

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

STATE OF WISCONSIN  
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

-----  
IN THE MATTER OF AN  
ESTABLISHMENT LICENCE OF

ORQUINCY HAMILTON,  
RESPONDENT.

FINAL DECISION AND ORDER  
LS9909172RAL

-----  
The State of Wisconsin, Barbering and Cosmetology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 7th day of February, 2000.

Barbara Flaherty

STATE OF WISCONSIN  
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

-----  
----  
IN THE MATTER OF  
THE APPLICATION  
OF

**ORQUINCY HAMILTON,**  
APPLICANT.

**PROPOSED DECISION AND ORDER**  
Case No. LS 9909172 RAL

-----  
----  
**PARTIES**

The parties to this action for the purposes of s. 227.53 Stats., are:

*Orquincy Hamilton Attorney  
Hamilton's Barber Shop  
409 High Street  
Racine, WI 53402*

*Steven M. Gloe  
Division of Enforcement  
Department of Regulation & Licensing*

## **PROCEDURAL HISTORY**

On April 13, 1999 Orquincy Hamilton submitted an application to the Barbering and Cosmetology Examining Board for a Barbering and Cosmetology Establishment License. Thereafter, by correspondence dated July 29, 1999, (and served August 2, 1999) the Barbering and Cosmetology Examining Board issued to Mr. Hamilton a notice of denial, based upon

s. 454.15(2)(d), Stats. In response to the notice of denial, on August 5, 1999 Mr. Hamilton timely requested a hearing raising the factual issue of rehabilitation as grounds for issuance of the establishment license. On October 20, 1999 a Class One hearing was conducted affording Mr. Hamilton the opportunity to present evidence of his rehabilitation.

Based upon the record herein, the Administrative Law Judge recommends that the Barbering and Cosmetology Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

## **FINDINGS OF FACT**

1. Orquincy Hamilton, (dob 06-15-1960), is currently licensed as a manager pursuant to license number 21287-81, which license was first granted on March 28, 1988.
2. The address of record for Hamilton's proposed barbering establishment is 409 High St., Racine, Wisconsin, 53403.
3. The address of record for Hamilton's manager license is 409 High St., Racine, Wisconsin, 53403.
4. The business currently operating as a barbering and cosmetology establishment at 409 High St., Racine, Wisconsin, 53403, is not operating under an establishment license issued by the Barbering and Cosmetology Examining Board.
5. Hamilton was convicted on December 16, 1996 for violation of s. 961.42(1), Stats., (Maintain a Drug Trafficking Place), and received a sentence consisting of six months confinement in county jail (balance stayed except for 60 days), a two year probationary period, orders to maintain regular full time employment, AODA and follow through, no drugs or alcohol, random UA's at least every 60 days.
6. The drug trafficking place maintained by Hamilton was a barbershop located at 1436 State Street, Racine. Criminal complaint #96-CF-731 alleged a search revealed a plastic baggie of marijuana in the front room of the barbershop. In the rear room were found thirty or more baggies with the corners torn out and ten or more baggies in the front room. The baggies were consistent with packaging with the sale of controlled substances, specifically cocaine.
7. Hamilton was convicted on April 11, 1997 for violation of s. 961.573(1), Stats., (Possess Drug Paraphernalia), and received a sentence of two years in state prison (stayed), two year probation, 100 hours of community service, AODA and follow through, no drugs or alcohol, random UA's.
8. Criminal complaint #97-CM-381 alleged a search of Hamilton revealed a chrome pipe which was burned at both ends as well as a glass pipe which was burned at both ends and three packages of Zig-Zag rolling papers. These items were alleged to be used for the smoking of cocaine base and the smoking of marijuana.
9. On July 27, 1998, June 9, 1998, and October 23, 1997, a urinalysis of Hamilton tested positive for marijuana.
10. On January 4, 1999, and February 8, 1999 a urinalysis of Hamilton tested positive for marijuana.
11. Hamilton completed probation on April 11, 1999.
12. At approximately the end of April, 1999, after his probation was completed, Hamilton used marijuana.
13. The AODA assessment dated September 28, 1999, fails to report Hamilton's 1997 conviction for possession of drug paraphernalia.
14. The AODA assessment dated September 28, 1999, indicates a last date of use for marijuana to be 1995.
15. The AODA assessment dated September 28, 1999, indicates a last date of use for cocaine to be 1996. The AODA Initial Diagnostic Impressions indicate, 304.20 cocaine dependence in remission for 3 years.

