

Transcript of the Testimony of

Date: June 5, 2006

Case: 06-05-15

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BEFORE THE ARKANSAS STATE BOARD OF COSMETOLOGY

BOARD MEETING & PUBLIC HEARING

BE IT REMEMBERED, that on the 15th day of May,
2006, before the members of the Arkansas State Board of
Cosmetology, the following business and actions came on
for hearing, as follows, to-wit:

A P P E A R A N C E S:

BOARD MEMBERS:

JANE POWELL - President

CLIFFORD KEENE - 1st Vice President

NICK DOWNEY - 2nd Vice President

VEDA TRAYLOR - Secretary

MITZIE MCKINNEY - Treasurer

LAJOY GORDON

ANN PICKERING

SHERRON WEST

MELINDA STEELE

PATRICIA TURMAN

KATHY WITTUM - Director

ARNOLD JOCHUMS - Legal Counsel

MISTY BORKOWSKI - Hearing Officer

P R O C E E D I N G S

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THEREUPON,

MS. POWELL: The Arkansas State Board of Cosmetology meeting will come to order. Madam Chairman, will you take the roll? I mean -- Secretary, will you take the roll?

MS. TRAYLOR: Everybody is present except Mitzi McKinney and Sherron West.

MS. POWELL: We wanted -- the first order of business is, we wanted to welcome our new staff member. Amber McCuien, and she's the new Administrative Assistant to join the office. Kathy may have some information on her.

MS. WITTUM: We'll wait until this afternoon, so that I can introduce y'all to her.

MS. POWELL: All right. And do we have a Treasurer's report?

MS. TRAYLOR: Our Treasurer isn't here.

MS. POWELL: Well, we need to approve the minutes for the March Board meeting.

MS. WITTUM: You guys haven't been given a copy of those yet. We are going to get those copied for you and give them to you before you

1 leave today because there's -- it's a pretty
2 thick stack. To save us having to send them
3 out to you.

4 MS. POWELL: That was the March 27 Board
5 meeting --

6 MS. WITTUM: Yes.

7 MS. POWELL: -- minutes?

8 MS. WITTUM: Yes.

9 MS. POWELL: Okay. And you have received
10 your examination reports for April and May --
11 or March and April, correct?

12 MR. KEENE: I move to approve.

13 MS. TURMAN: I second.

14 MS. POWELL: We have a motion and a second.
15 Is there any discussion?

16 (No response.)

17 MS. POWELL: All those in favor to approve
18 (Show of hands.)

19 MS. POWELL: Unanimous. Minutes are
20 approved as read and submitted.

21 MS. WITTUM: Arnie, would you give them an
22 update on where we are with the 6.13.

23 MR. JOCHUMS: Okay. As you will remember,
24 at the March 27 meeting, the Board adopted
25 many, many, many rule changes. And including a

1 6.13, which has to do with, essentially, credit
2 for workshops outside of school. We ran into
3 flack -- would be a nice way to put it -- at
4 the Legislative Rules Committee. The Rules
5 Committee declared everything in the package
6 except 6.13 review. In conjunction with your
7 Chairman/Executive Director/President and
8 myself, we decided to keep the process flowing,
9 to file with the Secretary of State, everything
10 except 6.13 here. So, the published rules now
11 show a paragraph 6.13, essentially, vacant.
12 So, we can leave it open for further
13 discussion, but not -- the point was not to
14 hold up the rest of the rules, which you've
15 done a real lot of work on, and there was some
16 serious changes. There was the ADA issues and
17 HIV issues, and we all had to get that
18 straight. So, we've got new rules, except we
19 have this one paragraph where there is no rule.
20 Many of you were at the meeting last week, of a
21 sub-committee of the Legislature. And at that
22 meeting, the President communicated to the
23 legislators present that she would not be
24 opposed to the Board looking at this whole
25 issue again, and going through a rule making

1 process. So, we are now at the stage of
2 addressing, "Do you want to do that, as a
3 Board?" She, of course, can only speak for
4 herself. At that -- we didn't have a Board
5 meeting that day. I think that, in the context
6 of producing strife, discontent and other
7 issues, that I would recommend that you go back
8 to the point where we were at the end of March
9 6th, which was a draft, before the rule. That
10 you vote to send that draft out for public
11 comment. That was up to 30 hours on
12 cosmetologists and other levels for other
13 things, in-state or out-of-state charge or no
14 charge, however, I think those are the main
15 ingredients of that rule. Send it out where we
16 can have public comment in about 30 days. In
17 fact, your Executive Director would recommend
18 that you do that on June 19th. That's the --
19 it is a potential day to be more than enough
20 time, as today is the 15th of May so that gives
21 us 30 days. We could get a rule that short
22 advertised very quickly. We could have a
23 public hearing and -- of course, after the
24 public hearing, then decide whether it should
25 be adopted as a final rule, or there should be

1 no rule, or some other form or format. But
2 those are my thoughts on that. This is
3 essentially a political issue, not a lawyer
4 issue. But I think that this would be a good
5 way to address it.

6 MR. KEENE: Kathy?

7 MS. WITTUM: Yes?

8 MR. KEENE: I see on the calendar that we
9 have exams scheduled for the 19th -- June 19th.
10 What are you doing with those?

11 MS. WITTUM: Well, we haven't scheduled any
12 yet. We're not to the point where we're
13 scheduling June exams. So, I will just find
14 another day for us to have exams if we need
15 another day, and use this day for the public
16 hearing.

17 MR. KEENE: Okay. Well, then I would move
18 that we schedule the public hearing meeting for
19 June 19, to discuss Rule 6.13.

20 MS. GORDON: I second.

21 MR. JOCHUMS: In the -- in the format of
22 the March 6th, correct?

23 MR. KEENE: Yes.

24 MR. JOCHUMS: Okay. Just so everybody
25 knows what you're -- what you're moving.

1 MS. WITTUM: Does everyone remember what
2 was in the March 6th draft, or proposal?

3 MR. JOCHUMS: Yeah.

4 MS. WITTUM: This one is what -- what we
5 ended with on the 27th.

6 MS. TURMAN: I have my copy.

7 MR. KEENE: I have a copy.

8 MR. JOCHUMS: She's got a copy.

9 MR. KEENE: But this is the one that we're
10 talking about doing on the 19th?

11 MS. WITTUM: This is the one from the 27th,
12 but all we have to do is mark out that last
13 part of the first sentence, where it says that
14 they will be provided at no charge to the
15 student. Because that was what y'all decided
16 on the 6th, was to allow for the number of
17 hours here, allow the students to go in-state
18 or out-of-state, and at no charge to the
19 student.

20 MS. TURMAN: Right.

21 MS. WITTUM: I would like to point out, if
22 I could for a moment, that one of the issues
23 dealing with the charges stemmed from the fact
24 that -- some information that had been given to
25 us where the -- on the federal level, there was

1 a belief that it would be inappropriate for
2 students to attend an event and pay for it,
3 after they are receiving federal assistance
4 from the government through Title IV money.
5 Well, I got something in writing last week that
6 indicates it would not be an issue. So, as far
7 as the federal government is concerned, the
8 Board can make whatever decision they want to
9 make without regard to any of the federal
10 guidelines. So, that issue should not be an
11 issue to the school.

12 MS. POWELL: I think I'd like to clarify a
13 little bit or expound on that comment. This
14 has been a long process and the dealing -- the
15 information through the Department of Ed in the
16 past, has not made it an easy task for this
17 Board to form a decision. The information that
18 was received to the Director on two other
19 occasions was, as she stated before, it was a
20 foul. Now, as difficult as it can be to get a
21 clear answer from them, to get it in writing --
22 I mean, that is where we have, you know, headed
23 to try and facilitate the Board's ability to
24 make a regulation, based on the finding of
25 facts. And this is the first time the Director

1 has been able that we've -- she's attempted
2 three times, and this is the first time she's
3 been able to get a clear, documented answer,
4 correct?

5 MS. WITTUM: Yes.

6 MS. TURMAN: Madam President?

7 MS. POWELL: Ms. Turman?

8 MS. TURMAN: In lieu of this, I feel like
9 that was what I was basing my -- I think it's
10 very wrong -- I don't -- to bill somebody
11 twice. I know they're looking at things from a
12 different angle than what I am. I've had
13 several comments made to me that if the student
14 is in school -- (coughs) -- excuse me, -- and
15 they are -- they go on these little field
16 trips, and that's extra that they have to pay
17 for that. But really, they're students that
18 already had paid tuition. And that tuition
19 should cover those hours, regardless. And that
20 student shouldn't have to pay for any more.
21 But if it's -- I was looking at this point of --
22 -- that it was a foul if they -- if we did do
23 this. I think this is a different situation
24 that the Board's going to have to look at, now,
25 since it's a -- I still think it's wrong. I

1 will -- as many students as I've worked with,
2 does the Board have the right to make this
3 decision, then? That we say it's wrong and we
4 can still vote -- do we have to go by what the
5 federal government does? I want to do what's
6 right by everyone. You know what I mean? I
7 mean, I'm want -- I want some clarification.
8 What --

9 MS. TRAYLOR: What's our rule here?

10 MS. TURMAN: Am I making sense? I'm
11 probably not, but anyway.

12 MR. JOCHUMS: Well, I think that the simple
13 answer is, you can still vote "No" on this.
14 And you may be in the majority. I don't know.

15 MS. TURMAN: Okay.

16 MR. JOCHUMS: Because you have -- this is a
17 quasi-legislative activity. You -- you're
18 making a rule for all of the schools that you
19 regulate, and if you think something's wrong,
20 you should -- you should vote -- vote that way.
21 What we're saying is that the federal
22 government is not saying there's anything wrong
23 with this. I think that Kathy felt some
24 concern that we needed to be consistent with
25 the federal government's position. Apparently

1 -- and I'm not surprised that they answered
2 that way since we learned at one of the
3 hearings, that apparently all of the schools
4 around -- states around us have a similar kind
5 of situation. And the federal government
6 either -- for whatever reason, has decided it's
7 not a violation of their regulations. But you
8 still get to make up your own mind, on the
9 state level issue. I don't want to discourage
10 you. And if -- you state your position, and we
11 see how it comes out when the vote comes. But
12 that's my view on how -- you've got to make a
13 judgement call from where you sit, in the role
14 that you have.

15 MS. TURMAN: Okay. So, are we going to
16 have a chance to discuss this before we take
17 our vote, or is this our discussion for this?

18 MR. JOCHUMS: This probably is our
19 discussion.

20 MS. POWELL: This is the discussion.

21 MR. JOCHUMS: Well, he's -- I don't hear a
22 second, but a motion --

23 MS. POWELL: He didn't. His motion -- I
24 don't think it had been a second, so --

25 MR. JOCHUMS: Or did you even make it a

1 motion?

2 MS. POWELL: Was it a motion?

3 MR. KEENE: I wasn't really a motion. I
4 think we got into the discussion before --

5 MS. POWELL: Well, there wasn't a second.

6 MR. KEENE: -- a second, so --

7 MS. POWELL: Well, I think right now --

8 MR. KEENE: But now I'm confused as to what
9 the motion was.

10 MS. POWELL: Right. And I think, because
11 there is new information from the Director and
12 because the -- one thing that I want us, at
13 this time, to be sure that we do is that we
14 understand clearly which proposal -- what
15 proposal that we are going to discuss and what
16 we are going to present for public comment,
17 because I don't want anyone leaving here today
18 being confused. We can't make a decision, a
19 rash decision, or a decision based on refusing
20 to get clarification. If you're not clear,
21 let's talk about it. This is the time for us
22 to get clear what we want to present.

23 MS. PICKERING: Madam President?

24 MS. POWELL: Ms. Pickering?

25 MS. PICKERING: Okay. I am -- I want to

1 know -- okay, this -- my understanding is, when
2 we discussed this and voted on it, the students
3 -- tell me if I'm right or wrong. The students
4 can take their 30 hours in-state and out-of-
5 state. Does it -- doesn't it state that -- the
6 only thing this -- it states that the students
7 does not have to pay for this event, or this
8 educational class; is that correct?

9 MS. POWELL: Uh-huh. That's the way I
10 understand it.

11 MS. PICKERING: So, that responsibility
12 would be on the school, just to pay for that
13 class. Not provisions for going and coming
14 back and forth. Not for their hotel stay. It
15 just -- is that -- is that what we're talking
16 about? Is that the -- the school owner has to
17 pay for the educational class, not traveling
18 expense?

19 MS. POWELL: The attorney can --

20 MR. JOCHUMS: I don't think it was ever
21 broken out like that.

22 MS. POWELL: The attorney can clarify this
23 for me, if I'm not correct. There was nothing
24 that said who had to pay. It simply said that
25 the student would not be charged additional

1 charges to attend these events.

2 MS. PICKERING: But doesn't that -- I mean,
3 that does say that they're not charged, so who
4 would be paying that expense? The school
5 owner?

6 MS. POWELL: The school owner could. They
7 could raise money. The --

8 MS. PICKERING: Oh, they could raise money?

9 MS. POWELL: The -- some events are free of
10 charge to students.

11 MR. JOCHUMS: I think one of the events
12 last year was -- was free.

13 MS. POWELL: Right. Right.

14 MS. PICKERING: Well, I'm -- to me, this
15 what I understand. That the school owners are
16 disagreeing with us because they think that
17 it's going to have to come out of their pocket,
18 the classes -- educational classes, the tickets
19 and actually the money expenses for them.

20 MS. POWELL: Well, I can't answer for the
21 school owners.

22 MS. PICKERING: That's what I'm getting --
23 that's where I'm getting.

24 MS. POWELL: Right.

25 MS. PICKERING: And that's why they're

1 upset and they're trying to --

2 MS. POWELL: Well, I'd like to, at this
3 time, ask the Director -- as she has proposed
4 this and written this in many ways, in her
5 opinion, what is this proposal saying? So that
6 she can clear it for you as it is written.

7 MS. WITTUM: The one that you have in front
8 of you, as written, allows for the students to
9 attend any event, in-state or out-of-state, as
10 long as it's motivational -- motivational and
11 educational towards their course of study. And
12 it will allow 30 hours for cosmetology
13 students, twelve hours for specialty students.
14 And they have to attend events at no charge to
15 them. I had not heard of it broken down the
16 way you -- you've explained here, before. So,
17 you know, I think that would have to be a
18 Board's decision if you want to get that
19 technical with it. If you ask my opinion on
20 what we should end up with today, when we leave
21 here, I think we should go back to the rule
22 revision -- or the proposal that was suggested
23 at the March 6th meeting. That was the one
24 that the majority of the Board, at that time,
25 agreed with. That was what the public agreed

1 with at that time. And I understand the
2 Department of Ed has told us, it's not going to
3 be an issue when we're looking at those
4 charges.

5 MR. JOCHUMS: And the March 6th version was
6 that the word charge wouldn't come up.

7 MS. WITTUM: Right.

8 MR. JOCHUMS: It wasn't in the --

9 MS. WITTUM: It's the exact same thing you
10 have here, except it didn't have any mention of
11 charges.

12 MS. POWELL: So, the March -- for
13 clarification, the March 6th proposal was that
14 there would be a discretionary student -- off-
15 campus student hours obtained two percent,
16 being the 30 hours for cosmetology, twelve
17 hours for the 600 hour programs. They would be
18 able to be in or out of the state of Arkansas.
19 There would be no charges to the student.

20 MR. JOCHUMS: Well, now --

21 MS. POWELL: I mean, -- sorry.

22 MR. KEENE: There's no mention of charges

23 MS. POWELL: There was no -- there was no
24 mention to charges to anyone, either the
25 student or the school or anything. What you

1 were asking earlier. In other words, they
2 could be charged. I'd like to make it clear.
3 They could be or could not be. It's up to the
4 school. Could have charges. It's up to the
5 school.

6 (Board member, Sherron West is now present
7 at meeting.)

8 MS. PICKERING: Can I ask this, then?

9 MR. JOCHUMS: It's up to the organizer,
10 actually.

11 MS. POWELL: Yes. Yes.

12 MS. PICKERING: Okay. It -- it's being
13 raised that was then the school owners will
14 decide how they will come about paying for that
15 educational trip?

16 MR. JOCHUMS: No. No, it wouldn't be. The
17 students might have to pay for it, under that
18 proposal.

19 MS. PICKERING: Okay. The students might
20 have to pay for it.

21 MS. POWELL: Okay.

22 MS. PICKERING: So, it's not a direct
23 clarification the school owner's going to pay
24 for all this? It's not?

25 MR. JOCHUMS: Oh, no. No.

1 MS. WITTUM: But it's important to --

2 MS. TRAYLOR: That never was the intention.

3 MS. WITTUM: It's important to remember,
4 too, that the Board is not telling all the
5 schools to do this.

6 MS. PICKERING: Okay.

7 MS. WITTUM: I mean, the schools can decide
8 if they want to offer off-campus hours to their
9 students or not.

10 MS. PICKERING: Okay.

11 MS. WITTUM: And then, if they do, then
12 they can let the school -- the students know
13 what events are out there that they could go
14 to. Some of them may be free of charge, some
15 of them they may have to pay to attend. But at
16 that point, it would move to the student's
17 choice on whether or not they want to attend.

18 MS. PICKERING: So, it is mandatory for a
19 student to go to an educational class because
20 of the teacher saying, "I would like for us to
21 attend this class." So, it's not mandatory, on
22 the student's part; is that right?

23 MS. POWELL: Right.

24 MS. TURMAN: Madam President?

25 MS. POWELL: Ms. Turman?

1 MS. TURMAN: Thank you. I simply want to
2 do what is best, what is fair. But what I'm
3 looking at is, is the student -- and it seems
4 like I recall, when our attorney was there,
5 that she said that they -- the student would
6 only have to pay for -- the school would only
7 have to pay for the educational part of this
8 outing. Maybe I'm -- I slept hard or
9 something. I don't know why I remember that.

10 MS. POWELL: I think to clarify what you're
11 saying, I think that was proposed by
12 Representative Creekmore. At the time, I don't
13 think that we answered it clear. And I think
14 the idea was that the school had charged for
15 hours, for tuition, part of the fifteen
16 hundred. And this event came up for \$10.00.
17 Let's say the school collected for those hours
18 and it was \$5.00 -- equate to \$5.00. Then, we
19 were saying -- her question was, well then,
20 could the student just pay their \$5.00 for that
21 event --

22 MS. TURMAN: Okay.

23 MS. POWELL: -- and then, the student would
24 pay the above and over what they paid for
25 tuition?

1 MS. TURMAN: Right. Okay.

2 MS. POWELL: And in essence, because we did
3 not get that into it, it -- the answer, I
4 think, would be "Yes." But I don't think we
5 ever clearly answered her question. Am I
6 correct, Ms. Wittum?

7 MS. WITTUM: Right.

8 MS. POWELL: If we did not -- as Ms. Wittum
9 has said, we did not get into it as to who
10 would pay for this and how it would be paid
11 for. I think the point was made that the
12 opinion of the Board was that students would
13 not be charged additional for these 30 hours
14 that they've already paid, for their tuition.

15 MS. TURMAN: I would like to make some
16 comments. I have been so adamant against this.
17 It is nothing to do -- has nothing to do with
18 the schools. I think I am very respectful for
19 the schools, you guys. If we weren't, then --
20 I guess I'm going to be very honest with you.
21 My husband and I have given thousands and
22 thousands and thousands of dollars away to
23 education. Every day, I see these students
24 that -- that come into my office. I work four
25 months a year. I give this money away that

1 when I work, to try to get -- to help kids get
2 educated. Everything I make throughout the
3 year is given away. I see these students come
4 in, they're living in cars. And they're trying
5 to make their money for -- to pay for their
6 tuition. I think there's a lot of kids out
7 there that are trying to go to school. And I
8 guess I'm trying to think -- focus on this.
9 It's a very -- it's a struggle to get some of
10 this tuition paid, you guys. And if they pay
11 it, how would you feel if you paid your child's
12 tuition and, all of a sudden, they want 30 more
13 hours and say, "Okay. We want this to go
14 toward your hours." If it was not going toward
15 those 1,500 hours, you guys, I wouldn't care.
16 But technically, it's still going toward those
17 1,500 hours.

