of violations, would you term that more
16 severe than the first two?

17 A. Yes sir.

18 Q. They were more numerous, is that correct?

19 A. Yes.

20 Q. So I do know that we had the original -- I believe we
21 have original recommendation with the violations on page --
22 I'm sorry. Let me call your attention to page six of 39.

23 A. Okay.

24 Q. And what's on page six of 39?

1 A. It is a breakdown of each of the inspection sheets, what
2 happened in each one of the inspections that they were cited
3 for.

4 Q. Including the monetary penalties?

5 A. Correct.

6 Q. And the department's original -- based on this sheet,
7 the department's original proposal was the violations in the
8 order of \$625 and the violations themselves, and then
9 basically double that for a failure to pay on them, for a
10 total of \$1250 -- correct?

11 A. Yes sir, correct.

12 Q. And do we -- do we have any -- is that your current
13 recommendation?

14 A. That's our current recommendation.

15 Q. Do you believe that should be imposed today, or do you
16 believe that should be in abeyance with an opportunity to
17 correct this?

18 A. I think that maybe some of them could be corrected. And
19 you know, if they're not corrected, [inaudible]

20 Q. So you're saying that they -- give them an opportunity
21 to correct some. Are there some that you -- could you --
22 well, tell me which ones do you think that should be
23 corrected.

24 A. Well, I think maybe like the bottles and containers that

1 are labeled -- it's not really -- I mean, I know that's a
2 health and safety -- maybe the storage in the bathroom. I
3 feel like he felt like it was the washer that was the problem,
4 and I think he said that he moved it out of there already.

5 I don't think he understood that it was the cotton.

6 Q. So go down with me. Let's start -- let's look at page
7 39. And I don't want to belabor the but. But so -- well,
8 5.1C17a -- starting with that one.

9 Can you tell me, out of those rules which one would you
10 consider to be -- consider recommending be put in abeyance
11 with an opportunity to correct.

12 A. I'd have to -- I'm sorry, I'd have to look at all,
13 because I'm not exactly sure which one goes with which. Is
14 there -- these are in order of --

15 Q. Well, let's -- and I'm sorry, maybe it would be quicker
16 --

17 A. That's okay.

18 Q. What ones do you think -- what fines do you think should
19 be imposed today for what violations?

20 A. I definitely think that the files and the toe separators
21 that have been used should be enforced. He had already been
22 told that in one of the previous inspections. The -- they
23 definitely need to separate the dirty from the clean. Sorry
24 -- 23B.

1 Let me see -- they need to clean the -- I actually have the
2 original pictures if y'all would like to see those.

3 Q. Well, we can -- if the -- the cosmetology members will
4 have a chance to ask you these questions.

5 A. All right.

6 Q. So the toes, the buffers, the separate the dirties --

7 A. Uh-huh, the pedicure spa.

8 Q. The pedicure spa. It's your recommendation that those
9 fines be imposed today.

10 A. Yes.

11 Q. Because of the extreme health and safety concerns?

12 A. Yes. The paraffin wax, which is 17B -- that one --

13 Q. Just so we're clear -- toes and buffers, separate the
14 dirties, separation of the dirties, the paraffin wax. And was
15 that it?

16 A. The pedicure spa.

17 Q. And the pedicure spa.

18 A. Uh-huh.

19 Q. It's your recommendation that those fines be imposed
20 today and the other fines be held in abeyance for an
21 opportunity to correct.

22 A. Yes.

23 MR. THOMPSON: I'll pass the witness.

24 MR. JACKSON: Do you have any questions of this

1 witness? Okay, no questions.

2 MR. K. BOYLAN: Still translating. No questions.

3 MR. JACKSON: Does the board have any questions for
4 this witness?

5 UNIDENTIFIED: You said you have more pictures?

6 MS. KERSEY: Yeah, these are actually the originals,
7 yeah. And they are. And they are -- for some reason when we
8 copy them, they don't come out good. I've numbered them for
9 y'all.

10 MR. JACKSON: Let the respondents see them. These
11 are some additional photographs that they are wanting to look
12 at. And I'm allowing you to see them, and if there are no
13 objections.

