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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
: AND ORDER
:
HE & SHE DESIGN PARLOR #13577, :
: LS 0705223 BAC
RESPONDENT. :

(Division of Enforcement Case No. 07BAC070)

TO: He & She Design Parlor #13577
P.O.Box 83
101 Lothe Road
Marshall, WI 5559

Claudia Berry Miran
Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A Class 2 proceeding hearing in the above-captioned matter was conducted on June 25, 2007. The subject of the hearing was a challenge to the citation for an administrative forfeiture which was issued to the Respondent by the Barbering and Cosmetology Examining Board, pursuant to Wis. Stat. § 454.15 and Wis. Admn. Code chs. BC 10 and RL 2. The Respondent, He & She Design Parlor #13577, appeared through its owner, Ms. Vickie Vick-Peck. The Division of Enforcement appeared by Claudia Berry Miran, the prosecuting attorney. Based upon the entire record in this case, the undersigned Administrative Law Judge recommends that the Wisconsin Barbering and Cosmetology Examining Board adopt as its Final Decision and Order in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. He & She Design Parlor #13577, is a barbering and cosmetology establishment, which has been licensed in the state of Wisconsin since April 28, 1987.
2. The owner of the establishment is Ms. Vickie Vick-Peck.
3. The last address for the establishment reported to the Department of Regulation and Licensing is P.O. Box 83, 101 Lothe Road, Marshall, Wisconsin, 53559.
4. On May 3, 2007, Ms. Candace Bloedow, an investigator with the Division of Enforcement, conducted an unannounced inspection of the He and She Design Parlor #13577.
5. During the course of the inspection, Ms. Bloedow found that the establishment did not have a price list posted or a procedure for blood exposure. Ms. Bloedow prepared and gave a Notice of Compliance to Ms. Vick-Peck for these deficiencies.
6. During the inspection, Ms. Bloedow asked Ms. Vick-Peck how often the disinfectant used for decontamination of contact equipment was changed.
7. Ms. Vick-Peck told Ms. Bloedow that she changed the disinfectant one or two times per week.

8. Ms. Bloedow issued a Citation for Administrative Forfeiture to Ms. Vick-Peck for failure to change disinfectant for contact equipment on a daily basis.
9. Pursuant to the Notice of Right to Contest, Ms. Vick-Peck submitted a timely request for a hearing to challenge the citation.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter under § 454.15, Wis. Stats. and Wis. Admn. Code BC ch. 10 and RL 2.
2. The Respondent, by the conduct described in paragraphs 6 and 7, violated Wis. Admn. Code § BC 4.02(5) by not changing the disinfectant used for decontamination of contact equipment on a daily basis.

OPINION

The requirement for daily changing of the disinfectant used for decontamination of contact equipment has been required under BC 4.02(5) for a number of years. This requirement has been the subject of an article appearing in the December 1999 Regulatory Digest which was sent to all licensees. (Exhibit 2) Disciplinary action has also been taken by the Barbering and Cosmetology Examining Board for violation of this requirement, as shown in the February 2003, Regulatory Digest. (Exhibit 3)

Ms. Vick-Peck testified at the hearing that she misspoke during the inspection when asked about the changing of the contact equipment disinfectant. Ms. Vick-Peck claimed that she became “unglued” when the investigator started asking her questions because it had been a very busy day with a lot of customers in the establishment. Ms. Vick-Peck testified that she just “rattled off the answer,” and that her response was, in hindsight, incorrect. [Tr. at pgs. 21, 22]

Ms. Vick-Peck testified at the hearing as follows:

... I guess it wasn't the answer that I should have given because I'm here to tell you that disinfectant is changed when we do combs and brushes. I don't always do that on a daily basis, I mean do the procedure of that. Some of the other girls in the salon, we share that responsibility, so I don't change that daily. It's one of the other girls that may be changing it at the point that those combs and brushes are disinfected. [Tr. at pg. 22]

Ms. Vick-Peck's testimony at hearing was that the responsibility to change the disinfectant is shared among the other employees in the establishment. Unfortunately, Ms. Vick-Peck's explanation, although somewhat plausible, was not substantiated by any other evidence such as written sanitation protocols or job descriptions. The credibility of Ms. Vick-Peck's testimony would have certainly been enhanced by the testimony of others who shared in that responsibility. However, Ms. Vick-Peck did not produce any witnesses or statements by others who supposedly shared in the responsibility to change the disinfectant on a daily basis.

Ms. Vick-Peck seems to suggest that her previous statement to the investigator was only meant to refer to whether she *personally* changed the disinfectant daily and not whether the disinfectant was actually changed on a daily basis. However, Ms. Vick-Peck did not mention anything to the investigator that would suggest that others changed the disinfectant on a daily basis. In fact, the explanation given by Ms. Vick-Peck at the hearing is in direct contradiction to her previous statements to the investigator.

Clearly, there was insufficient credible evidence presented at the hearing to sustain Ms. Vick-Peck's challenge to the citation. Accordingly, the citation and forfeiture must be upheld.

ORDER

NOW, THEREFORE, IT IS ORDERED that the forfeiture in the amount of one hundred thirty dollars (\$130.00) imposed

against He & She Design Parlor #13577, for violation of the requirement to change the contact equipment disinfectant on a daily basis is hereby AFFIRMED.

EXPLANATION OF VARIANCE

The Board accepts the Administrative Law Judge's (ALJ) Conclusions of Law and Order. The Board has modified the proposed Findings of Fact by deleting finding number 9 which reads:

9. *On May 8, 2007, Ms. Vick-Peck signed and returned the citation form along with the forfeiture in the amount of \$130.00.*

The Complainant objected to that finding on the grounds that it was incorrect and that there is no evidence of record supporting that finding. The Board has deleted that finding because the Board agrees that there is no evidence in the record to support it.

The Board finds that Finding of Fact number 9 is not needed to reach the Conclusion of Law that Ms. Vick-Peck violated the sanitation laws by failing to change a disinfectant daily. The Board therefore adopts the Administrative Law Judge's Proposed Conclusions of Law and Order.

Dated this 4th day of February, 2008.

Jeannie M. Bush, Chair
Barber and Cosmetology Examining Board