18 MS. TRAYLOR: You're right.

19 MS. TURMAN: If the Board of Education --
20 if the United States government has got so much
21 money that they don't care what happens to this
22 student, well, I do. I care what happens to
23 these students. I care what happens to the
24 schools. And it doesn't matter if they say,
25 "The student doesn't care if they have to pay

1 for this or not." If they pay their tuition,
2 they shouldn't have to pay it. It's -- I think
3 we should make some kind of clarification. I
4 mean, I don't think we -- we said -- we didn't
5 tell them that they couldn't go out and raise
6 funds, like they were before, to go. They were
7 doing car washes. We had a young lady testify
8 before us, in order to get to go, she had to go
9 out and wash cars, babysit, whatever. If they
10 want to do this and go ahead and go, that's
11 fine. We're not going to tell them they can't
12 do that. We're just saying, "Look, you paid
13 your -- for your 1,500 hours." If they wanted
14 to go to where that 1,500 hours, then you
15 shouldn't pay extra for them.

16 MS. POWELL: Your point is well taken.

17 MS. TURMAN: Thank you.

18 MS. POWELL: I would like to also address
19 the public and the Board that all cell phones
20 and electronic equipment should -- must be
21 turned off.

22 MS. WITTUM: I'd like to comment.

23 MS. POWELL: Yes? Okay.

24 MS. WITTUM: I appreciate your position,
25 Ms. Turman. What I would suggest that we don't

1 following.

2 MS. STEELE: If they didn't have to pay.

3 MR. JOCHUMS: Okay.

4 MS. STEELE: Since they had already paid
5 their tuition, to begin with.

6 MS. POWELL: Your point has been taken.

7 Ms. Traylor?

8 MS. TRAYLOR: Our prime purpose as a Board
9 is to protect the public. And I -- and right
10 now, those students are our public. And I do
11 not like to see students penalized. And what
12 will -- I'm with Ms. Turman. You -- we're not
13 saying you can't do this. You know, I don't
14 care where they go. That's up to the school.
15 But I do not feel like that Susie over here
16 can't go, and have the same opportunity as
17 Becky, because Susie doesn't have the money.
18 And she's -- she's got the tuition paid. And I
19 just don't want to see these students charged
20 against that. Now, there's supply houses.
21 That's the way they make their money. And
22 they're making their money off of the students.
23 And that's not right, either. So, you know, I
24 had the statement made to me by one supplier,
25 "Oh, yeah. We've got that bunch from so-and-so

1 school in here, so we have to watch them." He
2 said, "They'd steal us blind." You know, I
3 have a problem with that. I don't think those
4 students -- I've been in there when the
5 students were in there, and the students wasn't
6 stealing them blind. So, I just have a problem
7 with them charged again.

8 MS. POWELL: Your point is well taken.

9 MS. PICKERING: May I make a comment?

10 MS. POWELL: Ms. Pickering?

11 MS. PICKERING: All right. So, we're
12 saying -- we're not only looking out for the
13 students, but we're looking out for 56 schools
14 in Arkansas.

15 MS. TRAYLOR: Right.

16 MS. PICKERING: And so, we want to be fair
17 with the students and we want to be fair with
18 those schools. How many people are they
19 training to go out in the public and work? So,
20 what I -- I am concerned about the students,
21 but I'm also concerned about the school owners.
22 I mean, if I am -- and I want you to help me
23 with this. It's not mandatory for the students
24 to go outside the school, to get these class --
25 take advantage of these classes. It's not

1 mandatory, but if they want to go bad enough,
2 it's just like we said. They will find a way
3 to make that extra money. I don't think it all
4 should be on that school, no matter what school
5 owner. And we're saying that, if I'm not -- if
6 I'm correct, you're saying it's up to that
7 student and up to that school owner for them to
8 take advantage of that class, if they want to.
9 So, my concern -- well, I'm just really having
10 a hard time consuming all of this. We say one
11 thing and then we turn around and say something
12 else. I do -- I am very sensitive to the
13 student, and I'm sensitive to the school owner.
14 I have a beauty shop. I've owned my shop for
15 41 years. If -- when the supplies go up, they
16 go up every few months. I have to increase my
17 prices to my -- to the public, to keep up with
18 that. And I know the school owner cannot just
19 outright, out of her pocket, say, "Okay, I want
20 15 or 20 students to go to this particular
21 class. Now, I know you don't have the money,
22 so it's going to have to come out of my
23 pocket." Well, most of the time, the school
24 owners cannot do that. I'm just saying that if
25 that student really wants to go and take

1 advantage of that class, they will babysit,
2 they will find a way. So, we're not really --
3 and Ms. Wittum, I think, has already told us --
4 have you -- haven't you already told us it's up
5 to the student and up to the school whether
6 they take advantage of a class? So, we're not
7 putting any -- we're not putting any burden on
8 the student nor the school with this Rule 6.13.
9 We're not putting any burden on either one.
10 It's either go or not go. I mean, you know, my
11 children and my grandchildren, who are grown,
12 when they wanted something extra, they got out
13 and worked for it, you know? So, what is wrong
14 with that? I mean, can't we just leave it up
15 to the school owner to say, "Okay, these
16 classes are available and you've already paid
17 your tuition. I'm not going to charge you any
18 more. But if you want to go, it's up to you to
19 provide those funds." Whether it's
20 babysitting, or washing cars, or whatever.

21 MS. POWELL: Ms. Turman?

22 MS. TURMAN: Thank you for recognizing me,
23 Madam President. And yes, it is putting more
24 burden on the student when -- and they do have
25 a choice. That's -- any time that you run a

1 business, you have to -- and I'm sure you've
2 been in the business long enough to know -- you
3 have to -- you can raise your prices for hair
4 coloring or whatever. But you know, when
5 you're dealing with tuition fee, I think if you
6 take into consideration any cost that might
7 occur during that haircut, but it is putting a
8 burden on that student. It would be different
9 if they were not going for those hours that
10 they already paid for. But this is going for
11 hours that they've already paid for. So, then
12 they have to come back and pay these hours
13 again. This is part of their 1,500 hours.
14 They've already paid for that. And yet, they
15 have to turn around and pay for those hours
16 again. So, it is putting more of a burden on
17 the student. They do have their choice on
18 whether to go or not, but sure. If any one of
19 them can't afford these -- to cough up that
20 money again, then they have to stay back. And
21 that -- they can -- if this is not the case,
22 I'd like clarification. Because they can go
23 out and raise money babysitting and whatever,
24 like this, but why should they, if that's part
25 of their tuition and they've already paid for

1 it?

2 MS. POWELL: Well, I think one issue that
3 Ms. Pickering was discussing -- and also Ms.
4 Turman, that I'd like to bring up is, this
5 started out called "Extracurricular Activity".

6 MS. TURMAN: Right.

7 MS. POWELL: "Extra" means above and
8 beyond. And would have, in my mind, been above
9 and beyond the 1,500 hours. But as it is --
10 has been used in the past, and as it is now in
11 the policy, it's considered "Discretionary
12 Student Hours". So, it's not "extra" anymore.
13 We've changed the terminology of that. It is
14 now considered "discretionary". And to clarify
15 it for prospective students and school staff
16 and the Board, the public, the word "optional"
17 could be included into this heading, "Optional
18 Discretionary Off-Campus Student Hours," to
19 clarify that it is optional. That they could
20 go or that it's optional. The school could have
21 this provision. It's not mandating -- those
22 that are opposed to students being charged for
23 this, those that are opposed to the students
24 obtaining hours outside of the school, fearing
25 that it doesn't have the quality of education

1 that they would gain in the school, that's what
2 this "optional" means. You don't -- if you are
3 confident that what you have, and your belief
4 is what's best for this student, then you have
5 the choice. It's never been mandated. And
6 it's certainly not been in this setting. It is
7 strictly and optional offering.

8 MS. PICKERING: Thank you.

9 MS. TURMAN: Thank you, Madam President.

10 MS. POWELL: Mr. Keene?

11 MR. KEENE: I believe Senator Ferris told
12 us that, if we did decide to do something, we
13 needed to nullify our last decision on this
14 matter. And if we do that today, that would
15 take us back to the draft that I think we're
16 talking about bringing back to our next public
17 meeting. Which would go back to pay or not
18 pay, and the training would have to be in-
19 state. Am I correct?

20 MS. WITTUM: The March 6th --

21 MR. JOCHUMS: Well, --

22 MS. WITTUM: -- version is --

23 MR. JOCHUMS: -- no. It'll have to --

24 MR. KEENE: Whatever is --

25 MS. WITTUM: The March 6th version had no

1 limitations for the students.

2 MR. KEENE: They could pay or not pay, --

3 MS. WITTUM: They could go in- or out-of-
4 state, they could pay or not pay, and they
5 would get the 30 and twelve hours.

6 MR. KEENE: Right. So, if we nullify our
7 last decision, could we not approve that draft
8 today, without having to have another public
9 meeting?

10 MS. POWELL: That is a question --

11 MR. JOCHUMS: I think that, because of the
12 number of issues that got raised, that the
13 cleaner, safer way would be to have another
14 public hearing, for all concerned. Arguably,
15 you could, but I don't recommend --

16 MR. KEENE: Well, because that was a
17 decision that -- that came up in the March 6th
18 public hearing. That was the decision that was
19 made. And it doesn't sound to me like
20 anything's changed from the March 6th -- if we
21 nullify the last decision, to have a public
22 meeting or not, I mean, it sounds to me --
23 what I'm hearing in here is that that's what
24 our motion should be. Go back to the March 6th
25 draft that was created and have another -- have

1 another public hearing on it.

2 MS. POWELL: Your point is well taken, Mr.
3 Keene. I just want to make sure that at this
4 time, in that proposal, that everyone is clear
5 because I was not aware of the Board being
6 confused on the 27th. I want to make sure
7 that, if they revert back to the 6th, that they
8 understand clearly what they voted on and what
9 they decided -- what the -- their personal
10 decision was, on the 6th. And then, that way,
11 they also should know, if they move that, then
12 they would know what their decision was on the
13 27th. So, make sure you don't get these two
14 proposals confused.

15 MS. TURMAN: Madam President?

16 MS. POWELL: Ms. Turman?

17 MS. TURMAN: I also want it stated that we
18 did have our final vote on the 27th.

19 MS. POWELL: Pardon me?

20 MS. TURMAN: Our final vote was on the
21 27th, to my understanding; was that correct?

22 MS. POWELL: That's correct.

23 MS. TURMAN: Okay.

24 MR. KEENE: Okay. I don't understand what

25 --

1 MR. JOCHUMS: And one of the -- on the
2 26th, the draft free or not, in- or out-of-
3 state vote. Because it originally started out
4 limited to in-state and I think, maybe, Nick
5 pointed out that the --

6 MS. POWELL: No, it was Cliff and I.

7 MR. JOCHUMS: Maybe it was you that said
8 the kids in West Memphis --

9 MS. POWELL: Yes.

10 MR. JOCHUMS: -- shouldn't have to go to
11 Little Rock. They should be able to cross the
12 river into Memphis --

13 MS. POWELL: That is correct.

14 MR. JOCHUMS: -- to here. So, that was
15 amended and changed. And then, there was some
16 more discussion, then somebody said it was okay
17 to charge. That's the way the March 6th
18 meeting ended. That's the way it was
19 published. And part of the complaint of the
20 Legislature was that they said that your vote
21 to put the charge back on was an eleventh-hour
22 change. And that's what they were complaining
23 about last Wednesday, if you were all
24 listening. So, and also, I think pretty much
25 the way -- although I didn't agree with their

1 interpretation that that kind of change was
2 improper, obviously there is disagreement about
3 that among knowledgeable people. And the
4 cleanest, safest way to do it, to avoid a
5 future challenge by somebody else, whichever
6 side, who's unhappy might want to take the
7 matter to court. We really ought to have a
8 draft, which you can always change at the
9 public hearing, but an agreed draft. Have the
10 public hearing, let the people come in and talk
11 about it some more. Maybe they'll persuade you
12 that it's a bad draft. Maybe they'll persuade
13 you shouldn't have it at all. Maybe -- I don't
14 know where it will go, but I think that would
15 be best. Although it costs a little more
16 money, that would be the more safe, prudent way
17 to take care of it.

18 MS. POWELL: Thank you, Mr. Jochums. Ms.
19 Turman?

20 MS. TURMAN: My thinking was that -- I was
21 before the Congress and they asked met to
22 speak. I don't think they had a problem with
23 our outcome. I think they had a problem that
24 they thought we had staged our vote. I think
25 that's the only problem they had with it. I

1 don't think they had a problem with how we
2 voted. It was that they said that we had
3 staged our vote. And I think that's what we
4 should -- I think we should correct. I don't
5 want any misconceptions -- as a Board member, I
6 do not want any misconceptions out there that
7 we -- you know, that we staged our vote. That
8 we all called each other and staged our vote.
9 I certainly did not do that. And I took
10 offense to that, when they suggested this Board
11 did that. And that's what -- I think that was
12 the only problem that we had is that -- I don't
13 think they had a problem with our -- that they
14 said it was an eleventh-hour and that we had
15 switched our vote. And I think they didn't --
16 their attorney even said that we had called
17 each other or we'd had meetings. I think that
18 was her quote. I'm not sure. And I just want
19 to make sure that the world knows, and
20 everybody else in this audience, that we did
21 not -- I did not do that, for sure.

22 MS. POWELL: Thank you, Ms. Turman. I
23 think this Board needs to -- if they're clear
24 at this time on what the proposal was, on the
25 6th, and what the changes were and voted on, on

1 the 27th, they need to take this opportunity to
2 think long and hard about what proposal and how
3 you want to proceed forward with these two
4 proposals. How do you truly feel? You need to
5 take into consideration the issues that have
6 been brought up to you repeatedly. The
7 discretionary student hour rule, the amount of
8 the hours, the student's charge or not charge,
9 in- or out-of-state. Those are the issues.
10 And I think, before I entertain a motion, I
11 want to take a break. 15 minutes.

12 (WHEREUPON, a break was taken and the
13 meeting resumed as follows, to-wit:)

14 MS. POWELL: We took a break. We were
15 discussing Rule 6.13 in discussion. Is there
16 any further discussion on Rule 6.13?

17 (No response.)

18 MR. KEENE: Okay. So, we're going to make
19 a motion, based on -- on which one of these
20 orders are we going to -- the one that we were
21 handed today, that was the decision made on the
22 27th? Or are we going to choose to go on the
23 one that we came up with on the 6th of March?

24 MS. WITTUM: Right. And on the 6th, if you
25 just take the copy that I gave you, then in the

1 first sentence after, "...discretionary off-
2 campus hours," taking out the stricken language
3 there, "...provided they are accrued in
4 Arkansas," and also take out, "...when the
5 events are provided at no charge to the
6 student," you will have what the 6th was.
7 Because on the 6th, you said they can go
8 wherever they wanted, they didn't have to be
9 limited to attending only what was provided at
10 no charge, and they could get this set number
11 of hours.

12 MS. POWELL: Mr. Downey?

13 MR. DOWNEY: Madam Chairman, I'd like to
14 make a motion that we revert back to Rule 6.13
15 of March 6th, as the proposed rule for the
16 public hearing on June -- what 19th? Is that
17 what it was?

18 MR. JOCHUMS: Yes, sir.

19 MR. DOWNEY: Okay.

20 MS. POWELL: I have a motion. Do I have a
21 second?

22 MR. KEENE: I'll second.

23 MS. POWELL: I have a motion and a second
24 to approve proposed Rule 6.13, Discretionary
25 Off-Campus Student Hours as presented on the

1 6th of March, and to be submitted for public
2 comment on June 19th. And you are -- you all
3 have a copy of this proposed rule in front of
4 you for any clarification.

5 MR. KEENE: Would you say it again?

6 MS. POWELL: The rule that you have in
7 front of you that the Director just submitted
8 to you today, is the proposed rule, extracting
9 the sentence as she said, "...provided they are
10 accrued in Arkansas when the events are
11 provided at no charge to the students." Is
12 that correct?

13 MS. WITTUM: That's striking that out.
14 Yes.

15 MS. POWELL: Striking that out. The
16 proposal you have in front of you, strike out,
17 "...provided they are accrued in Arkansas when
18 the events are provided at no charge to the
19 student." That would clearly state that there
20 would be discretionary off-campus student
21 hours, the two percent. They could be obtained
22 in or out of Arkansas, and they are -- the
23 charges for these events is optional. Am I
24 correct, Mr. Jochums?

25 MR. JOCHUMS: That's what I understand.

1 MS. POWELL: I have a motion and a second.
2 All those in favor, raise their right hand.

3 (Show of hands.)

4 MS. POWELL: All those opposed?

5 (Show of hands.)

6 BOARD MEMBER: I abstain.

7 MS. POWELL: One abstention.

8 MS. TURMAN: I'm going to change my vote
9 back to abstain.

10 MS. POWELL: Two abstentions. The motion
11 carries for the discretionary off-campus
12 student hours to be as proposed on the 6th of
13 March -- or April.

14 MR. JOCHUMS: Actually, it's --

15 MS. POWELL: April.

16 MR. JOCHUMS: -- as proposed this morning.

17 MS. PIAZZA: As proposed this morning.

18 Correct.

19 MS. TURMAN: Okay. Madam President, I am
20 very sorry, but now I'm confused. Okay.
21 That's the reason why my first vote was for
22 "No" and then I changed it and I abstained.
23 Now, you're telling me that these hours that
24 these students -- they can either be charged or
25 not be charged?

1 MS. POWELL: That's correct.

2 MS. TURMAN: It's up to the school?

3 MS. POWELL: That's correct.

4 MS. TURMAN: Optional?

5 MS. POWELL: That's correct. And you
6 abstain, Ms. Turman?

7 MS. TURMAN: Yes.

8 MS. POWELL: Okay. We're going to take up
9 the next item of business, the NIC Regional
10 Update. I'll turn that over to the Director.

11 MS. WITTUM: Veda and I attended the
12 regional conference in Wilmington, North
13 Carolina. Would you like to update --

14 MS. TRAYLOR: Well, I'll let you do it.

15 MS. WITTUM: They had a lot of good
16 information. I wish all of you could have
17 worked it out to be able to go. There was one
18 issue in particular that I paid attention to,
19 and I think it would be helpful for this Board.
20 And that's to have kind of a Board orientation.
21 I know typically, people do it with new Board
22 members, but I kind of would like for us to
23 plan to bring this Board together, just to
24 reiterate the Robert's Rules of Order, the
25 Administrative Procedure Act, the ethics

1 issues, all of those things just to kind of
2 bring everybody up to the same playing field.
3 So, if no one objects to that, I'll start
4 working on getting that pulled together and
5 getting some updated information out to you
6 guys. And hopefully y'all can attend the
7 national conference in Augusta, Maine, in
8 August.

9 MS. POWELL: This event is going to be
10 classified as a --

11 MS. WITTUM: Retreat.

12 MS. POWELL: -- retreat?

13 MS. WITTUM: Yes.

14 MS. POWELL: Be classified as a retreat. I
15 know that the Director spoke to us about that
16 possibility, in the past. I don't know if you
17 remember it or not. It's been quite a while
18 back. But I think that it would be an
19 opportunity for us all to get together, and be
20 very beneficial for all of us.

21 MS. WITTUM: Do you want me to go into new
22 business or do you want to --

23 MS. TRAYLOR: I'd like to add to Kathy's
24 report that they had some excellent speakers.
25 And one thing that I commend the North Carolina

1 Board with is they have a segment once a week,
2 on the local TV stations, on pedicures and
3 such. And they're really -- they're really
4 working on that. And that was -- and the lady
5 that spoke to us about it, she was very
6 informative. She knew -- she was not a
7 hairdresser, per say, or anything. She was
8 with the Health Department.

9 MS. WITTUM: Uh-huh.

10 MS. TRAYLOR: But she was good. It was a
11 good real image.

12 MS. POWELL: Thank you, Ms. Traylor. Do
13 you want to (inaudible).

14 MS. WITTUM: (Inaudible).

15 MS. POWELL: I think we need to go into new
16 business.

17 MS. TURMAN: Madam President?

18 MS. POWELL: Yes, Ms. Turman?

19 MS. TURMAN: Let me tell you something. I
20 am very -- I'm sitting here -- I hate to bring
21 this up again. Please, I know we've all voted
22 on this. But the reason why -- there's some of
23 these things that I like in here, but there's
24 one item I don't like in here. And we lumped
25 it all together. That made me have to -- the

1 30 hours and things like this, I have -- I'm
2 for it. But this one item in here that -- and
3 when we lumped that all together, without
4 breaking it down, I feel like that that's the
5 reason why I had to change my vote, and I'm
6 still -- I really don't like the way we lumped
7 everything all together.