14 MS. KERSEY: They're the same ones; they just more
15 clear.

16 MR. THOMPSON: And Judge --

17 MR. JACKSON: I'm going to clarify for the record,
18 apparently these are the original pictures that were part of
19 the packet that you have; they're just clearer picture. But
20 I'll still allow you to look at them, prior to introducing
21 them as exhibits.

22 MR. K. BOYLAN: No problem.

23 MR. JACKSON: Do you have any objection to the
24 clearer pictures being admitted?

1 MR. K. BOYLAN: No.

2 MR. JACKSON: All right, they can be presented to the
3 board.

4 MR. THOMPSON: And Judge, I'm going to ask that those
5 be entered into evidence.

6 MR. JACKSON: Since there were no objections, they
7 will be admitted as Exhibit 2. Does the board have any
8 further questions of this witness?

9 [inaudible conversation]

10 I want to caution everybody here, for the benefit of the
11 court reporter, she's going to be the hardest working person
12 in this room, after this hearing, especially.

13 She's going to transcribe all of this. So everybody, keep
14 your side conversations down to not interfere with her ability
15 to take down what's actually being said here.

16 Do any members of the board have any further questions of
17 this witness? As there are no further questions, are there
18 any follow-ups by the parties?

19 MR. THOMPSON: No.

20 MR. JACKSON: Do you have any follow-up questions?

21 MR. K. BOYLAN: He's asking on the first two notices,
22 the lesser violations, the one for \$150 and \$34 -- he's asking
23 for these -- these are sent directly to that address on the
24 top of that --

1 MS. KERSEY: Yes, that's where they were sent.
2 That's the mailing address that we have on file.

3 MR. K. BOYLAN: Do you know if there was any recently
4 address changes that have been filed?

5 MS. KERSEY: I don't know that. I can have that
6 looked up if you want me to. We have a physical address which
7 is in Russellville, and then we have that mailing address.

8 MR. K. BOYLAN: Because the mailing address was the
9 previous residence. And in 2019 we had moved to our new
10 house. [inaudible]

11 MS. KERSEY: On page seven, the addresses are on
12 there. The last change we have was in 2014.

13 MR. K. BOYLAN: Which one did you say was the address
14 change?

15 MS. KERSEY: The top one, the mailing address --
16 that was -- that's the last one we have, which was 8-7-14.

17 MR. K. BOYLAN: Because he says that he had switched
18 the addresses. He said after he bought the house, he had
19 switched the address to Lakeview Point, is our current house
20 now. And so if that was the case, I was just wondering if
21 like this was before the address change. [inaudible]

22 MS. KERSEY: How did he change the address with us?
23 Oh, I'm sorry, I'm asking a question.

24 MR. THOMPSON: Yeah, it's his testimony now. We'll do

1 some redirect.

2 MR. K. BOYLAN: That's what he's trying to say. He
3 just wants to know whether or not if these were sent before
4 the address change or after. Because if it was after the
5 address change then --

6 MS. KERSEY: What did you say the address was?
7 What did you say the date was that you --

8 MR. K. BOYLAN: He says February 5, 2018. 2815
9 Lakeview Point. That was -- that's our current residence, so
10 that's where all of our -- that's where all of the mail for
11 the nail salon would be sent to us. [inaudible]

12 MR. JACKSON: Do you have any further questions of
13 this witness?

14 MR. K. BOYLAN: No.

15 MR. JACKSON: No further questions. Mr. Thompson?

16 MR. THOMPSON: On brief redirect.

17 BY MR. THOMPSON:

18 Q. Ms. Kersey, can you look at page 7 of 39. What is that?

19 A. That is our printout from our system of the mailing
20 addresses and the physical address that we have on file.

21 Q. And what's the date on the bottom there, to the right?

22 A. 11-25-19.

23 Q. So that was printed on 11-25-2019?

24 A. Correct.

1 Q. So you have not received any notice of address change
2 since 2014?

3 A. Correct.

4 Q. Physical address is still listed as --

5 A. Correct.

6 Q. So if we had received notice of that address change,
7 that would have been entered into the system and reflected on
8 that document, would it not?