16. Hamilton is not rehabilitated such that an establishment license should issue from the Barbering and Cosmetology Examining Board.

### **CONCLUSIONS OF LAW**

1. The Barbering and Cosmetology Examining Board has jurisdiction in this matter pursuant to s. 227.01(3)(a), Stats., and RL1 , Wis. Adm. Code.
2. Hamilton's 1996 conviction as described in the Findings of Fact constitutes grounds for denial of a Wisconsin Barbering and Cosmetology Establishment License pursuant to s. 454.15(2)(d), Stats.
3. Hamilton has not met the burden of proof to show rehabilitation such that the license sought should issue. RL1.08(4)

### **ORDER**

**NOW THEREFORE, IT IS HEREBY ORDERED** that the applicant, Orquincy Hamilton, be **DENIED** his application for a Wisconsin Barbering and Cosmetology Establishment License, **no costs award** to the credentialing authority.

### **OPINION**

Orquincy Hamilton has not met his burden of proof by a preponderance of the evidence demonstrating his rehabilitation such as to qualify him for a barbering and cosmetology establishment license. **s. 440.20(3), Stats.** Inasmuch as this case presents an interesting legal twist pertaining to creating "new" grounds for denial of a license, a portion of this opinion will address the law which applies to this Class One hearing.

It is interesting that Mr. Hamilton has benefited to this point in time by receiving help from another state agency to provide many resources to establish his barbershop, including expenditures of state money. What has not been done is for those in authority to determine first whether and how Mr. Hamilton currently qualifies for a license to own such a business.<sup>1</sup>

This opinion will discuss this case in two parts. The first issue to be discussed is the legal standard to be applied. The second issue details the meaning of the term "rehabilitated" and credibility factors which militate against such a finding.

#### **A. Appropriate Legal and Factual Grounds for Class One Hearings**

##### **1. The July 29, 1999 Notice of Denial**

The July 29, 1999 Notice of Denial provided the legal basis for denial as:

"Section 454.15 (2)(d) of the Wisconsin Statutes.

454.15 Disciplinary proceedings and actions...

(2) Subject to the rules promulgated under s. 440.03 (1) and this chapter, the examining board may revoke, limit, suspend or refuse to issue or renew, in accordance with the severity of the violation, a license or permit issued under this chapter or reprimand the holder of a license or permit issued under this chapter if it finds that the holder or applicant has done any of the following:...

(d) Subject to ss. 111.321, 111.322 and 111.335, been convicted of a felony committed while engaged in the practice of barbering or cosmetology, aesthetics, electrology or manicuring..."

With certain exceptions, section 111.321, Stats. prohibits employment discrimination (defined in § 111.322 to include refusing to license an individual) on the basis of conviction record. Section 111.335 (1) includes as exceptions, the following:

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; ....

The determination of "circumstances" being substantially "related" means, "Assessing whether the tendencies and

inclinations to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. ... It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person." **County of Milwaukee v. LIRC, 139 Wis.2d 805, 824 (1987)**

The circumstances of Hamilton's 1996 conviction substantially relate to the practice of barbering and cosmetology, and the ownership of such an establishment. The exact same circumstances which would constitute unprofessional conduct by maintaining a drug trafficking place in a barber establishment also are the circumstances which satisfy the factual elements of the serious crime for which Hamilton was convicted.

This is an instance where the substantial relation test is met because the acts Hamilton was convicted for committing were not only substantially related to credentialed activity, but unfortunately, directly related to credentialed activity as well. In this instance, Hamilton as a credentialed practitioner is the specific person contemplated who, while subject to the rules of professional practice as a credentialed manager, can actually violate both a practice rule and a statutory drug trafficking law by the same act. Hamilton has done so here. The abuse of his position of trust as a manager with responsibility and control over an establishment for barbering directly violated state criminal law.

The July 29, 1999 Notice of Denial was therefore based upon proper grounds.