8 MS. POWELL: Your point is well taken, Ms.
9 Turman.

10 MS. TURMAN: Thank you.

11 MS. POWELL: I think we visited each one of
12 these issues in the past on an individual
13 basis.

14 MS. TURMAN: We did.

15 MS. POWELL: And I think it's a well-known
16 fact that the Board has concerns about this
17 discretionary student hours, possibly how many,
18 where they're at, and the charges event. But
19 those have --

20 MS. TURMAN: Will we revisit this on June
21 19th, then? We will get away from it, this is
22 over? When we have a --

23 MS. POWELL: This is the Board's opinion.

24 MS. TURMAN: Okay.

25 MS. POWELL: And we will have public

1 comment on -- I'm sorry, y'all, I'm -- June
2 19th. My months are running together.

3 MS. TURMAN: But I am so sorry, you guys,
4 but I just want to clarify that.

5 MS. POWELL: Okay. Thank you. Next item
6 of business is the sub-committees for the
7 Student Advisory Board. Ms. Wittum, do you
8 have comment?

9 MS. WITTUM: I would like to have some help
10 to start getting this pulled together, so I
11 would appreciate it if you could appoint a
12 couple of Board members to help with the --
13 with this particular project.

14 MS. POWELL: For the Advisory Board, I have
15 appointed Pat Turman and Sherron West. If you
16 feel that it's -- if you are unable to serve at
17 this capacity, for this committee, please let
18 me know, so that I can appoint someone else.
19 And is that all well with you two members?

20 (Board members nod heads up and down.)

21 MS. WITTUM: We also have a Legislative
22 Review. We're starting to work on any proposals
23 we want to make to the law. So, we will need
24 to start appointing members to participate with
25 that, as well.

1 MS. POWELL: I have appointed to that
2 committee Nick Downey, Melinda Steele, and Anne
3 Pickering. If you feel that you would not be
4 able to serve in this capacity for this
5 committee, please, let me know. Is that all
6 okay, at this time?

7 (Board members nod heads up and down.)

8 MS. POWELL: Thank you. We have our 2006
9 Rater Training Schedule on July the 8th and
10 9th. And I believe you've all received a copy
11 of that, and it was sent out to the schools.
12 You have information?

13 MS. WITTUM: The School Overview on July
14 10th was sent out to the schools, and we've
15 already started receiving registrations from
16 them. That will be held in the Blue Flame Room
17 over at the Office of Child Support Enforcement
18 office, from 9:00 to 1:00. Brenda Maythree and
19 Michael Hill will be doing our Rater Training
20 again, and they requested two full days. So,
21 we'll be doing all day Saturday and Sunday to
22 go over that. That will also eliminate the
23 need for Melinda and Anne to go to Missouri to
24 get your Rater Training. You'll just do it
25 here with us.

1 MS. TRAYLOR: Where is the Blue Flame Room?

2 MS. POWELL: That's the --

3 MR. JOCHUMS: Old Arkla building.

4 MS. POWELL: -- Arkla building. The one --

5 MS. TRAYLOR: Oh.

6 MS. POWELL: We've been there before.

7 MS. TRAYLOR: Oh. The Arkla building.

8 Okay.

9 MS. POWELL: Uh-huh. Yeah. And this also
10 has been discussed in the past, about the Board
11 required to attend the School Overview. And
12 unless the Board wants to make a motion that
13 they are, I'm proposing that they are not
14 required to attend the School Overview.

15 MS. TURMAN: That would be on Monday.
16 Right, Jane?

17 MS. POWELL: Um, --

18 MS. TURMAN: The 10th.

19 MS. POWELL: The 10th. Yes, ma'am.

20 MS. TURMAN: Okay.

21 MS. POWELL: Do I have any comment on that?

22 (No response).

23 MS. POWELL: And also, we've had comment
24 from the Blue Flame Room of the facility being
25 left unacceptable. I think --

1 MS. WITTUM: We almost didn't get it.

2 MS. POWELL: We almost did not get it. So,
3 I believe the last event that I can remember
4 there was -- there was food involved. So, we
5 want to be -- that was the report, correct?

6 MS. WITTUM: Yes.

7 MS. POWELL: So, we -- I want to advise the
8 Board to be sure that -- we enjoy using this
9 facility, so we want to make sure that we use
10 every precaution to leave it in the same shape
11 we found it. Yes?

12 MS. PICKERING: And you'll give us
13 directions?

14 MS. POWELL: Yes. It's close to the State
15 Board office, too. It's close by, so --

16 MS. PICKERING: It's right here?

17 MS. POWELL: Yes. It's within walking
18 distance, I think.

19 MS. WITTUM: Let's clarify that the Rater
20 Training will be here, at the exam facility,
21 where it always is.

22 MS. POWELL: Right.

23 MS. WITTUM: It's the Overview -- the
24 School Overview that should take place at the
25 Blue Flame Room.

1 MS. POWELL: Right. Yes, Ms. Gordon?

2 MS. GORDON: Are you saying that the Board
3 be aware of the fact that the room was not --
4 wasn't left to what it was when we first got
5 there. Now, we're not required to be there
6 that Monday.

7 MS. POWELL: That's what I said.

8 MS. GORDON: So, we won't --

9 MS. POWELL: If the Board decides to go.
10 It's not mandatory.

11 MS. GORDON: I understand.

12 MS. POWELL: But if you go, just make sure
13 that -- if you see, I guess, candy wrappers --
14 I don't know how else to expound on this.

15 MS. GORDON: Maybe it --

16 MS. POWELL: Pick them up.

17 MS. GORDON: -- should be stated that the
18 schools, or whoever is there, --

19 MS. POWELL: We will make that announcement
20 to the school owners that are there that day,
21 to be respectful of the facility.

22 MS. WITTUM: Well, Shaunta and I will take
23 full responsibility for the room. So, we
24 definitely will not let it -- we will not leave
25 until --

1 MR. KEENE: The School Owners Association
2 had a going away party for Linda, I believe, is
3 what that was. Congratulations, because we
4 made her Director or something, is what that
5 food was about.

6 MS. POWELL: Okay.

7 MR. KEENE: We're not doing that, no. I
8 don't think anybody is going to bringing that
9 kind of thing.

10 MS. WITTUM: We won't have a party.

11 MR. KEENE: Plus, it was your birthday that
12 weekend.

13 (MANY VOICES SPEAKING AT ONCE).

14 MS. POWELL: Ms. Pickering?

15 MS. PICKERING: Could we get a flyer from
16 you that will give us all these dates that
17 you're --

18 MS. WITTUM: Yes. I think it was in the
19 memo that I sent, but I'll -- I'll make sure
20 it's in another one before then.

21 MS. POWELL: Well, just for clarification,
22 the Rater Training for the Board members is on
23 July the 8th and 9th, and the School Overview
24 is July 10th. And the Board is not required to
25 attend the School Overview. And I'm certain

1 there are Board members that are not required
2 to attend the Rater Training.

3 MS. WITTUM: Two.

4 MS. POWELL: Two of you, but you're welcome
5 to come.

6 MS. TURMAN: The more we know, the better
7 off we are.

8 MS. POWELL: That's correct.

9 MS. TURMAN: Now, Madam President, can you
10 explain to those of us who -- what is the
11 School Overview? What do they -- what does
12 that consist of?

13 MS. POWELL: The School Overview is an
14 overview of what the Rater Training principles
15 were. It gives the school an overview of
16 procedures that their students will be expected
17 to use during the examinations.

18 MS. TRAYLOR: And any changes in that.

19 MS. POWELL: And any changes. Correct.
20 Correct.

21 MS. TURMAN: Okay. Thank you.

22 MS. POWELL: Okay. All right.

23 MS. BLAND: Madam President?

24 MS. POWELL: Yes?

25 MS. BLAND: Are the inspectors required to

1 attend Rater Training at that time, also?

2 MS. WITTUM: Yes.

3 MS. BLAND: I think some have already
4 rescheduled only for that week.

5 MS. WITTUM: We'll discuss that later.

6 MS. BLAND: Okay.

7 MS. POWELL: Thank you.

8 MS. WITTUM: (INAUDIBLE).

9 MS. POWELL: Okay. We'll go into --

10 MS. WITTUM: (INAUDIBLE).

11 MS. POWELL: At this time, we're going into
12 the hearings. And I'll turn the meeting over
13 to our legal counsel, Arnie Jochums.

14 ORDER AND NOTICE OF HEARING #06-120

15 MR. JOCHUMS: I would ask, when you do -- I
16 apologize about this -- is it Korto Monolu
17 Briggs? Is that right?

18 MS. BRIGGS: Monolu Briggs.

19 MR. JOCHUMS: Monolu Briggs. Just come up
20 here and have a chair. The hearing officer
21 will tell you what to do in a minute. This is
22 the case for you, Board Members, the third one
23 in your stock of documents.

24 MS. BORKOWSKI: I am Misti Borkowski, an
25 attorney. And I will serve as the hearing

1 officer today in the matter of Korto Monolu
2 Briggs. This is hearing officer -- or --

3 MS. POWELL: (INAUDIBLE).

4 MS. BORKOWSKI: I'm sorry?

5 MS. POWELL: I'm sorry. It was just --

6 MS. BORKOWSKI: Oh, that's okay. I'll just
7 take over.

8 MS. POWELL: Take the floor.

9 MS. BORKOWSKI: Hearing number 06-120.
10 This is a matter to be heard before the
11 Arkansas State Board of Cosmetology. Today is
12 May 15, 2006. And we are located in the Main
13 Street Mall Building, in the Lower Level
14 Conference Room. Is the Respondent, Ms.
15 Briggs, present?

16 MS. BRIGGS: Yes.

17 MS. BORKOWSKI: Please introduce yourself,
18 for the record.

19 MS. BRIGGS: My name is Korto Monolu --
20 that's M-O-N-O-L-U -- Briggs.

21 MS. BORKOWSKI: Okay. And are you
22 represented by counsel?

23 MS. BRIGGS: No, I'm not.

24 MS. BORKOWSKI: Okay. Have you received a
25 copy of the Order and Notice of Hearing?

1 MS. BRIGGS: Yes.

2 MS. BORKOWSKI: Are you ready to proceed in
3 this matter?

4 MS. BRIGGS: Yes.

5 MS. BORKOWSKI: Is the Arkansas State Board
6 of Cosmetology represented by counsel today?

7 MR. JOCHUMS: Yes. I am Arnold Jochums. I
8 am representing the Board this morning.

9 MS. BORKOWSKI: Okay. For the Respondent's
10 benefit, as well as the benefit of anyone
11 present today who may not have appeared in an
12 administrative hearing, let me explain that the
13 Board will base its decision solely upon the
14 evidence presented here today. This hearing is
15 held under the Administrative Procedures Act,
16 which means the strict rules of evidence that
17 would apply in a regular court of law do not
18 apply. To ensure the efficiency of the
19 proceeding, I may grant some objections or
20 caution the parties as the hearing proceeds.
21 The Board members themselves know nothing of
22 the case except what appears and is set forth
23 in the Order and Notice of Hearing. If there
24 is anything you wish for the Board to consider,
25 you should have it introduced into evidence

1 today, so it can be considered by the Board.
2 If at any time, during the course of this
3 hearing, you have any objection or questions
4 about the proceeding, please bring it to my
5 attention and I will address the issue. All
6 participants to the hearing should be aware
7 that these proceedings are subject to the
8 Freedom of Information Act and, as such, all
9 parts of the hearing, including the
10 deliberations of the Board, are open to the
11 public. For those of you who are here in this
12 matter, who will appear as a witness, please
13 raise your hand and be sworn by the court
14 reporter.

15 (Witnesses sworn.)

16 MS. BORKOWSKI: Are there any preliminary
17 matters to be discussed, or exhibits to be
18 offered into evidence, at this time?

19 MR. JOCHUMS: Yes. Madam Hearing Officer,
20 I want to offer, as a bulk, Exhibit "A". It's
21 a six page document that -- the first two pages
22 are a letter from Kathy Wittum, notifying --
23 the cover letter. And then, there's a two page
24 Notice of Hearing. Followed by a two page
25 inspection form, prepared by Detective Morgan.

1 And I'd like to offer that as Exhibit "A". All
2 of the Board members have already got it.

3 MS. BORKOWSKI: Okay. This will be
4 admitted as Exhibit "A". Agency's Exhibit "A",
5 I guess.

6 (WHEREUPON, Agency's Exhibit "A" was marked
7 for identification and admitted into evidence
8 without objection.)

9 MR. JOCHUMS: All right.

10 MS. BORKOWSKI: Is counsel for the Agency
11 ready to proceed?

12 MR. JOCHUMS: Yes, ma'am.

13 MS. BORKOWSKI: Do either of you wish to
14 make an opening statement?

15 MR. JOCHUMS: No, thank you.

16 MS. BORKOWSKI: Do you wish to make an
17 opening statement?

18 MS. BRIGGS: Yes.

19 MS. BORKOWSKI: Okay.

20 MS. BRIGGS: Really, basically, I just want
21 to go over, like, what happened that day. Is
22 this when I would do that, or after?

23 MS. BORKOWSKI: I think if you --

24 MS. BRIGGS: Just give them my side of the
25 story.

1 MS. WITTUM: Why don't we wait until the
2 Agency attorney puts on his case, and then
3 after he has questioned his witnesses, then we
4 will allow you to do that.

5 MS. BRIGGS: Okay. All right.

6 MS. BORKOWSKI: Will counsel for the Agency
7 please call the first witness?

8 MR. JOCHUMS: Okay. Brenda Morgan.

9 MS. MORGAN: That's me.

10 TESTIMONY AND EVIDENCE

11 GIVEN ON BEHALF OF THE AGENCY

12 BRENDA MORGAN,

13 having been called by and on behalf of the
14 Agency, and having been first duly sworn to
15 tell the truth, the whole truth, and nothing
16 but the truth, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. JOCHUMS:

20 Q You were sworn. You're sitting at the table. You
21 are Inspector for the Board?

22 A Yes, sir. I am.

23 Q And you mostly work in central Arkansas
24 territories; is that correct?

25 A I am southeast and central Arkansas.

1 Q Southeast and central. Did -- are you familiar
2 with the young lady seated to your left?

3 A I met her for the first time on April 7th, --

4 Q Okay.

5 A -- of this year.

6 Q Were you involved in inspection activities that led
7 to the filing of these administrative charges?

8 A Yes, sir. I was.

9 Q Can you tell us about your inspection?

10 A On April 7th, '06, I went to 6805 West 12th. The
11 name of the salon is Studio 6805. Upon inspection of
12 that facility, I discovered that Ms. Briggs was an
13 unlicensed person working in this salon. She was
14 working on a client, doing natural braiding.

15 Q Okay. Let me back you up a section -- a second.
16 Studio 6 --

17 A 6805.

18 Q 6805. If you could, just describe that. Is it
19 several --

20 A Yes, sir. You walk --

21 Q -- stations and --

22 A Yes, sir. You walk into it, it's a very nice
23 salon. You walk into a foyer or reception area, and
24 there are style rooms to my right, down -- they're
25 separate rooms. In the first room, there's just one

1 stylist. In the second room, there's a couple of
2 stylists. Across the hall is where Ms. Briggs was. You
3 can go around -- down another hall, and there is another
4 reception area, a few more style rooms, a manicure area,
5 and also a barber area.

6 Q Okay. And is there a -- as you come in the front,
7 is there a reception desk?

8 A There is a desk up there, yes.

9 Q Okay. And on the day you were there, there were
10 other people doing styling and other --

11 A Yes, sir. There were.

12 Q Okay. And you're telling the Board that you
13 observed the Respondent doing someone's hair?

14 A Yes, sir. She was.

15 Q What was her response when you asked about whether
16 she had a license?

17 A Upon entering the room, I just said, "Where are
18 your licenses posted?" And she told me she did not have
19 any license, that she was from another state. I believe
20 -- were you not from Canada?

21 MS. BRIGGS: Uh-huh.

22 BY THE WITNESS:

23 A Is that correct? Canada, I believe, is where she
24 was from. And that she didn't have to have a license to
25 braid. And I told her that the State of Arkansas does

1 require a cosmetology license to braid in our state.

2 BY MR. JOCHUMS:

3 Q Okay. Is there anything -- well, let me ask this.

4 The other persons that were present, were they either
5 licensed by this Board or the Department?

6 A Yes, sir.

7 Q Okay. And that's indicated in your report?

8 A Yes, sir.

9 Q You've written down some other people's names and
10 their license numbers and everything?

11 A Yes, sir.

12 Q Okay.

13 MR. JOCHUMS: I have no other questions of
14 Inspector Morgan.

15 MS. BORKOWSKI: Are there any questions
16 from members of the Board, for this witness?

17 (NO RESPONSE).

18 MS. BORKOWSKI: Okay. Mr. Jochums, do you
19 have any other witnesses?

20 MR. JOCHUMS: Do you want to offer the
21 cross from the Respondent?

22 MS. BORKOWSKI: Oh, I'm sorry. I
23 apologize. Ms. Briggs, do you have questions
24 for this witness?

25 MS. BRIGGS: I do.

1 CROSS EXAMINATION

2 BY MS. BRIGGS:

3 Q When you came into the salon, was I in a locked
4 room?

5 A No.

6 Q So, when you came in the salon, could you clearly
7 see me in there, working?

8 A When I came into your -- into through the door,
9 yes.

10 Q Yes. So, I wasn't hiding or --

11 A No, ma'am.

12 Q -- acting like I was doing something illegal?

13 A No.

14 Q Was I working with any chemicals?

15 A There were none on your station.

16 Q Okay. When you asked me to -- I just wanted, for
17 clarification, when you asked me about the license, --

18 A Uh-huh.

19 Q -- I believe what I said was about, not initially
20 that I didn't have -- I didn't need to have one. But
21 what I said was that I was -- I came into the salon with
22 the knowledge that it wouldn't be necessary, once I was
23 separated from the other chemical stylists.

24 A Yes. You did show what -- that you --

25 Q Was actually what I said.

1 A -- your belief was to be that you could --

2 Q Yes.

3 A -- braid, as long as you were not using chemicals
4 and that you were not in with the other stylists.

5 Q Okay. I just wanted to clarify what I said that
6 day.

7 A Yes. We did have that conversation.

8 Q And when you asked me for my license and -- to
9 leave the salon, did I put up a fight or give you any
10 problems?

11 A No.

12 Q Okay.

13 A No. By the time -- you finished what you needed to
14 do and then, --

15 Q I did exactly what you asked me to do.

16 A She was cooperative. I asked her to leave the
17 salon, and she did.

18 Q Okay. Thank you.

19 MS. BORKOWSKI: Are there any questions
20 from the Board, for this witness?

21 (NO RESPONSE).