9 A. Yes sir.

10 MR. THOMPSON: Thank you.

11 MR. JACKSON: Do you have any follow-up questions?

12 MR. K. BOYLAN: No.

13 MR. JACKSON: Did someone from the board earlier have
14 a question of this witness? So there are no further questions
15 of this witness?

16 MR. THOMPSON: We rest.

17 MR. JACKSON: At this time, the Department of Health
18 rests. Now is your opportunity to present your testimony and
19 your side of the case. So if you'd like to make an opening
20 statement, or go ahead with the testimony, it's your decision.

21 MR. K. BOYLAN: It's just that all the evidence
22 presented, you know, he said he's willing to accept the
23 penalties and he's also going to go back and make sure that
24 there's nothing that's wrong as soon as possible.

1 Other than that, that's all.

2 MR. JACKSON: Does he wish to present any testimony?

3 MR. K. BOYLAN: Other than that statement.

4 MR. THOMPSON: I have one brief closing remark.

5 MR. JACKSON: Then at this time I'll allow closing
6 arguments. And then we'll go off the record so they can
7 deliberate.

8 MR. THOMPSON: Members, as we -- I hate to do that to
9 you. We kind of modified our original recommendation as
10 things progressed here. And you've heard what the
11 recommendation was.

12 I think it was the serious health and safety violations
13 need to be imposed. The other ones, the department is willing
14 to go and give them opportunity to correct them.

15 I think that part of this -- part of what we do at the
16 department is enforce health and safety laws, but we also
17 educate. And some of these are an education aspect.

18 If somebody can learn from that education, great. At which
19 point they can't, then at that point we want to impose more
20 severe penalties.

21 So that's kind of where we're at from the department's
22 standpoint. But y'all are the experts and y'all are the
23 finders of fact and the decision-makers on that.

24 We would also -- also I would add that we would ask at this

1 time, based on the testimony regarding mailing address, that
2 part of the recommendation that the board impose that Solar
3 Nails immediately update with us officially their mailing
4 address, and that they keep us continually updated on mailing
5 addresses regarding where to send the mail to them.

6 But otherwise, that's where we stand, recommendation-wise.
7 Thank you.

8 MR. JACKSON: And would you like to make a closing
9 argument?

10 MR. K. BOYLAN: No.

11 MR. JACKSON: Okay. At this time we'll go off the
12 record for the board to recess for deliberations, and a
13 decision regarding finding of fact and conclusions of law.
14 Once the board reaches a decision, we'll go back on the
15 record.

16 [Whereupon parties went off the record at 10:40 a.m.]

17 [Back on the record at 10:48 a.m.]

18 MR. JACKSON: We're going to go back on the record.

19 MS. WILSON: We find that in the matter of Arkansas
20 Department of Health versus Solar Nails, number 129925, that
21 all of the allegations of fact are true and they violate the
22 statement of laws. The penalties will stand at \$1250. We
23 also require them to officially update mailing address.

24 MR. JACKSON: Is that a motion?

1 MS. WILSON: Yeah, that's a motion.

2 MS. JONES: I second that.

3 MS. WARE: All in favor.

4 BODY: Aye.

5 MS. WARE: Any opposed?

6 BODY: [no response]

7 MR. JACKSON: So let the record reflect that the
8 decision of the board was unanimous. Please reduce the
9 board's decision to writing, and make attempt of service upon
10 the parties. If the respondent cares to appeal the decision,
11 the appeal can be taken under any specific provision under the
12 Administrative Procedures Act, found in Arkansas Annotated 15-
13 201, et seq.

14 If there are no other questions or comments, this hearing
15 is concluded and the record is closed.

16 [concluded at 10:50 a.m.]

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CERTIFICATE

STATE OF ARKANSAS]

COUNTY OF PULASKI] ss

I, Stephanie G. Branton, an Arkansas Certified Court Reporter and Notary Public in and for the aforesaid county and state, do certify that a verbatim record of these proceedings were taken, by me, and reduced to typewriting by me; that this transcript is a true and correct record of the proceedings, to the best of my knowledge and belief. I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action; I am not a relative or employee of any attorney or counsel employed by the parties, nor financially or otherwise interested in the outcome of this action; that I have no contract with the parties, attorneys, or any person with an interest in this action that would affect impartiality. WITNESS MY HAND AND SEAL as court reporter on this 25th day of April, 2020.