## **2. Hamilton August 5, 1999 Request for Hearing**

RL 1.07(3) provides that a request for a hearing shall include a specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. Where the applicant asserts that a mistake of law or fact was made, the request shall include a concise statement of the essential facts the applicant intends to prove at the hearing, or the law upon which the applicant relies.

The August 5, 1999, Request for Hearing by Hamilton failed to assert any mistake in facts or law regarding the substantial relation between his felony conviction and the license for which he was applying. Instead, Hamilton raised the factual issue of rehabilitation as grounds for the granting of the establishment license.

## **3. Class One Hearing Notice.- "Sufficient Rehabilitation"**

The issue for consideration noted for the record in the Class One Hearing Notice is as follows:

"Has the Applicant demonstrated **sufficient rehabilitation** to make the Barbering and Cosmetology Examining Board's denial of his application for an Establishment License an abuse of its discretion." **[emphasis added]**

The drafting of the Class One Hearing Notice has encapsulated Hamilton's improper grounds to challenge the license denial, along with an issue statement regarding abuse of discretion. Technically, these two issues do not belong together under the facts of this case. The board could never abuse its discretion in the manner stated in the Notice, so long as the ground of denial legitimately involves a substantially related conviction to the license being sought.

During closing argument counsel for the Division of Enforcement attempted to parse out the specific legal issues as he saw them to be embraced by the language of the hearing notice. Counsel reminded this hearing examiner that although the focus of the hearing involved evidence of Hamilton's rehabilitation, the board does not abuse its discretion when it denies a credential to an applicant such as Hamilton based upon the conviction of record in this case, and invited this hearing examiner to, "uphold the board's authority to make that sort of determination."

While it is true in theory that the July 29, 1999 Notice of Denial is within a board's proper discretion the inquiry does not end there in this case. Since the Class One Hearing Notice in essence created a new issue intertwining abuse of discretion linked to evidence of sufficient rehabilitation, that is the issue the board shall have. The board does have authority to create an ad hoc right based upon the grounds given to an applicant in the notice of hearing. **Davis v. Psychology Examining Board, 146 Wis. 2d 595 (1988)**. In this case Hamilton presented his case based upon the contents of the Class One Hearing Notice. Due process requires that notice convey information about contested issues to a respondent such that the respondent can adequately prepare to litigate those issues, prepare a defense or make objections. **Schramek v. Bohren, 145 Wis.2d 695, (Ct.App.1988)**

## **B. Lack of "Sufficient" Rehabilitation.**

The achievement of "sufficient" rehabilitation can be a somewhat elusive event. Its determination requires that a prediction as to future behavior be made based upon currently observed facts. The goal is that this future behavior is rightly deemed to be predicted by a present inner change, ergo- rehabilitation, has been achieved presently.

To define rehabilitation for purposes of establishing its legal meaning, ordinary usage and accepted definition is

appropriate to provide guidance. One who is rehabilitated will provide evidence of the rehabilitation, of being, "put back in good condition; reestablish[ed] on a firm, sound basis" **Webster's New World Dictionary, Second College Edition, © 1974.**

The Department of Regulation and Licensing in setting forth criteria for evaluation of convictions for determining "substantially related" address factors of rehabilitation.<sup>2</sup>

3. Evidence of rehabilitation, such as:

a. Completion of any term of incarceration.

1) Unless unusual circumstances exist, a person who is in prison for an offense which has elements which are similar to the activities performed under a credential should not be granted a credential, because the person is only in the initial phase of the rehabilitation process.

2) Generally, if there is evidence that a person is not successfully participating in probation or parole for an offense which has elements which are similar to the activities performed under a credential, a board or the department should not grant a credential to the person, because rehabilitation has not occurred.

3) Generally, a board or the department should not grant a credential to a person who is still on probation or parole for an offense which has elements which are similar to the activities performed under a credential; however, if there are mitigating circumstances which support the granting of a credential, the board or the department should consider granting a limited credential.

b. For an offense which has elements which are similar to the activities performed under a credential, court-ordered restitution has been made or the person is following a schedule for making restitution to the satisfaction of the probation or parole officer.

c. For an offense which has elements which are similar to the activities performed under a credential, successful completion of a court-ordered counseling or treatment program, as determined by the counselor or treatment provider.