22 MS. BORKOWSKI: Okay.

23 MR. JOCHUMS: I have no other witnesses.

24 MS. BORKOWSKI: No other witnesses? Ms.

25 Briggs, do you have witnesses? Or now would be

1 --

2 MS. BRIGGS: Yes.

3 MS. BORKOWSKI: -- your opportunity to also
4 speak to the Board.

5 MS. BRIGGS: Yes.

6 TESTIMONY AND EVIDENCE

7 ON BEHALF OF THE RESPONDENT BY

8 KORTO MONOLU BRIGGS

9 having been called by and on behalf of the
10 Respondent, and having been first duly sworn to
11 tell the truth, the whole truth, and nothing
12 but the truth, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. BRIGGS: I just want to say --
16 because when I got this letter, there's
17 something in here that bothered me. Because on
18 the -- I think it's the first page where it
19 says, "Order and Notice of Hearing." Where it
20 says, "Number four. That the Respondent knew
21 or reasonably should have known that it is
22 unlawful to disregard the laws and rules and
23 regulations governing the cosmetology
24 industry." So, basically it's saying that I
25 knew it and I did it anyways, even though I

1 knew it was an illegal act. And upon going
2 into the salon, that was not actually a fact.
3 I did not know. I really did believe that,
4 once I was separated from the other stylists
5 who were working with chemicals, that I could
6 braid, being that the only thing I would need,
7 to braid hair naturally, is my fingers and a
8 tail comb. When she came into the salon and
9 she told me that, you know, "You were actually
10 given the wrong information," I didn't put up a
11 fight. I did what she told me to do. The
12 only time I did get upset that day was, she
13 told me that, in Arkansas, it is illegal to
14 braid hair for pay or not for pay. It was an
15 illegal act that could be fined or you could be
16 jailed for that. So, I told her, "Well, I do
17 braid my two-year-old's hair, so that's an
18 illegal act? Me braiding my child's hair can
19 send me to jail?" And she said, "Yes." It is
20 not something that I think is right, but it is
21 a law in Arkansas. So, I can go to jail for
22 braiding my child's hair. That's when I got
23 upset, and that's when I decided to come here
24 today, for this hearing, because I think that,
25 if that is true, that is wrong. Being

1 African American -- I'm actually originally
2 African. Braiding is something that has been
3 stemmed from generation to generation, has been
4 taught from generation to generation, and it's
5 a part of my culture. It's a part of African
6 American culture and traditions. And for
7 something that is not taught in the cosmetology
8 schools -- I'm being forced, really, to go to
9 school and learn how to do chemically processed
10 hair, learn the dyes, and colors, and roller
11 steps. But none of that is being taught about
12 what I want to learn, which is braiding hair.
13 Natural hair. Locks and twists. Things that
14 I've grown up with, my mother's grown up with,
15 and my great-grandmother. And none of these
16 things are taught, but I'm being forced to go
17 to school and get this license and still come
18 out with the same information, of braiding,
19 that I went in with. But I'll be licensed. I
20 think that's not right, and I think something
21 needs to be done to amend this. I understand
22 that all the schools here don't have to teach
23 braiding, and I can understand why. Because
24 it's something that's not easily taught. It's
25 hard to put "How to do a Corn Row," into form

1 of words and put it into a textbook. And
2 because of this, that's why I haven't gone to
3 school and get a license. Because if I go to
4 school, I feel like I should have the right to
5 be taught something. To come out with more
6 knowledge and new information. And that's not
7 going to happen, because none of the schools
8 here are naturally -- are teaching natural
9 styles; braiding, weaving, micro-braids,
10 twisting, natural locks. And so, that's why
11 I'm coming here today, to talk about this. And
12 I think I should have been given a warning.
13 Because when she came into the salon -- when
14 you're doing something illegal and you know it,
15 you act like you're doing something illegal and
16 you know it. I would've been in a locked room.
17 I would've been hiding. When she came in, I
18 was in a huge room right at the front of the
19 salon, proudly doing someone's hair. Not
20 acting like I was doing anything suspicious.
21 When she asked me for my license, I didn't say,
22 "Well, I don't have my purse today," or lie. I
23 gave it to her willingly. Gave her my address,
24 even clarified -- the address was wrong on my
25 license, and I corrected it for her. That's

1 not something that somebody who is doing
2 something illegal does. Because I really,
3 truly believe that I have the right to be in
4 the salon or to work in my own salon, natural
5 or not natural, to braid. And I want to go
6 through school to get a license, to learn more
7 about my trade. But there is nowhere for me to
8 go, to do that, in this state. Now, we do have
9 other states that do have this. There's
10 California; there's Maryland and Michigan;
11 Kansas; Georgia; Wisconsin; Illinois;
12 Tennessee; New York; Florida. All these states
13 -- and there's more than I just listed -- have
14 come up with programs for braiders, like myself
15 where you can get licensed separately, where
16 they're actually exempted completely, because
17 they're not using any chemicals. They're just
18 using their hands. Because braiding is a form
19 of art, and not everybody can possess that
20 gift. It's something that either you have it
21 or you don't. You can learn, as well, but it's
22 hard to teach. I'm just asking the Board today
23 that -- regardless of the fact that if I am
24 still fined or not fined today -- to please
25 consider the fact that there is a need to

1 address this issue. There are many braiders,
2 like myself, that are being robbed of setting
3 up businesses and working unless we go to
4 school to do what other cosmetologists do.
5 Even though we're not going to use any of that
6 information ever, even though we're not going
7 to learn anything new about our craft. But
8 we're going to be licensed anyways. I'm asking
9 you to please look at this document that I
10 have, here, from the other states. There might
11 be information that you might find that you can
12 live with, as a Board, to constitute, here in
13 Arkansas, or work with me or other braiders or
14 other states, to just start something here for
15 people like myself to be able to practice my
16 craft. And that's all I have to say today.

17 Actually, there's one more thing. It has
18 here, the duties of the school in your -- I
19 downloaded something from your website of the
20 duties of the school. And what the schools
21 have to do, it says, "(1) Possess sufficient
22 apparatus and equipment for the ready and full
23 teaching of all the subjects or practices of
24 cosmetology; (2) Maintain licensed instructors
25 competent to impart instruction in all branches

1 or practices of cosmetology." If braiding is
2 considered one of these acts, these things are
3 not being done. And I think that's robbing me
4 of something.

5 I have two witnesses here that may want to
6 speak. Can they come at this time?

7 MS. BORKOWSKI: Yes. First of all, --

8 MS. BRIGGS: Okay.

9 MS. BORKOWSKI: -- do you have a document
10 that you wish for the Board to look at --

11 MS. BRIGGS: Yes.

12 MS. BORKOWSKI: -- and consider?

13 MS. BRIGGS: Yes.

14 MS. BORKOWSKI: Any objection to this being
15 admitted as an exhibit?

16 MR. JOCHUMS: Just show it to me for a
17 second.

18 MS. BORKOWSKI: Can you show it to Mr.
19 Jochums?

20 MS. BRIGGS: All right.

21 MR. JOCHUMS: Thank you.

22 MS. BRIGGS: This is the stuff I was
23 talking about, from the different states, what
24 they have.

25 MR. JOCHUMS: Okay. I have no objection to

1 the -- about eight pages --

2 MS. BORKOWSKI: Eight pages?

3 MR. JOCHUMS: -- that the Respondent wants
4 offered as an exhibit.

5 MS. BORKOWSKI: Okay. This will be
6 admitted as Respondent's Exhibit "A".

7 (WHEREUPON, Respondent's Exhibit "A" was
8 marked for identification and admitted into
9 evidence without objection.)

10 MS. BRIGGS: Yeah.

11 MS. BORKOWSKI: We'll pass it around to the
12 members of the Board. Mr. Jochums -- before we
13 move to your next witnesses, --

14 MS. BRIGGS: Yes.

15 MS. BORKOWSKI: -- he has an opportunity
16 and the Board gets an opportunity to ask you
17 questions, okay?

18 MS. BRIGGS: Okay.

19 MS. BORKOWSKI: Do you have questions?

20 MR. JOCHUMS: I'll waive that right.

21 MS. BORKOWSKI: Okay. Any questions for
22 Ms. Briggs from members of the Board?

23 MR. KEENE: Yes.

24 MS. BORKOWSKI: Okay. Mr. Keene?

25 MR. KEENE: I would like to know what gave

1 you the idea that what you were doing was not
2 against the law?

3 MS. BRIGGS: That it was not against the
4 law?

5 MR. KEENE: Uh-huh. What gave you that --

6 MS. BRIGGS: It was really just false
7 information that was obtained. Because when I
8 went into the salon, we were under the
9 impression that I could braid in the salon,
10 once I was separated from other chemical
11 artists, once I wasn't in the same area with
12 chemicals, where my clients wouldn't be
13 touching it or I wouldn't be involved with it.
14 So it was a misunderstanding. And I admit to
15 that, but what I'm saying is I didn't go in
16 there knowing, okay, I'm not supposed to be
17 doing this. You know. It was just a
18 misunderstanding. It was bad information.

19 MR. KEENE: And where did you get that
20 information?

21 MS. BRIGGS: It was secondhand information,
22 speaking to -- and actually, when she comes up,
23 the manager of the salon, she'll explain more.
24 But apparently, somebody spoke to somebody at
25 the Board and was given -- I think she even

1 told Morgan about it -- that once that you were
2 in the separate room and the braiding was
3 separated, that it was possible. It was bad
4 information given at a bad time, really. But
5 when I went into the salon, I was under the
6 impression that I could. See, I didn't go in
7 there thinking, "Well, okay. I'm from Canada.
8 I can braid hair." It wasn't like that. I
9 really thought that I could braid in the salon,
10 legally, once those things were done. In fact,
11 the manager -- the owner of the salon -- they
12 actually moved things out of that room to make
13 sure that no one would be around me and I would
14 be separated. So, we actually went according
15 to these guidelines, even though they weren't
16 real guidelines. They were still done. And
17 she's a witness to that, when she came in.

18 MR. KEENE: Okay. I have a question for
19 Kathy. Can I ask her?

20 MS. BORKOWSKI: Sure.

21 MR. KEENE: Was this salon written up for
22 having unlicensed personnel?

23 MS. WITTUM: Yes. And they paid their
24 fine.

25 MR. KEENE: Okay. Thank you.

1 MS. BORKOWSKI: Ms. Traylor, you had a
2 question for this witness, Ms. Briggs?

3 MS. TRAYLOR: I don't know if the young
4 lady was aware, or is aware, that there is a
5 national exam now for braiders.

6 MS. BRIGGS: Is it recognized in Arkansas?

7 MS. TRAYLOR: I guess it would be, wouldn't
8 it, Kathy?

9 MS. WITTUM: I have no history of an exam
10 like that being purchased by this office, and
11 I've not had an instance where --

12 MS. TRAYLOR: Well, but it is available?

13 MS. WITTUM: There is one that NIC has.

14 MS. TRAYLOR: Yes.

15 MS. WITTUM: Yes.

16 MS. BRIGGS: I know there are some in
17 different states, and I thought they were just
18 for those states. I didn't know that I could
19 go to another state and get it.

20 MS. TRAYLOR: Well, --

21 MS. BRIGGS: If that's an option for me, I
22 will do that.

23 MS. POWELL: Ms. Briggs, do -- may I
24 address her?

25 MS. BORKOWSKI: Yes, Ms. Powell.

1 MS. TRAYLOR: Okay.

2 MS. POWELL: Ms. Briggs, did you check in
3 the -- I guess the Little Rock area, at
4 schools, to see if there was braiding, at
5 least, taught in their curriculum?

6 MS. BRIGGS: Yes. I've been to a couple of
7 schools. There's one on Baseline. I've been
8 to a few. And I've talked to many, many
9 hairstylists and asked, you know, "Where have
10 you gone?" Because I see some people braiding.
11 Well, do you know where you taught them? Or is
12 there something that I pick -- they say, "It's
13 just something that I just picked up along the
14 way. It's not something that's actually part
15 of the course curriculum, where it's broken
16 down."

17 MS. POWELL: So, you've called a couple of
18 schools to find out if there was braiding being
19 taught?

20 MS. BRIGGS: Yes.

21 MS. POWELL: You did not check all the
22 schools in the state?

23 MS. BRIGGS: Not all the ones in the state
24 of Arkansas, but the majority that are in my
25 area that I can go to. Like, I can't drive to

1 Bentonville or -- you know, like ones in the
2 Little Rock area.

3 MS. POWELL: When -- did you call --

4 MS. BRIGGS: I called the ones from here
5 because I live here.

6 MS. POWELL: -- all the schools in Little
7 Rock?

8 MS. BRIGGS: The majority of them, yes.

9 MS. POWELL: Okay.

10 MS. BRIGGS: And most of them said they
11 didn't have a separate braiding curriculum.

12 MS. POWELL: Okay. But it didn't say that
13 they didn't have it in their curriculum for
14 their cosmetology program?

15 MS. BRIGGS: The ones that I spoke to said
16 that they didn't. Like, they didn't have a
17 separate course where it's taught where it's
18 separated. This is --

19 MS. POWELL: Right.

20 MS. BRIGGS: By how you do hair cutting, or
21 how you do color.

22 MS. POWELL: I understand what you're
23 saying.

24 MS. BRIGGS: It wasn't like that.

25 MS. POWELL: But did they say they did not

1 teach braiding in their curriculum?

2 MS. BRIGGS: Yes.

3 MS. POWELL: They do not. I'm not asking
4 you, "Did they say they didn't have a separate
5 program?" I'm asking you, "Did they say they
6 did not teach any braiding in their cosmetology
7 curriculum?"

8 MS. BRIGGS: Yes.

9 MS. POWELL: Okay.

10 MS. BRIGGS: And I can actually -- I don't
11 have it here with me, but I can give you the
12 names and even call back and get the name of
13 the person that I spoke to.

14 MS. POWELL: Okay.

15 MS. BRIGGS: And send that to --

16 MS. POWELL: But you didn't ask that
17 question to all of the schools?

18 MS. BRIGGS: When I called, this is what I
19 asked. I asked, "Do you have -- besides all
20 the colors and the roller steps, all that
21 stuff, do you teach braiding as an art form?"
22 Like, "Do you teach the different methods of
23 braiding, like how to braid, how to do weaves?"
24 Some did the weaves, which is an act where you
25 do have the braids that sew the hair on. But

1 actual -- like the corn rows, the micro-braids,
2 all that stuff, no. They did not.

3 MS. POWELL: Do you do the extensions that
4 you just spoke of? Do you do --

5 MS. BRIGGS: Do I know how to do them?

6 MS. POWELL: -- the artificial hair
7 extensions? Do you do extensions and weaving
8 into the --

9 MS. BRIGGS: Yeah. I know how to do that.
10 Yes.

11 MS. POWELL: Do you do that?

12 MS. BRIGGS: I do it on myself. This is
13 something, on my head, that I've done. Yeah.

14 MS. POWELL: Okay. I think the information
15 that you submitted, on the cosmetology, will
16 regulate -- or will -- the curriculum, that
17 they will provide curriculum on these areas or
18 be tested on -- or what was her -- what was her
19 statement on that? Speaking of the rule --
20 Arkansas's rule of curriculum.

21 MS. BRIGGS: Yeah, it's -- I don't know
22 where --

23 MS. POWELL: And you said it was to be
24 taught in all areas?

25 MS. BRIGGS: All areas of cosmetology.

1 Yes.

2 MS. POWELL: Okay. That is referencing all
3 areas of that mandated curriculum. That's what
4 it's -- it's stating it will be taught in all
5 areas of that particular mandated curriculum.
6 So, I mean, I do know that they do teach
7 braiding.

8 MS. BORKOWSKI: Okay. Ms. Traylor?

9 MS. TRAYLOR: My concern is the
10 sterilization and sanitation protecting the
11 client.

12 MS. BORKOWSKI: Do you have specific
13 questions for this witness?

14 MS. TRAYLOR: Yeah. I want to know, has
15 she got any information on what the sanitary
16 rules and regulations are?

17 MS. BRIGGS: That's one of the things that
18 the state's that have got it attempted, they
19 have where you can actually go and get -- not
20 licensed, but take a course in sanitation. I
21 have no objection to that. If the Board was to
22 set up something where braiders can go and
23 learn the proper methods of sanitation and just
24 looking at the client's hair and inspecting,
25 washing, all that stuff, that's not a problem.

1 Actually, when my witness comes up, she
2 actually has, like, an example of what they do
3 in Washington, D.C. There's actually a
4 separate thing where they have for braiders and
5 what they would need, to set up shop.

6 MS. TRAYLOR: I know. We were there.

7 MS. BRIGGS: Yeah. That's maybe where you
8 may have heard about the national licensing --

9 MS. TRAYLOR: No. No. I will -- I was in
10 Florida when they were writing the braiders'
11 test.

12 MS. BRIGGS: Okay.

13 MS. BORKOWSKI: Do you have a question, Ms.
14 Gordon?

15 MS. GORDON: Well, maybe it's more of a
16 comment than a question. But you were
17 referring to having a special curriculum set up
18 just for braiders. Well, what if I went to
19 beauty school and I only wanted to do relaxers?
20 Should there be just a separate curriculum set
21 up, for me, just to go in and learn to do
22 relaxers, and not have to know any of the other
23 things that -- that I would learn in beauty
24 school? If I'm understanding what you say,
25 that there should be just a special curriculum

1 for braiding?

2 MS. BRIGGS: For natural hair care.

3 MS. GORDON: Hair. Okay.

4 MS. BRIGGS: Not necessarily for -- for
5 just braiding hair.

6 MS. GORDON: Well, for natural hair --

7 MS. BRIGGS: But I understand what you're
8 saying.

9 MS. GORDON: Yes.

10 MS. BRIGGS: Like no, it isn't right just
11 to go for coloring. But I'm saying you're not
12 just learning how to do relaxers. You're
13 learning colors and stuff. But what I'm saying
14 is, the majority of the schools that I have the
15 option to go to, most of the things that I'm
16 learning, I'm not going to use. I don't use
17 any chemicals or -- most people that braid,
18 they don't use any chemicals. So, what I'm
19 really asking is for -- to either help me to
20 get more information put into the curriculum
21 for natural hair care. Because I want to go to
22 school, but I want to learn when I go to
23 school. I'm paying money. I want to learn
24 more than I already know. I don't want to come
25 out of school with the same knowledge that I

1 already have, of braiding, because I'm not
2 really going to learn anything extra when I get
3 there. Like the different methods of braiding.
4 The different styles and techniques of
5 braiding. And I totally understand what you're
6 saying, and I'm not saying that, "Okay, well,
7 we're special. We don't want to go to school.
8 We don't want to pay the money to --" it's not
9 -- that's not what I'm saying.

10 MS. POWELL: (INAUDIBLE).

11 MS. BRIGGS: I'm saying that, in natural
12 hair care, there's a whole lot of things that
13 you can do, for natural hair care, that has
14 nothing to do with chemicals. And it is
15 separated, in a sense. If both of those things
16 were taught in the school, then that would be
17 great. I wouldn't be here, saying this. I'm
18 not saying I'm special and I wanted to be
19 treated special. I'm just saying there is a
20 need and a concern for it. So much that these
21 other states have set up something for people
22 who are only doing natural hair, that have
23 nothing to do with chemicals. That's what I'm
24 saying. Maybe if you read those documents,
25 you'll kind of understand what I'm saying.

1 What -- what they've set up. If something
2 similar could be set up here or if going there
3 and getting licensed and coming back here. If
4 it could be recognized, that would be
5 excellent, as well.

6 MS. BORKOWSKI: Additional questions from
7 members of the Board? Ms. -- oh. I'm sorry.
8 Yes, ma'am?

9 MS. WEST: I have a question about your
10 education, other than before you came here.
11 Your educational background. Tell us a little
12 bit about yourself.

13 MS. BRIGGS: Well, my family is originally
14 from Liberia, West Africa. And we migrated to
15 Canada. It was a war in my country, and my
16 family settled in Ottawa, Canada. That's where
17 I got my citizenship. I recent -- six years
18 ago, I got married to an American citizen.
19 He's from Arkansas. I moved down here six
20 years ago. And my degree is in fashion design.
21 I'm a fashion designer. I do design and create
22 clothes. I have a website now that I'm
23 actually promoting my clothes and my purses.
24 And that's what I do full-time. Braiding is,
25 like, a part-time thing that I do for my child

1 or for family members, kids, you know, or for
2 myself. If I want to get my hair braided, I
3 braid my own hair.

4 MS. WEST: And when you went -- did you
5 attend college?

6 MS. BRIGGS: Yes.

7 MS. WEST: And when you went to college, in
8 Canada or in Europe somewhere, --

9 MS. BRIGGS: Uh-huh.

10 UNKNOWN: -- didn't you have to take
11 courses other than -- didn't you have to take
12 certain courses that would help you in your
13 overall education?

14 MS. BRIGGS: Yes.

15 MS. WEST: Okay. To us, our cosmetology
16 schools, they are offering other things, as
17 well. So that we will graduate students that
18 are well-rounded in everything. And it --
19 that's -- that's part of why we do it, is so
20 that they will be able to articulate in many
21 areas, not just braiding. And so, what you're
22 saying is you want -- you want something that
23 is just braiding. But what we're saying is
24 that our students graduate and they have been
25 well-rounded in other things, as well. And I

1 think our President said that there are courses
2 -- I mean -- that there are schools that offer
3 braiding.

4 MS. BRIGGS: Okay. Well, would I be able
5 to get a list of those schools today, that
6 teach braiding, as well? Do you know of any
7 offhand?

8 MS. POWELL: The Board would have a list of
9 schools. The office would have a list of
10 schools here, if you're interested in Little
11 Rock.

12 MS. BRIGGS: Actually, I have that list. I
13 downloaded that list. That's where I called a
14 few from.

15 MS. POWELL: I know that, in my school, we
16 teach braiding. But in my school, you would
17 learn all aspects of cosmetology. You would
18 not have an advanced training program in
19 braiding. So, if you're anticipating going to
20 a cosmetology program and concentrating
21 specifically to braiding, that that is not
22 enough hours in the curriculum to do that. You
23 have a specific -- you have 1,000 hours in
24 hairstyling. So, that is to include all
25 aspects of hairstyling, be it braiding or up-

1 dos or --

2 MS. BRIGGS: And natural hair care, like
3 locks and twists?

4 MS. POWELL: All hair is natural.
5 Absolutely.

6 MS. BRIGGS: Well, I'd like to have that
7 list. And just in response to you, when I went
8 to fashion design school, everything that I
9 learned there I can use today. It wasn't -- it
10 wasn't separated. You're right. It wasn't
11 just going and learning pattern-making. But if
12 you chose to just be a pattern-maker, there
13 were places where you could just go and focus
14 on that, as opposed to learning haute couture
15 or -- or regular seamstress work. So, you
16 could separate those students and choose where
17 you wanted to specialize in. And if one thing
18 wasn't available in that course, yeah, there
19 were other places that you could go, to learn
20 more in your art. Whereas, you can do
21 sketching. You can do drafting. You can do
22 cad designs. So, it is broken down where you
23 can go and specialize in one thing.