STEPHANIE G. BRANTON, CCR

ARKANSAS STATE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

HEARING - RE:

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

V.

STUDIO 710

RESPONDENT

MONDAY, JANUARY 27, 2020
Commencing at 12:10 p.m.
5800 West 10th Street, Room 801
LITTLE ROCK, ARKANSAS

ADAM JACKSON, ESQ., Hearing Officer

COMMITTEE MEMBERS PRESENT:

Lois Ware, Chair
Amy Lance
Andrea Wilson
Carla Jones
Tonya Boydston
Candace Kenyon

ON BEHALF OF THE COSMETOLOGY TECHNICAL ADVISORY
COMMITTEE:

Charles 'Chuck' Thompson, Esq.
Arkansas Department of Health
4815 W. Markham, Slot #31
Little Rock, AR 72205

Reported and Transcribed by Stephanie G. Branton, CCR
Gibson-Branton Reporting Service, 501-960-6313

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1 PROCEEDINGS - 12:10 p.m.

2 MR. JACKSON: Since we just took a recess, I'm going
3 to go right into the next hearing. I've seen nodding. Is
4 that --

5 MS. WARE: Go into the next one.

6 MR. JACKSON: Okay, we're going to go into the next
7 hearing. Again, I apologize like before; I kind of have to go
8 through the script so that everything is in the record for
9 everyone present.

10 My name is Adam Jackson. I'm an assistant attorney
11 general. And I'm the hearing officer today in this matter of
12 Arkansas Department of Health versus Studio 710. This is
13 number 117084. This is going to be heard before the
14 Cosmetology Technical Advisory Committee.

15 Today is January 27, 2020. Will the respondent for Studio
16 710 please identify yourself for the record? the table?

17 MR. ZIEGLER: I'm Zack Ziegler. I'm the owner of
18 Studio 710.

19 MR. JACKSON: Okay. And do you have counsel, or are
20 you aware that you have the right to counsel?

21 MR. ZIEGLER: I'm aware. I don't have any.

22 MR. JACKSON: Any time that you don't understand the
23 proceedings, just let me know.

24 MR. ZIEGLER: Okay.

1 MR. JACKSON: And I'll do my best to explain it. Did
2 you receive a copy of the order and notice of hearing
3 concerning this matter?

4 MR. ZIEGLER: Saturday, I did.

5 MR. JACKSON: Are you ready to proceed on this
6 matter?

7 MR. ZIEGLER: Yes sir.

8 MR. JACKSON: Will the board's counsel please
9 identify yourself for the record?

10 MR. THOMPSON: Chuck Thompson, Arkansas Department of
11 Health.

12 MR. JACKSON: Now, for the benefit of anyone present
13 today who may not have appeared in an administrative hearing,
14 the board will base its decision solely on the evidence
15 presented.

16 This hearing is held under the Administrative Procedures
17 Act, which means that the strict rules of evidence do not
18 apply, and the parties will be given latitude in introducing
19 evidence. This is to promote a fair hearing and to provide
20 the board with adequate information to make a decision.

21 To ensure the efficiency of the proceedings, I will grant
22 objections and caution the parties only as necessary. If
23 there is anything that you have in your possession that you
24 want the board to consider, you must offer it into evidence

1 today.

2 All participants to the hearing should be aware that these
3 proceedings are subject to the Freedom of Information Act, and
4 as such all parts of the hearing, including the deliberations
5 of the board, are open to the public.

6 It is important that all persons necessary to the hearing
7 are in the room while the hearing takes place. If a party,
8 attorney or board member that needs to take a break or leave
9 the room, please advise me, and we'll take that break from the
10 proceedings.

11 For those of you who are going to be a witness here today,
12 please raise your right hands to be sworn in.

13 [witnesses swore to tell the truth in these proceedings]

14 MR. JACKSON: Are there any preliminary matters that
15 need to be discussed?

16 MR. THOMPSON: Yes, Judge. I'd like to offer into
17 evidence what we would reflect the department's Exhibit 1,
18 which is the packet that includes the notice of hearing, the
19 U.S. Postal Service certified mail receipt, on page three.