4. The number of convictions.

a. Generally, the fact that a person has had more than one conviction will require that a more thorough review be conducted by a board or the department with a greater possibility that the credential may be denied or limited, unless no conviction has occurred within the 10 years preceding the date of application for a credential or the person is still in prison, on probation or on parole.

The foregoing criteria and definition of rehabilitation point to two general hallmarks of rehabilitation, time and specific acts, to demonstrate being "put back in good condition." This is a factual inquiry for which Hamilton has the burden of producing evidence. Successful completion of probation is a factor evidencing rehabilitation, as is successful completion of a court-ordered counseling or treatment program. Upon cursory review, Hamilton has satisfied both of those factors. However, these factors are tempered by the fact of Hamilton having more than one conviction within 10 years preceding the date of application. Also a tempering factor is the nature and substance of Hamilton's life to date post conviction.

At best Hamilton has only presented evidence that he is beginning to do some of the things that everyday law abiding citizens do all the time. At that, Hamilton has done some of his "rehabilitation" activities only pursuant to court order or state agency directive.

Several serious inconsistencies and credibility problems are plainly evident that militate against a finding of sufficient rehabilitation here. If time and acts are two hallmarks of rehabilitation, Hamilton has thus far not sufficiently demonstrated either.

The original crime for which Hamilton was convicted in 1996 was for maintaining a drug trafficking place at a barbershop. At that time Hamilton was a license holder as a barber establishment manager. Ironically, he has not apparently been disciplined as a current licensee for that conviction, yet instead applies for an additional license from the board.

What the conviction of 1996 illustrates is that Hamilton has had a tendency in the past to misuse the trust and responsibility placed in him by virtue of the manager's license. The very activity for which he was licensed was used by him for the commission of a felony. At no time has Hamilton presented any evidence that he

acknowledges the extreme seriousness of the felony committed. There are crimes and then there are crimes. It should not be forgotten that drug trafficking is one of the more serious crimes threatening the health, safety and welfare of the public, the very mission for which all regulatory agencies are tasked. Yet, the privileges and prerogatives of Hamilton's manager's license were used to endanger the public in the past. Hamilton presently fails to address his remorse, with no statements he realizes the seriousness of his prior acts.

The 1996 conviction occurred less than four years ago, and yet while on probation, Hamilton was convicted once again on April 11, 1997 for possession of drug paraphernalia. This evidences that as of two and one half years ago, no rehabilitation for the 1996 felony conviction had been achieved. Hamilton's "successful" completion of probation which is a factor in determining rehabilitation is actually an *extended* probation based upon the subsequent 1997 conviction. Thus Hamilton's propensity to repeat criminal behavior is very recent, and militates against a finding of rehabilitation. Indeed, Hamilton has actually only had the opportunity to demonstrate true rehabilitation beginning from April, 1999, which is a scant six months. This is not a sufficient period of time to demonstrate rehabilitation, given the seriousness of the 1996 conviction, and the fact it was substantially related to the license for which he now applies.

During a search prior to arrest leading to his 1996 conviction, Hamilton was found to possess drug paraphernalia. It is reasonable therefore to infer that Hamilton's drug use dating from 1996 was related to his drug trafficking activities. The current question then becomes, upon what basis can the conclusion be made that drug abuse by Hamilton has ended, such that it will not tend to cause a recurrence of associated drug trafficking, especially in combination with his control of a business establishment where he has previously conducted such illegal activity?

Evidence presented at the hearing demonstrates that an insufficient period of time has elapsed for Hamilton to demonstrate a recurrence unlikely. While participating in his probation (which was extended based upon the second violation for possession) Hamilton continued to test positive for drug use. Incredibly, his last urinalysis on February 8, 1999 was positive for marijuana when his probation was set to end in April, 1999.

More incredibly, Hamilton admitted to using marijuana once again after his probation ended near the end of April, 1999. While Hamilton's candor at the hearing is refreshing, by admitting at least one instance of post probation drug use he reinforces the fact that simply not enough time has elapsed for him to demonstrate that the prior patterns of his life have ceased.

Hamilton has practiced within recent months the activity associated with his two convictions. It would be unwise to issue him an establishment license which would all too easily present the opportunity to engage in the same or similar conduct which led to his 1996 conviction.