24 MS. WEST: But in our state, we have -- we
25 have to license people that are working on

1 hair. Because we're responsible to the public
2 for what goes on for everyone. And we feel
3 that we need to be responsible to you, as well.
4 And so, that's -- that's where we're coming
5 from.

6 MS. BRIGGS: I understand.

7 MS. WEST: We would love you -- to have you
8 be licensed.

9 MS. BRIGGS: I totally understand what
10 you're saying. And I want to be licensed. I'm
11 not saying I don't want to be licensed or I
12 don't want to go to school to be licensed. I
13 think I'm being misunderstood, here. I do.
14 What I am saying, that there is a need for more
15 --

16 MS. WEST: And we appreciate that.

17 MS. BRIGGS: There is a need for more.

18 MS. WEST: We appreciate that.

19 MS. BRIGGS: Okay, I'm not coming in here
20 to disrespect the fact that you are licensing
21 people. I know why you license people.
22 Obviously, for safety reasons. That's
23 completely understandable. I just wanted to
24 come and speak and -- and just let you know
25 what I was going through.

1 MS. BORKOWSKI: Ms. Briggs, do you have
2 another witness? Are there any other
3 questions?

4 (NO RESPONSE).

5 MS. BORKOWSKI: Okay. Ms. Morgan, if you
6 can let her witness have that seat? And we'll
7 just take one witness at a time. If you'll
8 introduce yourself, for the record.

9 TESTIMONY AND EVIDENCE

10 GIVEN ON BEHALF OF THE RESPONDENT BY

11 LIKITA STOUT ,

12 having been called by and on behalf of the
13 Respondent, and having been first duly sworn to
14 tell the truth, the whole truth, and nothing
15 but the truth, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 MS. STOUT: Hi. I'm Likita Stout. I'm
19 licensed under Rucker. That's my married name.
20 And I'm a 26-year cosmetologist, licensed in
21 the state of Harrisburg, Pennsylvania. Came
22 here and transferred my license to Little Rock,
23 Arkansas. I want -- I was here on the behalf
24 of Ms. Briggs. I manage the store, 6805. And
25 before I came to Studio 6805, I was working at

At

1 the University Mall in a studio there.
2 the time, my aunt was looking for a braider,
3 because people were coming in the salon asking,
4 do we do braids? And she said, "Well, no."
5 Because of them then, she said -- well, let me
6 call down to the State Board and ask them what
7 are the procedures of having a braider in the
8 salon. So, she said that she was informed
9 that, as long as the braider doesn't do
10 chemical services, and they're in a separate
11 area, then they don't see any problem with it.
12 Because she was the licensee, as far as her
13 building was concerned. And that she would
14 take total responsibility for what goes on in
15 her salon.
16 Now, when I told Brenda -- is that her name?
17 Brenda? When I told that to her, she -- her
18 statement to me was, "I don't doubt that you
19 were told that, but you were told false
20 information." Well, even then it was
21 secondhand information. And we do understand
22 that. And like she said, if it was something
23 we were trying to hide, then she wouldn't --
24 she wouldn't have been in the open. We were
25 given that information. Now, I can take the

1 blame and the fault there, and I feel
2 responsible because I put her in this
3 predicament because of my misinformation. But
4 I think, most of all, I think what we're trying
5 to really accomplish here is we understand the
6 laws of the State Board of Arkansas. We
7 understand everything that you all are saying.
8 But what we're trying to convey is that there
9 needs to be something more done in the fact of
10 what these licensees -- they're called a
11 specialty licensing in Washington, D.C. because
12 they only do 100 hours. They take Bacteriology
13 and Sanitation; Safety and Health; and D.C.
14 Laws -- and which would be Little Rock Laws;
15 Basic Anatomy and Physiology, which is talking
16 about the skin and basic -- you know, those
17 things; the cortex of the hair. They teach
18 all of these things, because they -- I went to
19 massage therapy school, as well, and the do
20 teach about the strand of the hair and
21 different things in massage therapy, as well.
22 Shampoo, Rinses, and Procedures; Chemicals and
23 Natural Hair Coloring Processing; Structure of
24 Hair; Scalp Disorders and Disease; Hair and
25 Scalp Care; Basic Braids; Corn Rows; with

1 Extensions. And these total hours is 100
2 hours. Now, either you all could set up
3 something that would be just something
4 separate, just like with your manicurists.
5 They don't have to go through the whole
6 cosmetology -- you know, it's something set
7 aside especially for someone that's doing
8 manicures -- nails. Artificial nails. There's
9 no chemicals in natural hair. Natural hair
10 actually is an art. And what we're trying to -
11 - because we really don't have to really be
12 here, but we're here because she's been fined
13 and she wants to take care of her business.
14 But we really don't -- because it's not up
15 under cosmetology. Braiding is an art. It's a
16 cultured art. We could open up a braiding
17 salon under a whole another licensing. Under
18 "Art Gallery". And by law, we're able to do
19 the braiding in the salon. But what we're
20 trying to do is, because we are touching hair,
21 and this is cosmetology -- is there any way
22 that you can implement from this procedure?
23 You know, that's what we're here for, because
24 we want to see this done. You know, and what
25 can we do for the first steps, to get it done?

1 That's another question.

2 MS. BORKOWSKI: Are there any questions?

3 MR. JOCHUMS: I have no questions of this
4 witness.

5 MS. BORKOWSKI: No questions. Any
6 questions for this witness, from the Board?

7 MR. KEENE: Just one. You say you called
8 the -- our office and someone in our office
9 gave you this information?

10 MS. STOUT: No. I didn't call. I didn't
11 call.

12 MR. KEENE: Oh. I thought you said you did
13 call.

14 MS. STOUT: No. My aunt -- I was working
15 at another salon, and another salon owner
16 called. Because she -- she was going to have a
17 braider in her salon --

18 MR. KEENE: Okay.

19 MS. STOUT: -- because they were coming --

20 MR. KEENE: Can you tell me when --
21 approximately when that may have taken place?

22 MS. STOUT: You know, I can -- I can call
23 my aunt and ask her, but I don't know exactly
24 when she did that.

25 MR. KEENE: Last six months? Last two

1 years?

2 MS. STOUT: Yeah, probably -- well, about -
3 - because I've been here three months, so it's
4 been like when I first started going there.
5 So, maybe about three to six months.

6 MR. KEENE: Okay. Thank you.

7 MS. BORKOWSKI: Ms. Briggs, does your
8 witness have anything else to add?

9 MS. BRIGGS: No.

10 MS. BORKOWSKI: Okay. And you have another
11 witness?

12 MS. BRIGGS: May I have a moment?

13 MS. BORKOWSKI: Sure.

14 TESTIMONY AND EVIDENCE

15 GIVEN ON BEHALF OF THE RESPONDENT BY

16 ANDREA HICKS ,

17 having been called by and on behalf of the
18 Respondent, and having been first duly sworn to
19 tell the truth, the whole truth, and nothing
20 but the truth, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 MS. HICKS: Hi. My name is Andrea Hicks,
24 and I am the owner of Studio 6805. The only
25 thing that I want to say today, and it's just

1 reiterating what they've already said. There
2 were some things that, even as an owner, that I
3 should have known. So, I'm not disputing those
4 things at all. And that's why your fines -- we
5 do understand that that's why your fines are
6 set up, that's why those rules are implemented.
7 That's why these things have legal
8 ramifications. I think it was Ms. Powell -- to
9 find out what I needed to do, to get things
10 rectified and back in order. It's just that --
11 that we are -- I'm taking full responsibility
12 for what happened. And we're not disputing
13 what happened. I don't want the Board to get
14 upset or angry. No one here has displayed
15 that, you know, any actions of that. But we
16 want to follow the rules and we want to follow
17 the guidelines. We -- again, we are just
18 asking that -- because I mean, I feel like
19 that's another industry, as a business owner.
20 I think that, you know, that if I wanted to set
21 up a braiding with -- another salon just for
22 braiding, completely -- only -- or natural hair
23 only, what would be my rules and regulations?
24 Are you completely saying, "No," to that?
25 Every single person in that establishment needs

1 to be licensed? Or could it be up under
2 another establishment and nobody there be
3 licensed, and it still -- and it still run?
4 So, those are the things.

5 And like she was saying, that -- I
6 completely understand what you were saying, Ms.
7 West, in regards to going to school. You do
8 have a lot of things that -- you know, you want
9 to be well-rounded. Yes, ma'am. You do. But
10 there are ten things that you're wanting her to
11 be well-rounded in that she's not wanting to
12 use. So, I mean, it wouldn't do me any good to
13 learn ten things -- and now maybe three or
14 four. And I just think that, when you say
15 "well-rounded", well then you -- I think that
16 the Board should be open to well-rounding, as
17 far as braids. Give them more options. If
18 you're only going to teach me how to braid a
19 straight line down in school, and maybe apply
20 sewing some hair to it, that's not going to
21 show her how to do a micro-braid. That's not
22 going to show her how to do a twist. That's
23 not going to show her how to do locks. So, I'm
24 just saying that if you want to be well-rounded
25 in things, then please con -- just consider.

1 That's all that we're saying today. Nothing
2 more. Nothing less. This is not a fight.
3 We're not petitioning. We don't -- I don't
4 want problems, as a business owner. I really
5 don't. But I do -- I'm pleading, because if
6 other states have actually incorporated these
7 things, then that should let everyone know that
8 there is an actual need for it. It is a
9 marketable business. And all I'm asking for,
10 again, is that these things are considered and
11 they are taken into consideration. And that
12 you do become a little bit more diverse, as far
13 as the well-rounding. That's it.

14 MS. BORKOWSKI: Any questions, Mr. Jochums?

15 MR. JOCHUMS: No, ma'am.

16 MS. BORKOWSKI: Any questions from the
17 Board?

18 MS. TURMAN: I was looking at this, and
19 it's not really -- I guess this -- I know a lot
20 of times, we take -- we -- on other things,
21 we've taken into consideration what other
22 states does. And this absolutely amazes me.
23 In Maryland, in 1997, Maryland Institution,
24 total exemption of braiders from the
25 cosmetology license requirements. I mean, and

1 other states. It's amazing. I don't
2 understand. I mean, I think we -- it must have
3 some kind of -- how do you -- how do you make
4 sure that everything is -- the public is
5 protected?

6 MS. BRIGGS: That's what I'm saying, like,
7 we're not saying that everything there is -- is
8 the right way. But that's why you have all the
9 different states out there, and there are
10 different things.

11 MS. TURMAN: Uh-huh.

12 MS. BRIGGS: I'm saying, if you can use it
13 as the guidelines, what you can live with, as a
14 Board.

15 MS. HICKS: And implement those things. I
16 mean, if there's --

17 MS. BRIGGS: If you want to do Sanitation -
18 -

19 MS. HICKS: Yeah. If there's -- if there's
20 X, Y, Z things that are good, then you know,
21 we're just saying take those things. And if
22 there needs to be an A, B, C, D, that we need
23 to add or implement, then please do that. I
24 mean, you know, we can't do anything without
25 you all. You know, I know -- like she was

1 saying, I understand that people are licensed
2 because there has to be someone because if her
3 hair falls out on the floor, someone needs to
4 be accountable. That's understandable. The
5 same way -- if you apply -- I know that there's
6 -- what they're giving now is a license for --
7 or not a license, but a certificate or some
8 kind of --

9 MS. BRIGGS: Certificate of Braiding.

10 MS. HICKS: Well, no. I'm saying for even
11 makeup, where they can put, like -- demonstrate
12 makeup or something of that nature. You know,
13 and that's basically so that everyone is on
14 record that's touching skin. So, if something
15 does happen, there's still somewhere to go back
16 to, to say, "You did this." Or, "We need to
17 talk with you about this." Or, "You're
18 responsible for that." And then, like I say,
19 we're not disputing anything, you guys. We
20 just want those things to be taken into
21 consideration, and that's it.

22 MS. BORKOWSKI: Okay. I don't want us to
23 get too far from the actual purpose --

24 MS. BRIGGS: Right. I'm sorry.

25 MS. BORKOWSKI: -- of this hearing, and --

1 MR. JOCHUMS: Right.

2 MS. BORKOWSKI: -- I think I've given lots
3 and lots of leeway.

4 MS. BRIGGS: Yeah.

5 MS. BORKOWSKI: Is -- are there any other
6 witnesses, any other --

7 MS. BRIGGS: That's it.

8 MS. BORKOWSKI: -- questions? Did you have
9 questions --

10 MR. JOCHUMS: I don't -- I don't think so.

11 MS. BORKOWSKI: -- of this witness? Okay.

12 MR. JOCHUMS: I think that, at this point,
13 we can -- from a Board standpoint, say that we
14 are -- we are always looking at our law. We do
15 have a legislative committee that's looking at
16 some things. We can certainly take into
17 consideration some comments you have had. It
18 really would have appeared that it would
19 probably take a change in our statute or
20 certainly a regulation change, maybe a
21 statutory change, to do the things you're
22 asking. But from the other side, I -- from
23 what I heard, essentially, the charges haven't
24 been controverted. Whether they deserve mercy
25 or a lesser fine than proposed, is a Board

1 option. And I think that this is the point at
2 which you can move on --

3 MS. BORKOWSKI: Okay.

4 MR. JOCHUMS: -- to --

5 MS. BORKOWSKI: Okay. Yeah.

6 MR. JOCHUMS: -- to resolution.

7 MS. BORKOWSKI: Any closing statements?
8 Closing arguments? I'm sorry. Ms. Morgan?

9 MS. MORGAN: Yes. Just for the record,
10 there was a statement that Ms. Briggs made, and
11 I want to clarify that. She mentioned the fact
12 that I said, if she braided her two-year-old's
13 hair, that she would be put in jail for that.
14 She misunderstood. I just want to clarify
15 myself. I told her, "You can't do your
16 neighbor's hair. You can do your daughter's
17 hair." That was the discussion that day. She
18 did mention her daughter's hair. There's
19 nothing wrong with her braiding her daughter's
20 hair. Now, for my own benefit, I wanted that
21 to be on the record that I didn't say she would
22 go to jail for doing her daughter's hair.

23 MS. STOUT: Yes. I was there.

24 MS. BRIGGS: She was in the salon. I said

25 --

1 MS. STOUT: You said that.

2 MS. BRIGGS: I said, "So, braiding my two-
3 year-old's hair would be illegal?" She said,
4 "Yes. For pay or not for pay."

5 MS. MORGAN: I said --

6 MS. BRIGGS: "It doesn't matter who you're
7 braiding."

8 MS. MORGAN: That's not what I said.

9 MS. POWELL: I think that clarification --

10 MS. BRIGGS: And that's why I got upset
11 and, so.

12 MS. BORKOWSKI: Okay.

13 MS. POWELL: For clarification of that, I
14 think the inspector's position would be, on
15 what was facilitated in the -- on the premises
16 of a licensed or unlicensed establishment.
17 Braiding your child's hair at home is not
18 illegal, bt to bring a child into a licensed
19 establishment and to --

20 MS. MORGAN: Uh-huh.

21 MS. POWELL: -- administer cosmetology
22 services is illegal.

23 MS. BORKOWSKI: Okay. No other questions
24 from members of the Board. At this time, the
25 record will be closed and complete, except for

1 the Board's recess for deliberation and
2 decision. Again, I point out that these
3 proceedings are subject to the Freedom of
4 Information Act and, as such, so the
5 deliberations of the Board are open to the
6 public. Although they are not transcribed and
7 are not made part of the record. We are now
8 off the record for deliberations.

9 (WHEREUPON, the Board deliberated a
10 decision and proceedings resumed as follows,
11 to-wit:)

12 MS. BORKOWSKI: If we can have the motion
13 again?

14 MR. KEENE: You want me to read the motion
15 again?

16 MS. BORKOWSKI: Yes, please. Just for the
17 record, now.

18 MR. KEENE: Finding the allegations being
19 true, I move to order the Respondent to pay a
20 fine in the amount of \$100.00, payable within
21 30 days of receiving the Board's order.
22 Further, the Respondent is ordered to cease and
23 desist from practicing cosmetology until such
24 time the Respondent is properly licensed by the
25 Board.

1 MS. GORDON: I second.

2 MS. POWELL: I have a motion and a second.

3 Motion number three. Fining \$1,000.00 -- or
4 \$100.00 -- excuse me -- Board fine. All those
5 in favor, raise your right hand?

6 (Show of hands.)

7 MS. POWELL: All those opposed?

8 (Show of hands.)

9 MS. POWELL: Two opposed. No abstentions.

10 MS. BORKOWSKI: Okay. This decision will
11 be reduced to writing, and service will be
12 made, or attempted upon the Respondent. If the
13 Respondent cares to appeal the decision, appeal
14 can be taken under the administrative
15 procedures act or any other provision provided
16 in the statutes pertaining to this Board.

17 If there are no other questions or
18 comments, this hearing is concluded and the
19 record is closed. However, I do, at this time,
20 need to turn it over to Kathy Wittum, the
21 Director, to make a statement.

22 MS. WITTUM: I would like to say, Ms.
23 Briggs, and thank you and your witnesses for
24 what you've come here and shared today. The
25 Board is limited to, in this particular

1 setting, look at whether or not the findings
2 are true. And if so, to invoke proper
3 punishment as they see fit. But your -- your
4 information today has not fallen on deaf ears.
5 We are looking to start deciding what law
6 revisions need to be made for the upcoming
7 legislative session, and the information you
8 shared today will certainly be considered, as
9 we're going through that process.

10 MS. BRIGGS: I appreciate that.

11 MS. WITTUM: Thank you.

12 MS. BRIGGS: Thank you.

13 MR. KEENE: This would probably be a good
14 subject for your Student Advisory Committee or
15 another committee, if you choose to appoint
16 one. There's a lot of information out there,
17 like she brought some of it in, that -- you
18 know, I don't know how popular that license is
19 in other states, or if it would be financially
20 feasible for this Board to even undertake it.
21 But I know the information is out there, to see
22 what other states are doing, how much they're
23 licensing in it, any kind of problems there may
24 be. I know that, from working with NIC, which
25 many of us sitting on this Board have, they've

1 got all that information. It'd be very easy to
2 come by.

3 MS. BORKOWSKI: And Ms. Briggs, are those
4 the documents that you asked the Board to
5 consider?

6 MS. BRIGGS: Yes. Would you like me to
7 leave them?

8 MS. BORKOWSKI: Yeah. We need to leave
9 this with the court reporter since it was
10 admitted --

11 MS. BRIGGS: Okay.

12 MS. BORKOWSKI: -- as an exhibit, if you
13 can give those to her.

14 MS. PICKERING: Could we have copies? It
15 never got over here, so --

16 MS. BORKOWSKI: It never -- it never made
17 it to this side.

18 MS. BRIGGS: Okay.

19 MS. WITTUM: We'll make copies and give to
20 all of the Board members. If you would like a
21 copy, I'll send you a copy of it, too.

22 MS. BRIGGS: All right.

23 MS. POWELL: And your point is well taken,
24 Mr. Keene. That would be something good for
25 the Student Advisory Committee. And this is

1 not a new issue, either. So, I mean, this is
2 typically one that's on the coastal states of
3 something that we probably are going to have to
4 look at more seriously, now. And as the
5 Director said, this would be the appropriate
6 time. Thank you for submitting that.

7 MS. BRIGGS: And I appreciate it. Thanks
8 for listening.

9 (WHEREUPON, the hearing was concluded.)

10 (WHEREUPON, a short break was taken and the
11 meeting resumed as follows, to-wit:)

12 ORDER AND NOTICE OF HEARING #06-084

13 MR. JOCHUMS: We will take up Lucille
14 Coleman, No. 06-084. I think Ms. Coleman is
15 here.

16 MS. BORKOWSKI: Okay. I am Misti
17 Borkowski, an attorney. And I will serve as
18 the hearing officer today, in the matter of
19 Lucille Coleman, Hearing number 06-084. This
20 is to be heard today before the Arkansas State
21 Board of Cosmetology. Today is May 15, 2006.
22 We are located in the Main Street Mall
23 Building, in the Lower Level Conference Room.