20 A breakdown of events, including a timeline of events, on
21 page four. A hearing request from Mr. Ziegler on page five.
22 A notice of violation letter October 15, 2019, page six.

23 The printouts on pages seven and eight of our -- of the
24 data base where we keep cosmetology. And let me make sure,

1 that's page - page seven through 12, which are printouts of
2 our cosmetology system, that includes notices as well as
3 payments.

4 And page 13 was a letter dated October 25, regarding that
5 past due license fees directed mailed to Studio 710. And
6 that's page 13.

7 MR. JACKSON: Do you have any objection to this
8 packet being submitted to the board to consider?

9 MR. ZIEGLER: No.

10 MR. JACKSON: Okay. Then it will be admitted.
11 Counsel, would you like to make an opening statement?

12 MR. THOMPSON: Yes, Judge, briefly. I think this is a
13 matter of -- I don't -- well, I think this is a matter of some
14 lack of, or misunderstanding perhaps, concerning dates and
15 dates of license renewals.

16 We found no health or safety violations at Studio 710. But
17 Mr. Ziegler's license was not current. And I think -- when we
18 talk about this, hopefully Mr. Ziegler will see what we're
19 talking about, and get to a quick resolution on this matter.

20 MR. JACKSON: Mr. Ziegler, would you like to make an
21 opening statement now, or defer an opening statement until the
22 start of your case?

23 MR. ZIEGLER: I'll defer.

24 MR. JACKSON: Counsel, call your first witness.

1 MR. THOMPSON: I would like to call Jacqueline Knopp,
2 please.

3 MR. JACKSON: And let the record reflect this witness
4 was sworn in at the beginning of the proceeding.

5 EXAMINATION OF JACQUELINE KNOPP

6 BY MR. THOMPSON:

7 Q. Jacqueline, turn your attention to page nine of what's
8 Department's Exhibit .

9 A. Yes.

10 Q. Can you identify that?

11 A. The inspection sheet of our report.

12 Q. And did you prepare that inspection sheet?

13 A. Yes.

14 Q. You were the inspector at Studio 710 on that date?

15 A. Yes.

16 Q. Did you find any violations?

17 A. Yes, the salon license was expired -- 6-25-19.

18 Q. Did you find any health or safety violations?

19 A. No.

20 Q. Okay, and then you went ahead and you sent that
21 inspection sheet on to your supervisor for further action?

22 A. Yes.

23 MR. THOMPSON: That's all I have.

24 MR. JACKSON: Do you have any questions for this

1 witness?

2 MR. ZIEGLER: No.

3 MR. JACKSON: Does the board have any questions for
4 this witness? Seeing as there are no questions, counsel?

5 MR. THOMPSON: I don't have any more questions. So I
6 will call Kelli Kersey.

7 MS. KERSEY: Kelli Kersey, Arkansas Department of
8 Health, Cosmetology and Massage Therapy, section chief.

9 MR. JACKSON: Let the record reflect that Ms. Kersey
10 was sworn in at the beginning of the proceeding.

11 EXAMINATION OF KELLI KERSEY

12 Q. Ms. Kersey, can you identify pages one and two of
13 Department's Exhibit 1.

14 A. Yes, that is the notice of hearing that was sent to
15 Studio 70.

16 Q. And is there a -- is that your signature on page two?

17 A. Yes sir.

18 Q. So you're familiar with the allegations of fact and
19 statement of laws concerning violations of Studio 710?

20 A. Yes sir.

21 Q. And if I can turn your attention to page 4 of 13,
22 timeline of events. And the violation -- expired license,
23 expired 6-25. Is that the -- what the records of the
24 department reflect?

1 A. Yes sir.

2 Q. And that's a violation of Rule 5.185?

3 A. Yes sir.

4 Q. And the violation -- and that violation is -- amounts to
5 what amount?

6 A. \$250.

7 Q. And so that's -- but there's -- which is also the
8 proposed penalty?

9 A. Correct.

10 Q. So the department is asking for -- is not asking for
11 additional penalties there?

12 A. Correct.

13 Q. So I'll turn your attention to page 8 of 13, I believe.
14 Can you identify that?

15 A. This is our notes section of the record for Studio 710.
16 It looks like they renewed on 7-10-2018, and it was generated.
17 He called on 1-4-2019 that the license had not been received.