It is reasonable to assume that Hamilton has not broken the cycle of activity demonstrated from 1996 to present, and is therefore not rehabilitated. To place him back into a position of power and control of the type of business establishment where he has proven his ability to break the law is unwise.

Even when probation conditions were imposed upon him by a court, Hamilton demonstrated the inability to fully comply. Hamilton has presented no evidence that over an extended period of time he can consistently self regulate his own behavior by any innate sense of responsibility. Hamilton may be on the road to rehabilitation, however, not enough time has passed to demonstrate arrival at the destination.

Hamilton's character witnesses attested generally to his now attending a church, speaking to groups of children and seeking the advice of an accountant for business matters. These may be acts of law-abiding citizens but still miss the point. Hamilton may tell children he has done wrong, and seek higher powers for strength to prevent doing wrong, and even learn business principles to prevent a business wrong; however, Hamilton hasn't shown he is fully responsible for his actions. Hamilton hasn't shown any reason that in the space of less than four years, less than six months removed from probation, that the application of either external or internal responsibility will be successful in his life.

A specific example is illustrative. An AODA assessment prepared by Genesis Treatment Centers on September 28, 1999 is riddled with significant error. It fails to report

Hamilton's 1997 conviction for possession of drug paraphernalia. It fails to report current marijuana use, in fact any since 1995. It indicates a last date of use for cocaine to be 1996, with 304.20 cocaine dependence in remission for 3 years. (This error is to be expected of course since the 1997 conviction for possession of drug paraphernalia – of the type used to ingest cocaine and marijuana- was not reported.) Also undisclosed are the "dirty urines" up through April of 1999. Also unreported is at least one instance of drug use post probation as testified to by Hamilton.

The cover letter from Troy Cobb, with the Department of Workforce Development attached to the AODA assessment indicates, "Mr. Hamilton has asked me to provide you with information regarding his status with our agency, and his current rehabilitation efforts.", and follows with, "...Mr. Hamilton continues to live a life of sobriety without the use of Drugs or alcohol." Mr. Cobb is apparently unaware of the true facts of Hamilton's past, or doesn't feel that they are relevant to his assessment of Mr. Hamilton's prospects. The flawed AODA assessment of Hamilton's past, in a document prepared mere days before the hearing, raises the question as to

whom if anyone is truly aware of Hamilton's actual rehabilitation status at the present time. Hamilton's credibility is damaged given that such history as contained in the AODA assessment is so flawed.

It is not for the board to divine whether Hamilton is rehabilitated, it is Hamilton's burden to present evidence on his behalf with truthfulness and candor. The AODA assessment therefore shows lack of knowledge by Hamilton's counselors as to past status, and cannot be used to credibly demonstrate current status or rehabilitation.

It is not credible to base a finding of rehabilitation on the AODA assessment, a document prepared by Hamilton's drug treatment program containing a history that coincidentally omits or misrepresents Hamilton's ongoing drug history from 1995 to present.

Regarding rehabilitation, Mr. Cobb testified:

Q. What does it mean to you when a person is rehabilitated? I notice that's your department. What does it mean to be rehabilitated to you?

A. Well, basically Mr. -- Mr. Hamilton came to my office with some AODA issues and some other issues, disabling conditions, that actually got in the way of him being successful in employment, an employment situation, so my goal is to make those AODA -- is to rehabilitate him from the AODA issues so he can get back on track in his barbering business. So what I would be looking for in his case is a sustained period of sobriety away from alcohol and other drug abuse, and a change in lifestyle.

Basically, that's what I'm looking for in terms of a rehabilitation effort with him, and continued and successful employment in his chosen occupation.

Generally, I would say after -- after a period of approximately **six months of -- of successful employment as a small business entrepreneur in the barbering field, our laws -- our policies indicate that that person would be successfully rehabilitated**, well on his way to being a success and returning to gainful employment and being a productive citizen once again.

Q. And how long under your guidelines does the period of sobriety need to exist for a person to be classified as rehabilitated?

A. Oh, I don't know if we really have guidelines currently for sobriety, but **I can successfully close a case as being rehabilitated after 90 successful days of employment. Okay?**

Regardless of whether the Department of Workforce Development considers Hamilton "rehabilitated" under its

guidelines, a higher standard is set for a regulated profession affecting the health, safety and welfare of the public.