24 Is the Respondent, Lucille Coleman,
25 present? Okay. Please introduce yourself, for

1 the record.

2 MS. COLEMAN: Lucille Coleman.
3 Blytheville, Arkansas. The owner of
4 Blytheville Academy of Cosmetology, the owner
5 of **.

6 MS. BORKOWSKI: Okay. And are you
7 represented by counsel today?

8 MS. COLEMAN: No.

9 MS. BORKOWSKI: Okay. Did you receive a
10 copy of the Order and Notice of Hearing?

11 MS. COLEMAN: Yes.

12 MS. BORKOWSKI: And are you ready to
13 proceed in this matter?

14 MS. COLEMAN: Yes.

15 MS. BORKOWSKI: Is the Arkansas State Board
16 of Cosmetology represented by counsel today?

17 MR. JOCHUMS: Yes, ma'am.

18 MS. BORKOWSKI: Please introduce yourself,
19 for the record.

20 MR. JOCHUMS: Yes. My name is Arnold
21 Jochums. I'll be representing the witness for
22 the Board, in this matter.

23 MS. BORKOWSKI: Okay. And although I've
24 already gone over this with another hearing,
25 because these are separate, individual

1 hearings, I'm going to go over it again. So,
2 please bear with me. For the Respondent's
3 benefit as well as the benefit of anyone
4 present today who may not have appeared in an
5 administrative hearing, let me explain that the
6 Board will base its decision solely upon the
7 evidence presented here today. This hearing is
8 held under the Administrative Procedures Act,
9 which means the strict rules of evidence do not
10 apply, that normally would apply in a regular
11 court of law. To ensure the efficiency of the
12 proceeding, I may grant objections or caution
13 the party as the hearing proceeds. The Board
14 members themselves know nothing of the case
15 except what appears and is set forth in the
16 Order and Notice of Hearing. If there is
17 anything you wish for the Board to consider,
18 please ask to have it introduced into evidence
19 at that time. All participants to the hearing
20 should be aware that these proceedings are
21 subject to the Freedom of Information Act and,
22 as such, all parts of the hearing, including
23 the deliberations of the Board, are open to the
24 public. For all who will appear as witnesses
25 in this matter today, please raise your hand

1 and be sworn by the court reporter.

2 (Witnesses sworn.)

3 MS. BORKOWSKI: Okay. Are there any
4 preliminary matters to be discussed, or
5 exhibits to be offered at this time?

6 MR. JOCHUMS: The only thing that I want to
7 do is to make sure that we've made the Notice
8 of Hearing and also the cover letter of Kathy
9 Wittum, Exhibit "A" for the Board.

10 MS. BORKOWSKI: Okay. The Agency's Exhibit
11 "A" will be introduced.

12 (WHEREUPON, Agency's Exhibit "A" to HO#06-
13 084 was marked for identification and admitted
14 into evidence without objection.)

15 MS. BORKOWSKI: Does the Board have a copy
16 of that?

17 MS. COLEMAN: Yes.

18 MS. BORKOWSKI: Okay. Is counsel for the
19 Agency ready to proceed?

20 MR. JOCHUMS: Yes, ma'am.

21 MS. BORKOWSKI: And Ms. Coleman, do you or
22 the Agency attorney wish to make an opening
23 statement?

24 MR. JOCHUMS: I want to do it.

25 MS. BORKOWSKI: Okay. Go ahead and --

1 MR. JOCHUMS: Members of the Board, this is
2 a hearing involving the operation of one of the
3 schools regulated by the Board. As you will
4 hear some testimony and see from the Notice,
5 the Blytheville Academy of Cosmetology and --
6 has previously been on probation for some
7 record-keeping problems. We'll have testimony
8 here today that the Board Inspector, visited
9 the school four or five times in 2005 and at
10 least once in 2006, for auditing purposes.
11 She's going to give some testimony about health
12 and safety violations that were discovered.
13 And some of these were rectified, or perhaps
14 all of them. Also, she's going to give
15 testimony regarding the record-keeping and
16 problems that she observed within the various
17 records that are required of all schools, in
18 connection with the hours that the students are
19 actually in class. That is the nature of the
20 hearing this morning.

21 MS. BORKOWSKI: Okay. Ms. Coleman, you
22 have an opportunity to make an opening
23 statement. I will caution you not into -- to
24 get into the full details of your case. So, do
25 you wish to make an overview opening statement?

1 MS. COLEMAN: Okay. Ms. Love and Dr.
2 Chapman is there more than I am, so if they'd
3 like to make an opening statement.

4 MS. LOVE: Madam President, I would just
5 like to make a comment. According to the rules
6 and regulations on page 31 of the state
7 lawbook, it says, "At the time the annual
8 inspection is conducted a member of the State
9 Board will accompany the Inspector, to review
10 the records maintained by the school, review
11 the course outline, the lesson plans, and
12 generally evaluate the operation of the school.
13 The school owners will be notified of the Board
14 member's recommendation. The school owners
15 will be granted a hearing before the board to
16 discuss any recommendations made by the Board
17 member, upon filing a request, in accordance
18 with Section 3 of Regulation 71-819. In the
19 absence of a request to meet with the Board,
20 all recommendations made by the member shall be
21 complied with before the issuing year's license
22 will be issued."

23 My comment to this is, we had one inspector
24 come to our school. We did not have two. I
25 would like to have a reasonable answer, because

1 I feel like some of the charges are the same
2 things that you wrote up on before. And I'd
3 like to have an opinion about.

4 MS. BORKOWSKI: Okay. Before we -- that
5 was -- what I wanted was an opening statement,
6 just an overview of your position. So, why
7 don't we wait to get into the details of the
8 case, and if your disputing some of the facts,
9 then you'll have your opportunity to do that.
10 I will make sure of that. But now, we probably
11 need to move to the Agency's first witness.

12 MR. JOCHUMS: Okay.

13 TESTIMONY AND EVIDENCE

14 GIVEN ON BEHALF OF THE BOARD BY

15 SHEILA CAUDLE ,

16 having been called by and on behalf of the
17 Agency, and having been first duly sworn to
18 tell the truth, the whole truth, and nothing
19 but the truth, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. JOCHUMS:

23 Q Please state your name and job.

24 A Sheila Caudle, Inspector.

25 Q Okay. And how long have you been an inspector for

1 the Board?

2 A I've been employed with the Board for about
3 thirteen years, and probably eleven of those, I have
4 been an inspector.

5 Q Okay. And in the recent months, has more of your
6 duties gone to inspecting schools?

7 A Yes, sir. It has.

8 Q Okay.

9 A Just recently.

10 Q Now, did you make the inspections that led to the
11 issuance of the Notice of Hearing in this matter?

12 A Not all of them. No, sir.

13 Q Okay. Who made those others?

14 A I'm not sure. There was an initial inspection done
15 on October 7th, and I think Ms. Morgan done the initial
16 inspection.

17 Q Okay. Then, was that of '05, are you talking
18 about?

19 A That was '05.

20 Q Okay. Now, do you know Ms. Coleman?

21 A I do.

22 Q Okay. And do you know, from being there, that she
23 is the school operator?

24 A Yes, sir.

25 Q And do you know these other two people?

1 A Yes. I know Ms. Love, but I don't know this
2 gentleman.

3 Q Okay. And are you aware that the school is
4 currently on probation for record-keeping problems?

5 A Yes, sir.

6 Q Okay. Now, tell us about your visit on September
7 14, 2005.

8 A When?

9 Q I think it says September 14th. Do you have the
10 Notice of Hearing?

11 A September 14th -- was not me -- of '05.

12 MS. WITTUM: It's an inspection report.

13 BY THE WITNESS:

14 A Just a regular inspection report? You'll have to
15 give me a minute, because this was not my regular area,
16 and in '05, I was not doing just schools.

17 MS. BORKOWSKI: Do we need to take a break?

18 Okay. Is there any objection to us taking a
19 five, ten minute break while the witness
20 gathers her documents?

21 MR. JOCHUMS: No objection.

22 MS. BORKOWSKI: Okay. We're going to
23 adjourn until five after 12:00. Is that okay?
24 I'm sorry, five after 11:00. Whew.

25 MS. POWELL: Five after 11:00.

1 MS. BORKOWSKI: Okay.

2 (WHEREUPON, a short break was taken and
3 proceedings resumed as follows, to-wit:)

4 MR. JOCHUMS: Madam Chairman, I wanted to -
5 - we learned, during the break, we've got some
6 witness confusion. I want to divert just a
7 moment, from this witness, to ask a couple of
8 questions of the Executive Director, who has
9 not been sworn yet.

10 (Witness sworn.)

11 MR. JOCHUMS: Okay.

12 TESTIMONY AND EVIDENCE

13 GIVEN ON BEHALF OF THE BOARD BY

14 KATHY WITTUM ,

15 having been called by and on behalf of the
16 Agency, and having been first duly sworn to
17 tell the truth, the whole truth, and nothing
18 but the truth, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. JOCHUMS:

22 Q You're Kathy Wittum, the Executive Director. And
23 you prepared the Order and Notice of Hearing?

24 A Yes, I did.

25 Q Okay. When we broke off, I was asking some

1 questions about basically the first page, which is
2 paragraphs one, two, three, and four of the inspection
3 report. And we learned that Ms. Caudle hasn't done
4 those inspections, or --

5 A Right.

6 Q Or at least she couldn't find anything. Could you
7 fill in the Board with the status of these first four
8 paragraphs.

9 A The first paragraph is simply to let the Board know
10 that the Blytheville Academy of Cosmetology is a school,
11 a licensed school, and that Ms. Coleman is the school
12 owner and and instructor there, at that facility.

13 The second one is to just let the Board know that
14 Blytheville is currently on probation for improper
15 record-keeping. According to the file, in July of 2002,
16 the Board fined Blytheville Academy \$500.00 and placed
17 the school on probation for five years, which will
18 expire in 2007.

19 The third paragraph is historical information,
20 basically, that on September 14, '05, a cosmetology
21 inspector did go to the school, and there were some
22 health and safety violations discovered. Namely, those
23 were not having sanitary towels or a hand-drying device;
24 and the floors and equipment needed to be cleaned or
25 repaired. There was information in the system that the

1 Respondent had been cited for these type violations on
2 or about March 2, 2005, when a warning was issued with
3 no penalty.

4 Number four is also historical information. And I
5 believe this was probably the inspection that took place
6 prior to the 2006 license being issued. I think most of
7 you probably would understand that being the initial
8 inspection. The inspector appeared at the school.
9 Several issues were noted, requiring attention. As you
10 can see from the Hearing Order, those included the
11 extension cord being taped to the floor in the reception
12 area, and wires were exposed; the floor in the classroom
13 was dirty; several areas of vinyl needed to be replaced;
14 the instructor's chair was stained and dirty; the
15 classroom needed to be cleaned and organized; brooms
16 needed to be replaced, in the utility room; several
17 dresserettes in the clinic area needed to be repaired
18 and painted; counter tops needed to be sanitized;
19 styling chairs needed to be replaced or recovered; and
20 there was no access to a water fountain. It was this
21 information that prompted the subsequent visits that
22 Inspector Caudle did, to address these particular
23 issues, considering the fact that the school was on
24 probation.

25 MR. JOCHUMS: Okay. No other questions.

1 MS. POWELL: This was November 9th?

2 BY THE WITNESS:

3 A Yes.

4 MR. JOCHUMS: (INAUDIBLE) November 9th.

5 MS. POWELL: Was prompted November 9th.

6 BY THE WITNESS:

7 A Right. Correct.

8 MR. JOCHUMS: Okay. I have no other
9 questions for Kathy.

10 MS. BORKOWSKI: Okay. Ms. Coleman, do you
11 have any questions for Ms. Wittum? Do you have
12 any questions for her?

13 MS. COLEMAN: Okay. Can I address some of
14 these things that she read off? Or --

15 MS. BORKOWSKI: The -- limited to what she
16 testified about, just now.

17 MS. COLEMAN: Okay.

18 CROSS EXAMINATION

19 BY MS. COLEMAN:

20 Q A lot of those things that was mentioned -- and to
21 be really honest with you, I don't know exactly who was
22 the inspector. But -- and almost sure you came back the
23 next time. And we got two water fountains. We got two
24 water fountains. We got bottled water you could buy.
25 And then, we have another cooler that's in the manicure

1 area.

2 MS. BORKOWSKI: Okay.

3 BY MS. COLEMAN:

4 Q I mean, I don't get it. She seen it. They're not
5 brand new. They're there. They're working. The chair
6 --

7 MS. BORKOWSKI: Can -- can we limit -- can
8 we limit what you're asking, for a specific
9 questions to, at this point, to Ms. Wittum?
10 You'll get -- you'll definitely get your chance
11 --

12 MS. COLEMAN: I understand.

13 MS. BORKOWSKI: -- to have your case. But
14 we need to limit our questions so that this
15 procedure goes with some organization to it.

16 MR. CHAPMAN: I have a question for Ms.
17 Wittum. The question is once the inspector --

18 MS. BORKOWSKI: And can you introduce
19 yourself, for the record?

20 MR. CHAPMAN: My name is Patrick Chapman.
21 I am instructor and co-owner of Blytheville
22 Academy of Cosmetology.

23 MS. BORKOWSKI: Okay.

24 CROSS EXAMINATION

25 BY MR. CHAPMAN:

1 Q Once the inspector comes in and inspects and gives
2 information to Ms. Wittum, at that point, what is the
3 Board's position? Is it to bring us in front of a
4 hearing? Or bring it to our attention? Do we get a
5 chance to respond before it goes to the Board? Or what
6 is the Board's position after an inspector finding such
7 information, whether we agree or disagree?

8 MS. BORKOWSKI: I do not know the answer,
9 and I'm not sure this is the proper venue for
10 answering that. It's something that probably
11 needs to be a phone call or a visit to Ms.
12 Wittum. But right now, we are confined within
13 what the Order and Notice of Hearing, the
14 allegations are. And the Board has to hear the
15 witnesses and hear arguments, and make their
16 decision based on that. So, I apologize for
17 not being able to answer your question.

18 MR. CHAPMAN: No, it -- I'm sorry. It
19 wasn't for you. It was for Ms. Wittum. You
20 asked me could we ask her a question.

21 MS. BORKOWSKI: Okay. Ms. Wittum, is this
22 --

23 BY THE WITNESS (Kathy Wittum):

24 A It's my understanding that, in the past, the
25 inspectors who go out and do the initial inspection --

1 which was the one that occurred in October -- to do the
2 preliminary view of the school, just to determine
3 whether or not the next year's license would be renewed.
4 And then, the inspector -- if anything were found, the
5 inspector would go back to make sure everything was in
6 order before that license was actually issued. And the
7 inspectors who have been here longer than I have can
8 correct me, if I'm wrong.

9 The fact that there were issues found at the
10 October visit was what prompted me to send Ms. Caudle
11 back out there in November, for her to make sure those
12 issues had been addressed, in order for us to know
13 whether or not the 2006 license could be issued. She
14 went back on November 9th and it would be for her to
15 discuss what she found there.

16 BY MR. CHAPMAN:

17 Q I don't think you really understood what I'm
18 asking. I understand the procedures that you took.

19 A Uh-huh.

20 Q My question is, after the Board or yourself sent
21 the inspector out to the school and you find some
22 information, from that point, do you contact the school,
23 like, in writing or a phone call? Or do you just send
24 them back out? I mean, what is your procedure, as far
25 as the office, once you get information from the Board?

1 A My procedure has been to follow suit with what's
2 been done in the past, and that has been to bring the
3 issues to the Board. There are some violations that are
4 not serious, that I do have the ability to decide
5 whether or not they should come. But with the schools -
6 - and especially with this school being on probation, I
7 didn't feel that it was my place to not bring these
8 issues to the Board.

9 Now, I will to tell you that the inspection that
10 Ms. Caudle just recently finished doing at all of the
11 schools -- not just your school, but all of them --
12 since she took over inspecting all of the schools. That
13 is for the purpose of me to find out if there are issues
14 that are needing to be addressed in all of the schools.
15 And then a letter will be sent directly to you, to let
16 you know what issues were found, to give you an
17 opportunity to correct them.

18 So, there's two answers to your question. One
19 dealing with what we have here today. One with what
20 you're going to be experiencing in the future. And we
21 can discuss this. I don't mind spending time with you
22 at break to explain this more in depth, but these issues
23 that are here today are the ones that I felt the Board
24 needed to be addressing. Not me, because I'm the new
25 Director.

1 Q I understand that. I was really just trying to
2 find out, like, if you're going to take something to the
3 Board because you feel it's a Board situation for a
4 decision.

5 A Uh-huh.

6 Q Do you send a letter out and say, "These is what
7 the inspector find and, this has to go to the Board and,
8 this is what --"

9 A That's the Hearing Order that --

10 Q Okay.

11 A -- you have a copy of.

12 Q Okay.

13 MS. BORKOWSKI: Okay. Any questions --

14 MS. PICKERING: Madam President, I need to
15 recuse myself from this case, please?

16 MS. POWELL: Okay.

17 MS. BORKOWSKI: Okay.

18 MS. PICKERING: Do I need to leave or can I
19 stay?

20 MS. TRAYLOR: You just don't have to vote.

21 MS. POWELL: No. You can recuse yourself
22 and stay.

23 MS. BORKOWSKI: Are there any questions for
24 Ms. Wittum from members of the Board? Okay.

25 Your ne --

1 MR. JOCHUMS: Could we go back to Ms.
2 Caudle?

3 MS. BORKOWSKI: Okay.

4 MR. JOCHUMS: Okay.

5 CONTINUED TESTIMONY AND EVIDENCE

6 GIVEN ON BEHALF OF THE BOARD BY

7 SHEILA CAUDLE ,

8 having been called by and on behalf of the
9 Agency, and having been first duly sworn to
10 tell the truth, the whole truth, and nothing
11 but the truth, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. JOCHUMS:

15 Q Ms. Caudle, you have heard the testimony about some
16 matters before your --

17 A Right.

18 Q -- first visit. Am I to understand that the first
19 time you went to visit the school was on about November
20 9, 2005?

21 A That's correct. That was the first time on this
22 issue. When they originally went on probation, I was
23 the investigating inspector at that time, also.

24 Q Okay. But other than that?

25 A But other than that, the regular inspection, no.

1 They were not mine.

2 Q Okay. So, --

3 MR. JOCHUMS: And I'm looking at paragraph
4 five of the Notice of Hearing that everybody
5 that has.

6 BY MR. JOCHUMS:

7 Q You went there, among other reasons, to see whether
8 the health and safety issues had been resolved?

9 A That's correct.

10 Q Okay. What did you do, with regard to that?

11 A Ms. Coleman has been completely re-doing the
12 school, as far as the health and safety issues. She has
13 put new styling chairs in. She has redone the floor.
14 She has painted the stations. The school is looking
15 great, as far as the health and safety issues go. While
16 I was there, since the school was on probation for
17 record-keeping, I pulled some records at that time, just
18 to look over things. And there was some concerns to me,
19 so I revisited the school on March 8, 2006 to do an
20 audit of the records.

21 Q Okay. Now, tell us a little bit about the whole
22 approach to the audit of the records. What, for the lay
23 members of the Board and perhaps the audience, what
24 records do they have to maintain?

25 A Well, they're supposed to keep a Daily Activity

1 Record on each student. They're supposed to keep a
2 theory roll book, to show us who was in the theory
3 class, so they can keep up with how many hours that each
4 student has for theory. They should keep an appointment
5 book for the students, with their names in it telling,
6 you know, what student had what service or --

7 Q Now, is that -- for example -- when they work on
8 somebody's hair?

9 A When they work on a client. Yes.

10 Q Or on a client.

11 A And the Activity Record shows the activities that
12 they do before they actually go out on the floor, and
13 even after they go out on the floor. If they don't have
14 a client, they should have some type of work to keep
15 them busy with some type of -- most schools use a
16 mannequin worksheet that they have so many roller sets
17 to do on there, they have so many chemical relaxers, or
18 hair colorings, or lightenings, or things to do, on
19 these mannequins. They should have something to keep
20 their time occupied while they are receiving these 1,500
21 hours in this training course, instead of sitting around
22 and doing nothing.

23 Q Now, in this particular case, what methodologies
24 does the school use to keep up with the students' hours?

25 A They have a time clock.

1 Q Like in a --

2 A Like a punch-in and -out time clock.

3 Q Okay.

4 A They're on what they call the Smart System, which
5 is a system that is for the cosmetology program, where
6 they key in all the information into the computer system
7 for each student, but their time clock is not on the
8 Smart System. It's a manual time clock. They have the
9 Smart System for their record-keeping but not for the
10 time-keeping.