18 So we generated it on that date. And that was the license
19 for 2019.

20 Q. And so that's 7-10-2018 license -- that was for 2019?

21 A. Correct.

22 Q. And he called that he failed to receive it. And it was
23 generated and sent on January 7, 2019?

24 A. Correct.

1 Q. And so at what point would that 2019 license expire?

2 A. 6-25-2019.

3 Q. So at that point, he should have renewed for a 2020
4 license?

5 A. Correct.

6 Q. And so that would have been the license that the
7 inspector would have been looking for when she got to the
8 salon for the inspection?

9 A. Correct.

10 Q. And so this is a matter of him getting his license up to
11 date based on the 6-25-2019 expiration date?

12 A. Yes sir.

13 Q. Do we have any notice of -- strike that.

14 MR. THOMPSON: I'll pass the witness.

15 MR. JACKSON: Mr. Ziegler, do you have any questions
16 of this witness?

17 MR. ZIEGLER: No.

18 MR. JACKSON: Okay. Does the board have any
19 questions? So if there are no questions, counsel?

20 MR. THOMPSON: Those are -- well, actually -- Kelsey
21 Billington, please.

22 MR. JACKSON: And let the record reflect that you
23 were sworn in at the beginning of this proceeding.

24 EXAMINATION OF KELSEY (Billington) FINNEY

1 BY MR. THOMPSON:

2 Q. Kelsey, can you please state your name and title?

3 A. Kelsey Finney, administrative specialist III.

4 Q. And as part of your job, do you generate letters of
5 violation, as well as help renew licenses? Is that part of
6 what you do?

7 A. Yes.

8 Q. Do you have any -- well, let me call your attention to
9 pages 10 through 12 of Exhibit. What is the -- what are those
10 printouts of?

11 A. Page 10 is a kind of -- page 10 is a note stating that
12 the check was sent back, because there was an outstanding
13 violation. And that it expired on 6-25-19. And then page 11
14 shows that the licensure -- the issuing date and the
15 expiration date of the license. And then page 12 shows
16 receipts for [inaudible].

17 Q. And then page 13, can you identify that?

18 A. Page 13 is sent out letters that we send them telling
19 them that we can't process their payment because they have an
20 outstanding violation or it wasn't for enough money to renew
21 the license.

22 Q. So is it -- so it's standard policy that if they have
23 outstanding violation, the entire amount is sent back for them
24 to clear it before they renew their license?

1 A. Yes, uh-huh.

2 Q. Do you have the -- prior to this, prior to the letter
3 being sent out, do you have any record or remember talking to
4 Mr. Ziegler regarding this?

5 A. I do not. When I speak to someone, I always put a note
6 in the system, especially when it's something regarding a
7 violation. Like if they said they were going to pay it, or
8 they know what's going on, then I always take note of what I
9 said that that they understood that this was something they
10 needed to do to get their profile back in good standing.

11 MR. THOMPSON: I'll pass the witness.

12 MR. JACKSON: Mr. Ziegler, do you have any questions
13 of this witness?

14 MR. ZIEGLER: I don't.

15 MR. JACKSON: Does the board have any questions of
16 this witness? Counsel?

17 MR. THOMPSON: I'm done, Judge.

18 MR. JACKSON: Mr. Ziegler, this is your opportunity
19 to present an opening statement, and if you wish to make
20 testimony after that, you can.

21 MR. ZIEGLER: Well, once again? Say that again?

22 MR. JACKSON: This is your opportunity to present
23 your side of the -- your portion of the case. You can begin
24 with an opening statement or if you just want to testify --

1 MR. ZIEGLER: Oh. I called in December about not
2 receiving my license, and was told to be patient. And then I
3 called again in January when I didn't receive my license.

4 And I still -- I didn't -- I still didn't get a -- I called
5 again and told y'all -- in January, and told them I didn't get
6 my license.