Q. So the period of sobriety doesn't factor into that as long as they meet the 90 days of employment?

A. As long as they meet 90 successful days of employment, and **I sort of gauge what a person is doing by sending them to experts. Currently the expert at the Genesis treatment program states that he's doing well, he's maintaining his sobriety and doing what it takes to overcome what -- his past drug and alcohol abuses. [emphasis added]**

As Mr. Cobb indicates, the expert at Genesis treatment was retained to perform an AODA assessment of Hamilton, and the flawed AODA assessment is the result. When Hamilton supplied the history for the AODA assessment, either by intention or mistake, he assisted in creating a false view of his past life upon which the Genesis treatment counselor based the conclusion as to his present rehabilitation status.

The five witnesses called by Hamilton ostensibly provided testimony as to his history and current activities. By the tenor of their testimony, it appears that it was offered in the main to evidence current good character as proof of rehabilitation, and thus is admissible, though of little weight. None of the proffered testimony was persuasive enough to make it more probable than not to find in favor of Hamilton's rehabilitation.

Ms. Valerie Oliver is a current friend of Hamilton. While describing the condition of the barbershop generally, she testified, "you know, he's employing now, I think, three people, three or four people at the time in the shop." The inference clearly was that he was an asset to the community for providing jobs. Hamilton then interjected, "I'm not -- I'm not really -- you know, anyone right at the moment. I was trying to get three people in, two, as an apprentice, but I couldn't go through with that because I couldn't get the establishment license."<sup>3</sup>

The testimonial interchange with Hamilton calls his credibility into question. While he asks for a finding of rehabilitation based in part on his assurances of reformation, the details of his current operations appear clouded with inconsistencies. This calls into doubt his claim of rehabilitation.

Ms. Oliver's testimony regarding Hamilton installing a cash register and hiring an accountant do not sufficiently demonstrate Hamilton's changed character. Ms. Oliver did not know Hamilton personally until approximately one year ago. This is insufficient time to provide a compelling historical perspective regarding Hamilton's rehabilitation, and thus her testimony is given little weight. Ms. Oliver also indicated that she and Hamilton viewed religious preachers together. Her summation is that, "we're orientated mentally, you know, for that change, you know, and I think it's just -- it's beautiful." If taken as true, Hamilton is oriented, not rehabilitated, yet.

Reverend Buddy O. Vinson is Hamilton's pastor. He stated he read in the paper how Hamilton participated in a meeting with police and young children from the area. He also stated that Hamilton has joined his church upon release from jail and appears to be maintaining abstinence from cocaine. Reverend Vinson's testimony contained no details as to how Hamilton appeared to be maintaining abstinence. Reverend Vinson's demeanor also evidenced a lack of enthusiasm to accompany the lack of details regarding rehabilitation.

The remaining witnesses were Hamilton's probation officer, Grace Orlando, and accountant, Michael Cuccia.<sup>4</sup> Each of these respective person's testimony was useful in demonstrating technical Department of Corrections or Department of Workforce Development "rehabilitation". The difficulty arises in using the technical completion of court ordered probation, or apparent drug abstinence as a defining hallmark of rehabilitation for purposes of granting a license affecting the health, safety and welfare of the public.

Ms. Orlando testified:

Q. Do you have an opinion as to whether or not he could successfully run an independent business?

A. Well, I -- my belief is that he can run a successful business. **One of his cases did include**

**maintained drug trafficking, and that was in a barber shop. So I -- I feel that it's necessary to bring that forward if it's not been already. But he is capable.**

Q. Is there anything further you'd like to add?

A. No. He completed his program. He attended his classes. He did the homework for the programming on treatment. He was cooperative. Kept in touch with me if he had to reschedule something or if there was another issue that he needed to discuss. But he did discharge successfully.

Q. You mentioned his conviction for running a drug house and indicated that you wanted to make sure that that was brought out. Why -- why do you feel that that is important for us to know?