11 Q Okay. Now, do schools send records to this Board's
12 office about once a month?

13 A They send monthly hour records. Yes, sir.

14 Q And how -- where do those records come from?

15 A Those records are supposed to come from the time
16 cards. From the -- they figure the time for each
17 student and then they register that time for each
18 student, with the Cosmetology Office, --

19 Q Okay.

20 A -- as to how many hours each student got per month.

21 Q If I could draw your attention to paragraph 7a, --

22 A Uh-huh.

23 Q -- tell us about what you learned about Kelli
24 Meacham.

25 A Okay. On March 8, 2006, I did go back to do a

1 records audit of the school and noticed that they did
2 have a manual time clock. An instructor trainee, namely
3 Kelli Meacham, it was found in the records that I have
4 here, that she performed services on September 5, 2005
5 when the school should have been closed. And the
6 services were noted in the daily receptionist report.
7 However, according to the time clock, Kelli did not
8 clock hours for this day. This also occurred in
9 November 2003 [sic], which was a Sunday. And it should
10 be noted Kelli had graduated from the school and was
11 issued a license in January.

12 Q That was 2005?

13 A Yes.

14 Q Okay. Now, --

15 A 2006.

16 Q I noticed --

17 MS. COLEMAN: 2006.

18 BY MR. JOCHUMS:

19 Q -- you mentioned that -- okay. And I noticed that
20 you mentioned that the school should have been closed.
21 Why was that? Why would that be?

22 A Because the school hours -- school days are
23 Wednesday through Saturday. However, it states on --
24 two pages over that the school is -- school hours, in
25 Section J, are 8:30 a.m. to 4:30 p.m. Tuesday through

1 Saturday. That should read 8:30 to 4:30 Wednesday
2 through Saturday.

3 Q Okay. Moving on through, did you find more --

4 A Yes.

5 Q -- problems?

6 A Three students, Alicia Boone, Lindsey Heggins, and
7 Matt Godsey were not on the October and November monthly
8 reports, but were listed in the roll book and signed in
9 for theory class. They have a sign-in sheet to sign in
10 for theory class, when some of them sign, some of them
11 do not. Lindsey and Matt were also noted to have
12 appointments during this time.

13 Q And by that, does it mean that they were apparently
14 at the school, but they didn't get reported to the Board
15 office?

16 A That's correct.

17 Q Okay. Move on to Kelly Guest.

18 A Kelly Guest was enrolled as a manicure student.

19 She was listed in the appointment book as having
20 performed service outside the scope of her practice.

21 Namely, she was assigned a haircut on November 9th and a
22 wax on September 7th.

23 Q Now, are those things that you would need to have
24 been a cosmetology student?

25 A Yes, sir. Manicurists is for manicures and

1 pedicures, artificial nails.

2 Q Okay. Then, I don't know the -- I don't see the
3 point of absolutely reading through this, I think, line
4 by line. But in paragraph 7(d), do you list some timing
5 discrepancies that were for September '05?

6 A What page?

7 Q The third page of the Notice of Hearing. Top of
8 the third page.

9 A Yes, sir.

10 Q Okay.

11 A Discrepancies were found concerning the month of
12 September. And I have the students listed there: Kelli
13 Meacham, April McKinney, Latrice Henderson, Matha Meeks,
14 Kelly Guest, Terri Dority, Sade Curry. They were not
15 listed in the September roll book. They appeared on the
16 monthly report. October follows that, the ones I found
17 for the month of October. And November follows that,
18 the ones I found for the month of November. And as a
19 reminder, when I was there, I'd only done those three
20 months. I'd done -- September, October, and November
21 were the only three months' records that I pulled while
22 I was there.

23 Q Okay. And you did that yourself?

24 A Yes, sir.

25 Q And made notes and that's --

1 A Yes, sir.

2 Q -- what this Notice of Hearing --

3 A This is my notes.

4 Q They're all there printed by Ms. Wittum. Okay.

5 Would you turn to page four in the Notice of Hearing?

6 And this is subparagraph (g) -- I think we're still in

7 paragraph seven, maybe. Yeah. 7(g). What is the

8 Practical Monthly Worksheet?

9 A The Practical Monthly Worksheets are the worksheets

10 that they have, as I was explaining earlier, for their

11 mannequin work or their practical work. Where they have

12 so many assignments that they should do each month or

13 each week. And when they do those services -- for

14 example, if it's a roller set, they do the roller set.

15 And an instructor should sign off on that sheet, saying

16 that she viewed that and that they did complete that

17 assignment.

18 Q Okay. And did you make a review of some of the

19 student folders?

20 A Yes, I did.

21 Q And what did you find?

22 A The Practical Monthly Worksheets were completed by

23 the students and signed off on by the instructor, though

24 not consistently. They just occasionally signed off on

25 them. I reviewed 15 folders and found only five

1 students who had worksheets in their folders. The
2 instructor did not always sign off on the services, nor
3 did she include a grade or overall performance
4 evaluation.

5 Q Now, did you, in your visit, note a problem with
6 the sign-in procedure?

7 A The sign-in procedure? The students didn't always
8 sign in beside their name. They have a sheet on their
9 front desk, a Services Sheet, and it's dated. And when
10 the client comes into the salon, they sign in on the
11 sheet. And across there, the student is supposed to
12 sign their name as to what student provided services to
13 that client. And there was lots of blanks there.

14 Q Apparently clients, but not a student's name?

15 A Right.

16 Q Okay. Did you also observe problems with clocking
17 in and out?

18 A Yes.

19 Q Tell us about that.

20 A There appears to be a problem with the clocking in
21 and out. Sometimes they would clock in, sometimes they
22 would clock out. They hardly ever clocked in and out
23 for lunch. They -- for five days, during the month of
24 September, they didn't have any sign-in sheets. There
25 just wasn't any consistent clocking, whatsoever.

1 Q Okay. Now, what did you tell us about the hours of
2 this school?

3 A The school hours are from 8:30 a.m. to 4:30 p.m.
4 Wednesday through Saturday. That is what is recorded in
5 our record, and that's what is also posted at the
6 school.

7 Q Okay. Was there some indication that students were
8 there on other occasions?

9 A Yes, sir. Let me find my notes, here. There was
10 two days that were closed, with sign-in sheets. In
11 October there were eight days without sign-in sheets and
12 in November there were four days without them. There is
13 a note here that I made that, according to the time
14 card, students were permitted to attend any time. And
15 that's explained on further over into my report. Daily
16 records were being maintained in a cardboard box under
17 Ms. Coleman's desk.

18 MS. COLEMAN: Records are papers.

19 BY THE WITNESS:

20 A Right.

21 MS. COLEMAN: Let me clarify that one.

22 BY MR. JOCHUMS:

23 Q Let me ask you, starting with subparagraph (1), we
24 go to a list of a number of students.

25 A Yes.

1 Q And there's a box in the middle.

2 A Yes.

3 Q And some of us that aren't familiar with --

4 A This is --

5 Q -- this school's --

6 A -- a layout of what it is. On her system at her

7 school is the first list, which is the Smart System.

8 That's the printout that I got from the Smart System of

9 what is recorded on that student. The middle box is the

10 Monthly Hour Report, which is what is sent to our State

11 Board office for us to record their monthly hours. And

12 the last box is what the time card shows.

13 Q Okay. So for example, and this little (I), Kelli

14 Meacham, the Smart System said she had 130 hours and 18

15 days, in September.

16 A Right.

17 Q And the -- that's what they reported to the office?

18 A That's what they reported to the office in the

19 monthly hours, but --

20 Q But they only had --

21 A But looking at her time card, she only clocked in

22 17 days as opposed to the 18.

23 Q Okay.

24 A And if you go across there, that's for the month of

25 September. The month of October follows that, and the

1 month of November follows that. And this is laid out on
2 each individual student. The third student is the one
3 that I was referring to earlier. On September 28th, --

4 Q Is this Shaun Rainer?

5 A Shaun Rainer.

6 Q Okay.

7 A Her time clock reflected that she had clocked in at
8 5:15 p.m. and clocked out at 8:19 p.m. which is roughly
9 three hours. However, the student was given a total of
10 7.5 hours for this day. And also, the school should
11 have been closed at that time.

12 Q Okay. So, if we could sort of summarize what the -
13 - we've got a total of 15 students that you looked at?

14 A Should be. Yes, sir.

15 Q For -- and with each of them, there's a at least
16 one month with some problems with the time?

17 A Right.

18 Q Some of them with several days, but --

19 A Well, the reason being on some of these that it's
20 not all three months, that student wasn't there for
21 three months. If they were there for three months, then
22 all the records would be here that was in the school.

23 Q Okay. For example, you have Latrice Henderson was
24 just there in September?

25 A Yes, sir.

1 Q Okay. Now in that case, the Smart System is
2 different from the Monthly Report and also different
3 from the time card?

4 A In her situation, yes, sir.

5 Q Okay. I don't think we need to go through each one
6 of those students one by one. Is there anything further
7 that --

8 A It's all laid out here, each student, one by one,
9 for review.

10 Q Is there anything else that you want to add about
11 your -- either -- well, let me stop there. You've been
12 to the school?

13 A Yes, sir.

14 Q Okay. It's in Blytheville?

15 A Yes, sir.

16 Q How many students do they normally have?

17 A It varies from day to day. There's been days I've
18 been there and they've been really busy, with several
19 students. And there's been days I've been there,
20 there's only been five or six students. So, --

21 Q Okay. So the kids are --

22 A -- you know, it depends on enrollment, and who's
23 showing up for class and who's showing up for school and
24 --

25 Q Okay. Normally, how many instructors are present?

1 A Two.

2 Q Okay. And would it be fair to say that, as of this
3 point, the question of health and safety issues have
4 been solved?

5 A It's looking right.

6 Q Okay.

7 A Yes.

8 Q So, the only -- the concern, at this point, or the
9 -- that you want brought to the Board's attention is the
10 record-keeping --

11 A The record-keeping.

12 Q -- situation?

13 A I will tell you, too, that two weeks ago, I had
14 revisited the school and they have developed some new
15 forms and some new things that I think are going to work
16 great.

17 Q Okay. Thank you.

18 MR. JOCHUMS: I have no other questions of
19 the witness.

20 MS. BORKOWSKI: Okay. Ms. Coleman, do you
21 have questions for this witness? And I will
22 have to advise that, under the Administrative
23 Procedures Act, Section 25-15-213, it states
24 that you have the right to be accompanied and
25 advised by counsel. So, I'm only going to

1 allow you to ask the questions. You are
2 welcome to confer with your colleagues or your
3 counterparts, but we're going to limit you to
4 asking the questions.

5 MS. COLEMAN: That's okay. But he's my
6 partner also, so -- he's the father of the
7 school.

8 MS. BORKOWSKI: Is he --

9 MS. COLEMAN: -- he's the co-owner.

10 MS. BORKOWSKI: Is there any objection to -
11 -

12 MS. COLEMAN: Okay.

13 MS. BORKOWSKI: Okay. I'm sorry.

14 MS. COLEMAN: I do recall that when I
15 called -- I called before, and every time I
16 call the Board I cannot get an answer. So, I
17 finally got a hold of you and I asked, "Do I
18 need to turn in Dr. Chapman's -- he owned 35
19 percent of my school. Do I need to turn that
20 in?" I got an answer, "I'm not sure, but I
21 will get back with you later."

22 MS. BORKOWSKI: Okay. Ms. Coleman, that is
23 strictly a misunderstanding --

24 MS. COLEMAN: So, that's okay.

25 MS. BORKOWSKI: -- on my part. No, no, no.

1 That is a misunderstanding on my part. So,
2 absolutely a co-owner will be allowed to ask
3 questions on --

4 MS. COLEMAN: Yes.

5 MS. BORKOWSKI: -- behalf of the school.

6 MS. COLEMAN: Okay.

7 MR. CHAPMAN: Okay.

8 MS. BORKOWSKI: So, do you have any
9 questions of this witness?

10 MS. COLEMAN: Okay.

11 CROSS EXAMINATION

12 BY MS. COLEMAN:

13 Q The very first question was, I think when you came
14 to the school -- one time you went to the school, I was
15 working in Marked Tree.

16 A Uh-huh.

17 Q Right?

18 A Uh-huh.

19 Q When you came in there and checked that Marked
20 Tree, what did you find?

21 A When I checked Marked Tree for what?

22 Q Uh-huh. When you came into Marked Tree to do the
23 inspection.

24 A As far as what, Ms. Coleman?

25 Q Anything on the -- on the sheet that you all have,

1 that you grade off the school, --

2 A You're talking about a previous visit which had
3 nothing to do with the audit of the record, which was --
4 is what I was to do at your school, was audit the
5 records. And when I went to Marked Tree, it was just an
6 inspection.

7 Q But inspection on the record sheet, do you cover
8 that totally of what this paper said, that you check
9 off?

10 A Yes. When it applies to the school.

11 Q Okay. Well, if -- I could be wrong. I don't want
12 to say it. Don't want to say I'm harsh. But I work at
13 Marked Tree more than I work at my own school.

14 A Okay.

15 Q You know, I go in there, an inspector come in.
16 This had happened more than once. And I need to take a
17 pill after this one, because it really gets me. But I
18 go like, "That's okay, Lucille. Don't call prejudice.
19 Don't do it." But I have a problem with that. I have a
20 problem that -- I work in Marked Tree, okay? Everybody
21 in Marked Tree -- and I hate to say it like this, and I
22 promise you I do. Everybody is white, okay? Well, at
23 my school the majority is black, okay? You come for
24 inspection -- and I didn't do this intentionally, but my
25 license is not even on the board at Marked Tree. I've

1 been working there at Marked Tree for six years -- seven
2 -- eight. Eight years, okay? But you come to mine, you
3 pick mine out, "Is this person licensed here? Is that
4 done? Is this done?" I'm knowing that things went with
5 Marked Tree because a lot of times I go in with their --
6 I learned a lot from them and I know -- I like being
7 there. And I hate bringing up their name. I hate it
8 because I love the school, okay? But then, I come back.
9 I get cited on things that's -- with our school that
10 nobody even look at, at Marked Tree. I got cited over a
11 water fountain and we had two water fountains and a
12 water bottle. They don't even have a water fountain.

13 You know, I have a problem with that. I really,
14 really do. And I feel like there is a picking
15 situation. Now, I'm not saying some of these problems
16 is not what she saw. I'm sure that it is. You know,
17 and I'm not calling you prejudice, per say.

18 A I know you're not. I know.

19 Q What I'm saying is that you don't follow your own
20 rules as who you check. When you find one person with -
21 - and help me. I can't do this. Let me stand up for a
22 minute. My back is killing me. But I found out that
23 when you go to one school, if this school have no
24 problems, you just look at it, you go, "Everything is
25 okay. Everything is okay. Yeah, everything looks

1 okay." You walk on out. Then you go to this other
2 school and you go, you white blood test.

3 And the thing I meant to tell you folks, yeah, you
4 know, and about the cord on the floor. I don't know
5 which one of the inspectors did that. It wasn't a cord.
6 It was a telephone line. And we had tape over the
7 telephone line, which is in proof of the records right
8 here that we pulled that tape up and we re-stationed the
9 counter, so that the line could be -- the telephone line
10 could be right there. Because a lot of people come in
11 and the phone started ringing, instead of running to the
12 office to get it all the time, okay? And then, I go and
13 it's like -- somebody said one time about, "Oh, you
14 don't have a brush," or "You don't," this and that. And
15 we're like, "Well, here this is." I mean, a lot of
16 things that was cited, I'm still wondering, "Is it just
17 me?" You know what I'm saying? Is it just me? I have
18 an issue with that.

19 MS. BORKOWSKI: Ms. Coleman, is the Board
20 okay with her -- do we want -- we want to
21 follow a procedure. And I'm going to need to
22 limit that.

23 MS. COLEMAN: I understand.

24 MS. BORKOWSKI: And I just want to continue
25 with the procedure of how this goes. So, if --

1 I promise you will get your chance.

2 MS. COLEMAN: Okay.

3 BY MS. COLEMAN:

4 Q Without the dirty chair --

5 MS. BORKOWSKI: But if you have specific
6 questions for the witnesses. And we have an
7 inspector who has not been sworn in, in this
8 case.

9 MS. COLEMAN: All right.

10 MS. BORKOWSKI: I think you are limited to
11 asking questions of the witnesses.

12 MS. POWELL: Also, I'd like to cite that on
13 this Order and Notice of Hearing, this item
14 number five clearly states, as well as the
15 inspector has already said, that the
16 cosmetology inspector appeared on this November
17 9, 2005 and observed if the issues stated above
18 and before had been addressed, which they had
19 been. So, at this time we're not discussing
20 those issues. We're discussing the issues as
21 of the events of November 9th. So, I don't
22 know about -- the drinking fountain has nothing
23 to do, in my mind, with what we're talking
24 about now. We're only addressing issues as of
25 November 9, 2005. Correct?

1 MS. COLEMAN: Okay.

2 BY MS. COLEMAN:

3 Q On the paper where it says, --

4 MS. COLEMAN: Okay. Go ahead.

5 MR. CHAPMAN: I would like to ask a
6 question to the inspector.

7 CROSS EXAMINATION

8 BY MR. CHAPMAN:

9 Q Inspector, when you came into the school, was it
10 brought to your attention that we was having problems
11 with the time clock?

12 A Not that I'm aware of.

13 Q Okay. Okay. Maybe that's why we've got so many
14 issues with this time -- what appears is that you're
15 satisfied and the Board is comfortable with the health
16 issues because we cleared them up.

17 A That's right.

18 Q -- and you said you was comfortable with it? Okay.
19 So, the main issue that's on the floor right now is
20 probably the record-keeping for the student hours --

21 A That's right.

22 Q -- and things like that?

23 A Absolutely.

24 Q Okay. We have some documentation, like exhibits,
25 for the Board if they'd like to see it. The first issue

1 -- we did have problems with the time clock. And what
2 the time clock would -- sometimes it punches in p.m.
3 then it punches in on the wrong date. It just went
4 haywire.

5 MS. COLEMAN: Knowing anybody ain't gonna
6 work on no Sunday.

7 BY MR. CHAPMAN:

8 Q And it reflected one day, on a Sunday. And you
9 know, of course the school is not open on a Sunday. And
10 you just went based on what was clocked in. And I can
11 understand that, but in retrospect, we have replaced
12 that time clock. And we also ordered a Smart Time Clock
13 to coincide with the Smart System.

14 A Okay.

15 Q And if you look at the findings that you have here,
16 the main discrepancy that I'm seeing, based on your
17 records that you submitted, is the fact that there's
18 inconsistency with the Smart System and the time clock.

19 A And the monthly.

20 Q And the Monthly Report. Now, --

21 A That's correct.

22 Q -- as an educator, one of the biggest part of
23 teaching -- for over 20 years, one of the biggest
24 problems an educator will have that's going on, if a
25 student hours -- they ain't got no complaint about hours

1 being more hours. But God Doggitt, they'll -- man,
2 they'll call congress if you cheat them for one hour.

3 A That's right.

4 Q And so, the problem that we had at the school, if
5 you reflect that the Smart System and the Monthly Hour
6 Report, those hours are more consistent. But then, when
7 you compare those two sections with the time clock, then
8 that's when the inconsistency of the records come into
9 play.

10 A But the time card is your official reporting
11 document.

12 Q I understand that.

13 A And that's where --

14 Q I fully --

15 A -- everything has to go back to, is that official
16 reporting document. And if you're reporting something
17 different than that document has, that's where my notes
18 came into play. If something different is reported than
19 that official reporting document.

20 Q I'm not disputing what you found --

21 A Right.

22 Q -- and what you submitted. Maybe what we should've
23 done, at the school, was submitted that to Ms. Director,
24 Ms. Wittum, and said, "We've got a problem with our time
25 clock."

1 A Right. Absolutely.

2 Q "It be inconsistent with what's actually
3 reporting." So, if the inspector so happened to come
4 in, --

5 A Right.

6 Q -- this is what you will find. And so, we try to -
7 - myself -- I tried to work on that little thing. And
8 that little message just kicked back that little date.

9 A Right.

10 Q And so, we got another clock and I said there will
11 probably be more consistent --

12 A Then you need to have notation somewhere or it was
13 reported on --

14 Q That's what I'm saying. That's what I'm saying.
15 That might have been my neglect or Ms. Coleman's. We
16 should have submitted a letter to the Board saying,
17 "Hey, we've got problems with this time clock." And
18 since then, I purchased a \$2,200 clock from Smart
19 Systems. It'll be in next month. But just --
20 equipments are expensive.