7 Sometime between February and March I called again when I
8 still didn't get my license. And I was told that there were
9 network, computer problems. And we discussed about changing
10 my address to get my license to my home instead of the salon.

11 I feel that if I had had my license, that I would have been
12 able to follow up better. And I thought that I had renewed my
13 license for two years.

14 So I was unaware that I was in violation of my license had
15 been expired. I didn't know.

16 MR. JACKSON: Counsel, do you have any questions for
17 this witness?

18 MR. THOMPSON: No, I don't have any questions.

19 MR. JACKSON: Does the board have any questions?

20 MS. JONES: Mr. Ziegler, when did your license
21 initially expire?

22 MR. ZIEGLER: You know, I assumed that it -- since
23 the license would have said 2019/2020, that would have been --
24 I didn't know that it would have expired on June -- I figured

1 it would be kind of like a driver's license or something of
2 that nature.

3 So yeah, I didn't know that they had expired in June. I
4 didn't get a letter. I've been looking for not only a letter,
5 but a license.

6 MS. JONES: When is your birthday?

7 MR. ZIEGLER: June 25.

8 MS. JONES: So are you not aware that licenses
9 expire on your birthday?

10 MR. ZIEGLER: I knew -- I knew that it was due. But
11 I didn't know that that license expired. I knew that I had to
12 get ready for next year. But I wasn't aware that I was in
13 violation in June -- I figured it went through the year that
14 was on the license.

15 MS. JONES: So in June, your license expired. So
16 then in October, you were cited for not having a current
17 license.

18 MR. ZIEGLER: Yes ma'am.

19 MS. JONES: So when you called in January, and you
20 understand that you were already in violation?

21 MR. ZIEGLER: Yes.

22 MS. JONES: Yes.

23 MR. ZIEGLER: Which was not my last phone call, by
24 the way. There was another phone call where there were

1 computer problems. And she took my license. She took my
2 number. I gave her my number, and she was going to call me
3 back. And I gave her my name.

4 And she -- she called me back, and then she told me that
5 she couldn't find any information. So I really didn't -- I
6 had no idea what to do at that point. And then it was about a
7 month later when we got on schedule.

8 MS. JONES: So you do understand that in order to
9 get your license renewed, you had to pay the violation for
10 expired --

11 MR. ZIEGLER: I did. I mean, I don't agree with the
12 violation -- I don't agree with the violation. I didn't agree
13 with the violation. I feel like if my license had been taken
14 care of, I just don't feel fully responsible for not having my
15 license.

16 If I had had my license, I would have been current, the
17 same thing that I've been doing for 26 years.

18 MS. LANCE: Have you ever allowed your license to
19 expire before this time?

20 MR. ZIEGLER: It's probably -- it's probably been
21 late before.

22 MR. JACKSON: Any further questions from the board?

23 MS. LANCE: You don't know how many times you've
24 been late?

1 MR. ZIEGLER: No.

2 MR. JACKSON: Any other questions? Counsel?

3 MR. THOMPSON: I don't have any questions of Mr.
4 Ziegler. I would like to re-call Ms. Kelly Kersey based on
5 Mr. Ziegler's testimony. I need some clarification.

6 MR. JACKSON: Let me make sure he's got no further
7 witnesses. Do you have any further witnesses to call on your
8 behalf?

9 MR. ZIEGLER: No sir.

10 MR. JACKSON: You want to re-call --

11 MR. THOMPSON: I would like to re-call Ms. Kelli
12 Kersey, please.

13 MR. JACKSON: Let the record reflect that you're
14 still under oath.

15 FURTHER EXAMINATION OF KELLI KERSEY

16 BY MR. THOMPSON:

17 Q. Ms. Kersey, can you -- I direct you to page 12 of 13,
18 please.

19 A. Okay.

20 Q. So you heard Mr. Ziegler and his understanding that he
21 thought his license was good for two years. Can you -- can
22 you tell me what page 12 of 13 reflects regarding his most
23 recent licensure?

24 A. Okay. If you'll look at 7-19-2016, it was the date

1 received, date processed -- that was for the licensing that
2 went from '16 to '17. But it would have expired on 6-25-17.
3 He paid a hundred dollars.