A. Well, it was -- the conviction was maintained drug trafficking place and that was within a barbershop here in Racine. That was one of the cases that I supervised, as well as another case of possession of drug paraphernalia that he obtained while on supervision for maintained drug trafficking place. **[emphasis added]**

Ms. Orlando's testimony is typical of the picture drawn of Hamilton, a technical iteration of the factual history of his probation and that Hamilton appears to be capable, and completed his probation. Ms. Orlando felt compelled without further explanation to reiterate the convictions for which Hamilton served probation. Without further comment, she pointed out his reoffending while on probation for the 1996 conviction. Her demeanor was cautionary and clinical in tone.

Michael Cuccia has only known Hamilton since March, 1999. The nature of the relationship is business, accountant to client, and offered little personal insight into Hamilton's rehabilitation. Once again, Mr. Cuccia's testimony brought out an interesting scenario that reflects upon Hamilton's credibility.

Q. And that would be in conjunction with All Nations Barber Shop?

A. Yes. Basically he works at All Nations Barber Shop. He was **the operating manager, if you will, and under their license, I believe. And he wanted to get things set up so that he could, you know, pursue, get his own license and pursue the business on his own as a -- as a sole proprietor. [emphasis added]**

Despite all of the testimony, it isn't clear who actually currently owns the barbershop on 409 High St. Racine. Yet it is Mr. Cuccia's role with Mr. Hamilton to obtain licenses, and permits and perform tax services. This strongly suggests Hamilton's current ownership. Cuccia stated:

Q. Do you have an opinion today as to Mr. Quincy's

character?

A. Yes, I do. I find him very conscientious, wants to do everything correctly and legally and wants to pay **his fair share of taxes**, you know, is willing to cooperate with all the paperwork. Actually, he initiated the contact personally. It's not as though I called him and said: Quincy we need to do this. He called me and said he would like to meet with me and -- and **set it up**.

I was very impressed over the fact -- I've seen situations like that where people run businesses for a long time before they get -- before they try to establish the correct procedure. **And Quincy up front wanted to make sure things were done correctly**. I've driven by the establishment at least twice a week in the last six months and stopped in to see him at least two times a month, to pick up paperwork, drop off paperwork, see if he had any questions, and I was very impressed with the professionalism. The patrons in the establishment appeared to be there for business. There weren't an overly number of people where there's too many to handle. There were enough there getting their hair cut, having -- waiting to get their hair cut, and basically I was quite -- I'm quite impressed with **his operation** and his character. He seems to have had some religious counseling and he's very sincere in how he approaches people and he wishes to do things correctly and -- and abide by the rules and the regulations. And I'm very impressed. I think he on a -- **I would rank him top among probably the 50 small business owners I work** with regarding sincerity and wishing to do the right thing. **[emphasis added]**

From Cuccia's testimony, it appears Hamilton owns the barbershop currently. Hamilton's AODA assessment also indicates he owns the barbershop. The barbershop is currently unlicensed by any owner of record. When trying to show rehabilitation, Hamilton does a disservice to himself by presenting flawed, incomplete and obfuscatory evidence. This strongly suggests Hamilton has not yet acquired the skill of taking full accountability and responsibility for his actions. This lessens his credibility when he claims rehabilitation for the 1996 conviction.

While Hamilton's rehabilitation as defined by other state agencies may be achieved the concept of rehabilitation for purposes of granting a license affecting the public health, safety and welfare requires a stricter standard of demonstrated performance and accountability over time. Hamilton has not met this stricter standard, either by satisfactory performance, or the passage of time.

Finally, the strongest witness against Hamilton is Hamilton himself. Under cross examination he stated he did not "know of" any positive screens for drugs during his probation.

Q. And how often did they do the screens?

A. Well, basically my probation officer, she did my screens. And I had a screen every -- every week.

Q. And were any of the screens positive for drugs?

A. **No, not that I know of.**

Q. And have you been successful in keeping off of drugs?

A. **Yes, I have. [emphasis added]**

Hamilton's testimony is false, contradicted by the extensive record of "dirty urines" in evidence.

Hamilton claims to be successful in keeping off of drugs. This current claim is unverifiable, and unpersuasive. Hamilton's lack of credibility in this area of personal conduct, combined with an insufficient passage of time demonstrating law-biding behavior, requires a finding of no rehabilitation.

Hamilton has not met his burden of proof to demonstrate rehabilitation such that an establishment license should issue.

Dated at Madison, Wisconsin this 30th day of November, 1999

---

William Anderson Black

Administrative Law Judge