4 So when -- in '18, he had never paid for any '17 license.
5 So on 7-10-2018, he paid for his license for 6-25-17 to
6 6-25-19. So he did pay for two years. It was just a year
7 late.

8 MS. JONES: Oh.

9 BY MR. THOMPSON:

10 Q. So --

11 A. So --

12 Q. So he --

13 A. I mean, he actually did pay for two years. But he was
14 paying for the previous year that he wasn't licensed.

15 Q. So that would explain why he understood it to be two
16 years, but not realizing it was still a year to --

17 A. Correct.

18 Q. Is there anything else you want to add on that,
19 regarding that page?

20 A. No.

21 MR. THOMPSON: I'll pass the witness, Judge.

22 MR. JACKSON: Do you have any follow-up questions for
23 this witness?

24 MR. ZIEGLER: The only thing I would like to add is I

1 didn't have any cosmetologists in the shop during some of
2 this. So whenever some of this was late, it was because I
3 actually contemplated not renewing my license. I didn't have
4 a cosmetologist working for me at the time.

5 But whenever a cosmetologist came on, that's when I was --
6 went to bring up my license, which is why I was late. If I
7 could explain that.

8 MR. JACKSON: Does the board have any questions?
9 Seeing as there are no further questions, do you have any
10 other witnesses that you want to re-call?

11 MR. THOMPSON: No.

12 MR. JACKSON: Do you have any rebuttal witnesses that
13 you need to re-call?

14 MR. ZIEGLER: No sir.

15 MR. JACKSON: Okay. At this time, would you like to
16 make a closing statement?

17 MR. THOMPSON: Just briefly. I think as a matter of -
18 - there's no health and safety violations. And the fact is
19 I'm not disputing whether Mr. Ziegler did or did not call. We
20 just -- we don't have record of it. And if he says he did,
21 I'll -- you know, I'll willing to accept that. But the fact
22 is that he was -- he was behind a year, and that's kind of
23 where we're at now.

24 And so it's a paper work and license fee issue. And it's

1 pretty cut and dried, in my opinion. So --

2 MR. JACKSON: Would you like to make a closing
3 argument?

4 MR. ZIEGLER: No.

5 MR. JACKSON: At this time we'll go off the record
6 for the board's deliberations on findings of fact and
7 conclusions of law. Once the board reaches a decision, we'll
8 go back on the record. And we're off the record now.

9 [Whereupon parties went off the record at 12:20 p.m.]

10 [Back on the record at 12:25 p.m.]

11 MR. JACKSON: Back on the record in the matter of
12 Arkansas Department of Health versus Studio 710.

13 MS. WILSON: I make a motion that in the matter of
14 Arkansas Department of Health versus Studio 710, we find that
15 all the allegations of fact to be true, and violate the
16 statement of laws.

17 The penalty will be \$250.

18 MS. JONES: And I second.

19 MS. WARE: All in favor?

20 BODY: Aye.

21 MS. WARE: No opposing?

22 MR. JACKSON: Let the record reflect that the
23 decision is unanimous. Please reduce the board's decision to
24 writing and make an attempt to serve on the parties.

1 Respondent, if you care to appeal this decision, appeal can be
2 taken under any specific provisions relating to this board
3 under the Administrative Procedures Act, found at Arkansas
4 Code Annotated 25-15-201 et seq.

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

7 [concluded at 12:30 p.m.]

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CERTIFICATE

STATE OF ARKANSAS]

COUNTY OF PULASKI] ss

I, Stephanie G. Branton, an Arkansas Certified Court Reporter and Notary Public in and for the aforesaid county and state, do certify that a verbatim record of these proceedings were taken, by me, and reduced to typewriting by me; that this transcript is a true and correct record of the proceedings, to the best of my knowledge and belief. I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action; I am not a relative or employee of any attorney or counsel employed by the parties, nor financially or otherwise interested in the outcome of this action; that I have no contract with the parties, attorneys, or any person with an interest in this action that would affect impartiality. WITNESS MY HAND AND SEAL as court reporter on this 19th day of May, 2020.

STEPHANIE G. BRANTON, CCR