21 A All right.

22 Q -- enough.

23 A Right.

24 Q Maybe -- maybe if we would have did that, maybe you
25 would have some comfort about these records. Because --

1 A Right.

2 Q -- the most important things that we want to do is,
3 we want to make sure that we get the students' hours.
4 Because they maintain hours also. And if we submit
5 hours -- like the Smart System say 18 and we submit 17,
6 oh, they gonna be right in. You can't teach them, you
7 can't do nothing to them until you --

8 A And it's not only the time clock. It's the Daily
9 Activity Sheets, the theory roll book.

10 MS. COLEMAN: Well, I'm not gonna be
11 comfortable that when you go to one school and
12 do this, and then you come to mine and do
13 something else. I am not gonna be comfortable
14 with it.

15 MR. CHAPMAN: Okay. We've not come to that
16 part.

17 BY MR. CHAPMAN:

18 Q But you do understand what -- okay, you wasn't
19 aware that the time clock was having a problem?

20 MS. COLEMAN: (INAUDIBLE).

21 MR. CHAPMAN: Okay. She wasn't aware, and
22 so now we're just efficiently letting the Board
23 know that there was problems with the time
24 cards and -- to rectify, to make sure the
25 records are more accurate.

1 BY MR. CHAPMAN:

2 Q Because when NAACAS came in -- and some of the
3 school owners are familiar with NACCAS, they stayed at
4 our school all day long. From 8:00 in the morning till
5 5:00 in the evening. And they looked at everything.
6 They called employers and graduates. They talked to
7 graduates. They looked a records. They looked at
8 files. They looked at what you did, but they did it all
9 day long.

10 BY THE WITNESS:

11 A Right.

12 Q And I'm thinking, from when I'm looking and from
13 what I'm hearing, the only problem that you have and
14 this Board has is inconsistent record-keeping with this
15 time clock.

16 A The time clock, Daily Activity Sheets, theory roll
17 book, and sign-in sheets. Which I didn't stay there all
18 day long, but I made copies of all this. And I studied
19 it.

20 Q Okay. What --

21 A So, I have copies of all of those records, and
22 that's where all my information --

23 Q Okay. But I just wanted to address the time clock
24 issue so it's --

25 A Right.

1 Q -- before I move on to the next issue.

2 A Okay.

3 Q Okay. So, that was the time clock issue.

4 A Right.

5 Q Okay. Now, from my understanding -- and maybe you

6 can shed some light to me about -- according to the

7 State Board Regulation 71-862 §1, Monthly Report. It --

8 how does it -- I don't really see where it's asking me

9 to have a roll book. I'm not saying that we won't, --

10 A Okay.

11 Q -- and maybe Ms. Love can answer these questions

12 about the roll book and things like that, --

13 A Uh-huh.

14 Q -- for the Daily Activity Report. But I just want

15 to approach (INAUDIBLE) the inconsistent record-keeping

16 with the time clock and --

17 A State Board of Cosmetology requires every student

18 to have at least 180 theory hours in a 1,500 hour

19 course. If you don't have a theory roll book, how are

20 you going to tell me how many hours each student --

21 Q Okay. Wait --

22 A -- was in theory?

23 Q -- a second, Ms. Caudle. Before I go to that part,

24 --

25 A Uh-huh.

1 Q -- because I know that has to be addressed also.

2 A Right.

3 Q But I just wanted to (INAUDIBLE) that we are on the
4 same page with the time card records now.

5 A Uh-huh.

6 Q Okay. So, that's our plan of improvement. That's
7 how we're improving it.

8 A Right.

9 MR. CHAPMAN: Now we want to go into the
10 record-keeping, and Ms. Love can answer that --
11 address that question. Did she ask questions
12 about --

13 UNKNOWN: (INAUDIBLE).

14 MR. CHAPMAN: Okay. Well, let me converse
15 with her. Because she can't answer.

16 MS. BORKOWSKI: Okay.

17 MR. JOCHUMS: We may have moved into their
18 evidence part, which is okay.

19 MS. BORKOWSKI: Yeah.

20 MR. JOCHUMS: (INAUDIBLE) but I don't think
21 they're asking questions anymore.

22 MS. BORKOWSKI: Okay.

23 MR. JOCHUMS: And maybe we all should find
24 out (INAUDIBLE).

25 MS. BORKOWSKI: Well, we need to -- before

1 we move to your witnesses, we want to give the
2 Board an opportunity to ask the inspector any
3 questions, so that we can kind of close each
4 little chapter of this hearing, if that makes
5 any sense.

6 MR. CHAPMAN: Okay.

7 MS. BORKOWSKI: So, --

8 COURT REPORTER: He can call Ms. Coleman,
9 if he wants to, also.

10 MS. BORKOWSKI: I'm sorry?

11 COURT REPORTER: He can recall her, if he
12 needs to.

13 MS. BORKOWSKI: Yes. Absolutely.

14 Absolutely. We can recall -- we can recall
15 these -- the inspector as a witness. So, are
16 there any questions for the inspector from
17 members of the Board?

18 (NO RESPONSE).

19 MS. BORKOWSKI: Okay. Do you have any
20 other witnesses?

21 MR. JOCHUMS: No.

22 MS. BORKOWSKI: Okay. Ms. Coleman and Mr.
23 Chapman, you guys are welcome to now state your
24 case or call your witnesses or -- I think we
25 give a little leeway in how you testified, but

1 if you can take one person at a time, testify,
2 and then give Mr. Jochums an opportunity to ask
3 you questions. That -- that will help the
4 Board members kind of keep this moving along.

5 MR. CHAPMAN: Okay.

6 MS. BORKOWSKI: So, --

7 TESTIMONY AND EVIDENCE

8 GIVEN ON BEHALF OF THE RESPONDENT

9 LUCILLE COLEMAN ,

10 having been called by and on behalf of the
11 Plaintiffs, and having been first duly sworn to
12 tell the truth, the whole truth, and nothing
13 but the truth, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 MS. COLEMAN : Let me say this, then I'll be
17 through. I'm doing like I do in church now.
18 I'd like to say, I am truly sorry if I outburst
19 too much, okay? But sometimes it do get to me.
20 But on Lindsey, the one that was on the report
21 that showed students wasn't in the roll book,
22 they wasn't in the roll book. You were right.
23 They wasn't there. What it is, we have so many
24 drop-outs, a lot of times that we will allow
25 students to come in and to observe to see, do

1 they want to be in this school, before they
2 sign up. I don't know how many (INAUDIBLE)
3 NACCAS, but you can only have a certain drop
4 rate. So we let them come in, we let them
5 observe. "Do you want this school? Or do you
6 want to go to another school?" I even tell
7 them about we got another -- not that we got
8 another school, but I say, "I'm also at the
9 school in Marked Tree. That's about the
10 closest school you can get to. You can check
11 this one out and check that one out, and you
12 choose which one you'd rather be at." And if
13 you'll notice -- go back in the records, the
14 name that she have that -- one of the students
15 never enrolled. And which I was glad that, you
16 know, they came, they checked it out, they
17 didn't work. But the person that we have at
18 the reception area, if they writing down that
19 they see you standing up there with somebody
20 else doing something, they'll assume, "Okay,
21 this person doing this service." You not going
22 to let a person just come in off the floor and
23 just observing, and do somebody's hair and put
24 their name on it. And anybody that got a
25 school, you know how students do. And that's

1 the reason it is so hard to talk to people that
2 doesn't have a school, because they don't
3 understand how things can happen.

4 MS. BORKOWSKI: Okay. Let's let -- let's
5 allow -- Mr. Jochums, do you have any questions
6 for this witness?

7 MR. JOCHUMS: Yes. I didn't quite follow
8 that. Are you saying that a student would be
9 in the clinic, working on somebody?

10 MS. COLEMAN: No.

11 MR. JOCHUMS:

12 MS. COLEMAN: Observing.

13 MR. JOCHUMS: They would be observing
14 somebody else do it, but the receptionist who
15 would write them down as being on the --

16 MR. CHAPMAN: See, we have a policy and --
17 we had to adopt this policy. When you're
18 talking about a Title IV school -- which we are
19 -- an accredited school, you are held under the
20 highest standards. Right along with the
21 Regulatory Board. And one of the things they -
22 - cause we -- we struggle with this. Once you
23 sign a person up on a contract, if they drop,
24 that hurts your performance rates. Which means
25 if you have one person drop, in a 1,500 hour

1 program, you have to have another person to
2 complete, to match that drop, and then have
3 another person on top of that so you don't go
4 below standard. Because if you go below
5 standard, then they'll remove you off the
6 accrediting list. They move you off the
7 accrediting list, then you're not able to
8 operate.

9 So, what we did as a policy, we allow them
10 to observe the school for 14 days. 14 business
11 days. To see if this is exactly what you'd
12 like to do. Because if you know anything about
13 young adults, they are indecisive. One minute
14 they want to be a cosmetologist, and they want
15 to own their own salon, and work at these other
16 salons. And then, they actually get in there
17 and see there's more than just cutting hair and
18 styling hair. You actually -- you have to do
19 book work, you have to do assignments and
20 things like that. Then, that gives them
21 another chance to make a decision. Because we
22 want to give them the true (INAUDIBLE) of the
23 school before they actually make that
24 commitment. And we, as an institution, we want
25 to be certain on who we're enrolling because

1 that affects the entire body.

2 MR. JOCHUMS: But then, when they do --
3 let's say after 14 days, they decide they do
4 want to be a student and they enroll, do you
5 give them credit for those 14 days?

6 MR. CHAPMAN: No. You can't.

7 MS. COLEMAN: No.

8 MR. CHAPMAN: No. They're just a potential
9 student at that point. They're just -- we
10 can't give them credit because they're not
11 registered with the Board. That's the one
12 thing. They don't have a student permit. We
13 don't have no obligation to them, as well as
14 they don't have none to us.

15 MS. BORKOWSKI: Let's allow Mr. Jochums to
16 --

17 MR. JOCHUMS: And that -- what you're
18 saying is this policy and this whole practice
19 is part of why you end up with records that --
20 that the Board --

21 MR. CHAPMAN: That's why you will see --

22 MR. JOCHUMS: -- (INAUDIBLE) --

23 MR. CHAPMAN: That's why you will see a
24 name on the --

25 MS. COLEMAN: Sometimes.

1 MR. CHAPMAN: -- on the sign-in sheet, but
2 you wouldn't see them on the Monthly Report.

3 MR. JOCHUMS: They weren't reported on the
4 Monthly Report but they were there. And that's
5 because --

6 MR. CHAPMAN: Right.

7 MR. JOCHUMS: -- they weren't students yet?

8 MR. CHAPMAN: Right.

9 MR. JOCHUMS: Okay. That's all I have. I
10 have no other questions.

11 UNKNOWN: (INAUDIBLE).

12 MS. BORKOWSKI: I'm sorry?

13 MR. JOCHUMS: I don't have any other
14 questions.

15 MS. BORKOWSKI: Are there any questions for
16 Ms. Coleman, from members of the Board?

17 MS. TURMAN: I was going to ask the same
18 question that --

19 MS. BORKOWSKI: Okay. From Ms. Coleman?

20 MS. TURMAN: Yes.

21 MS. BORKOWSKI: Okay.

22 MS. POWELL: I would like to hear the
23 explanation that you just received, first. I
24 did not grasp that. You said that the students
25 were observing for 14 days, and they are part

1 of this record that we have here, submitted.

2 MS. COLEMAN: Uh-huh.

3 MS. POWELL: Were they clocked in on a
4 card?

5 MS. COLEMAN: No, they were signed in.

6 MS. LOVE: Sign-in sheet.

7 MS. POWELL: They were --

8 MS. COLEMAN: They were in a roll book.

9 MS. POWELL: They were on a sign-in sheet.

10 MS. COLEMAN: Yes.

11 MS. LOVE: Yes.

12 MS. POWELL: They had -- did they have a
13 time card?

14 MS. COLEMAN: No.

15 MS. LOVE: No.

16 MS. POWELL: Were they entered into the
17 Smart System?

18 MS. COLEMAN: No.

19 MS. LOVE: No.

20 MS. POWELL: Was there -- the only
21 attendance that you're showing was the sign-in
22 sheet, where they signed in --

23 MS. COLEMAN: Yes.

24 MS. POWELL: -- to your facility?

25 MS. COLEMAN: Yes. And the reason you say

1 that -- the reason I did that was for the
2 simple reason -- if I tell you to come to the
3 school and you can't make those 14 days, and
4 you're going to miss two days out of 14 days,
5 then you're telling me you're not serious.

6 MS. POWELL: So, then you would have a
7 policy implemented in place -- or in place to
8 discourage them from involvement? I'm a school
9 owner. I --

10 MS. COLEMAN: Yes. I wouldn't disencourage
11 [sic] them, but I want to know if they going to
12 come or not, on a regular basis.

13 MS. POWELL: Well, --

14 MS. COLEMAN: What else, because they'll be
15 telling me some of everything.

16 MS. POWELL: Well, you just said that if
17 they don't show up, then that would tell you
18 that they were not going to be --

19 MS. COLEMAN: Serious.

20 MS. POWELL: -- participating -- a serious
21 student.

22 MS. COLEMAN: Right.

23 MS. POWELL: Okay. So, if you'd make
24 another plan to discourage them from coming, if
25 they were not going to be a serious student,

1 correct?

2 MS. COLEMAN: Yeah.

3 MS. POWELL: Okay. Well, I feel your pain.
4 I'm a school owner, as well. I know the
5 compromising positions that you can get put in,
6 when you do not have a serious student. So,
7 you're saying that this person here, that we're
8 talking about, Kelli, she -- what is her name,
9 here? Kelli Meacham. She was actually --
10 where it shows Sunday, it was truly not a
11 Sunday.

12 MS. COLEMAN: No.

13 MS. POWELL: Is that what you're saying?

14 MS. COLEMAN: No.

15 MS. POWELL: So, it's a faulty time clock?

16 MS. COLEMAN: Yeah. We're no going to work
17 on Sunday.

18 MS. POWELL: Well, I don't know. I mean,
19 she is a --

20 MS. COLEMAN: She's a instructor.

21 MS. POWELL: She's a student instructor,
22 and your facility --

23 MS. COLEMAN: Right.

24 MS. POWELL: -- was closed. So, are you
25 telling me that you would or wouldn't use your

1 facility on a Sunday, if it was --

2 MS. COLEMAN: No.

3 MS. POWELL: -- closed? You would not?

4 MS. COLEMAN: I do -- I'll be there all the
5 time.

6 MS. POWELL: Okay.

7 MS. COLEMAN: I'm there Monday, Tuesday,
8 Wednesday, Thursday, Friday, and after church.

9 MR. CHAPMAN: Madam President? You
10 mentioned about a policy to discourage a
11 student or whatever. I'm not actually clear
12 about that. I mean, if you have that policy --
13 I mean, what do you mean by that?

14 MS. POWELL: Well, I would think that if
15 you have a policy to review -- to have a
16 student to come in for a --

17 MS. CHAPMAN: Observation period.

18 MS. POWELL: -- what you're calling an
19 observation period, there should be -- if they
20 meet your standard, there would be one plan of
21 action. And if they didn't meet your standard,
22 there would be another plan of action after
23 that 14 days. Is that not true?

24 MR. CHAPMAN: Oh, okay. So, you're saying
25 "Plan of action." You -- because when you said

1 "...a policy to discourage them," I --

2 MS. POWELL: No, you said you had a policy.
3 A 14 day policy for observation. And I'm
4 saying, well, if you have this policy then you
5 would obviously have a plan of what to do after
6 the 14 days.

7 MR. CHAPMAN: Okay.

8 MS. COLEMAN: We know in about ten days,
9 basically.

10 MR. CHAPMAN: Okay. I'm misconstruing your
11 -- your words for saying "Plan of action,"
12 versus "...discouragement."

13 MS. COLEMAN: Uh-huh.

14 MS. POWELL: Well, yeah.

15 MR. CHAPMAN: I had the two confused.
16 Yeah.

17 MS. POWELL: I mean, if you've got one
18 that's coming, you're going to have one
19 technique. And if you have one that's not --

20 MR. CHAPMAN: Right. I understand it now.

21 MS. POWELL: -- you'll have another --

22 MR. CHAPMAN: I understand it now. I
23 thought you were saying --

24 MS. POWELL: Okay. So, when you have this
25 -- when you have class time, how do you -- how

1 do you define class time -- or theory class
2 time, if it's not in a roll book? How are you
3 defining that?

4 MS. COLEMAN: The clock-in time.

5 MS. POWELL: The clock-in time being what
6 time?

7 MS. COLEMAN: What they write in. The
8 clock-in time is at 8:30.

9 MS. POWELL: 8:30? Is that your class
10 theory time? Theory?

11 MS. COLEMAN: Yes, ma'am.

12 MR. CHAPMAN: Uh-huh.

13 MS. POWELL: And is that what you have
14 registered with the Board, as theory class
15 time?

16 MS. COLEMAN: Uh-huh.

17 MS. POWELL: So, are you using that class
18 time on the time cards or the Smart System, to
19 enter their theory hours, monthly, for the
20 student to obtain 180 hours?

21 MS. COLEMAN: Time card.

22 MS. POWELL: So, if the time card is not
23 accurate, then how do you enter the theory
24 time? If the -- and who enters the data into
25 the Smart System?

1 MS. COLEMAN: I do.

2 MS. POWELL: Like, -- you do? So, if the
3 student clocks in at six days -- or --

4 MS. COLEMAN: If I look at the time clock,
5 I can tell that it's off. If it said they came
6 in at 10:00 and stayed till 6:00 then, come on,
7 you can add those hours up and you know what
8 time they came in and stayed.

9 MS. POWELL: So, --

10 MR. CHAPMAN: Excuse me one second.

11 MS. POWELL: Uh-huh. Okay. So, if you
12 entered the data into the Smart System from the
13 time cards, and you're telling me the time
14 cards are incorrect, --

15 MS. COLEMAN: Uh-huh.

16 MS. POWELL: -- how do you enter correct --
17 you alter and change the time cards?

18 MS. COLEMAN: No. I don't change the time
19 card, itself.

20 MS. POWELL: So, you --

21 MS. COLEMAN: I look and see how long they
22 been there, and I could tell.

23 MS. POWELL: So, you're entering the data
24 into the Smart System based on what's on the
25 time card, correct?

1 MS. COLEMAN: Um, --

2 MR. CHAPMAN: And the roll book.

3 MS. COLEMAN: And the roll book.

4 MS. POWELL: I thought you said you didn't
5 have a roll book.

6 MS. COLEMAN: Yes, ma'am.

7 MS. POWELL: Oh. Y'all do have a --

8 MR. CHAPMAN: We do have a roll book.

9 MS. CAUDLE: A not very well kept roll
10 book.

11 MS. POWELL: Okay. How would a student
12 obtain more than eight hours in a day?

13 MS. COLEMAN: They can't. We don't give it
14 to them. And even though if it's a client --
15 and it have happened several times that if it
16 took -- if you got a slow student, and you had
17 gave this client to the slow student and you're
18 thinking, "Okay, they're going to be done at
19 4:00." Okay. I'm not going to send that
20 client out half done. So, it's basically their
21 choice. And I don't give them over eight
22 hours. I tell them, "Now, you can finish this
23 client up or whatever. What do you want to do
24 about it? You need to get through with her."
25 So, they will appear to have some that have

1 stayed over seven and a half hours.

2 MS. POWELL: So, the facility is not
3 actually shut down at shut-down time. It would
4 be --

5 MS. COLEMAN: Well, yeah. It's shut down.
6 It's closed. Can't nobody else come in. Until
7 that client is done. When that client is done,
8 she's done. But can't nobody come in. Can't
9 nobody else come in and sign in and say they
10 want to get their hair done. We stop taking
11 clients at 2:30, okay? The majority of our
12 clientele that come in, they are black. Our
13 hair take a little bit longer to do than you
14 all's hair take. So, we try to -- if they say,
15 "Roller set," and we got a thick head of hair,
16 and it's taking forever for that client to dry.
17 So what, do we send them out in rollers? Or do
18 we let them continue to dry?

19 MR. CHAPMAN: The time --

20 MS. POWELL: I think that, to answer your
21 question, if the school closes at 5:00 and the
22 student is not receiving time -- the student is
23 not receiving time, they would not be -- they
24 would not be practicing a service. I mean, it
25 would be the Director or --

1 MS. COLEMAN: Well, I guess that would be
2 on me, then.

3 MS. POWELL: It would be the school --

4 MS. COLEMAN: Because I ask them.

5 MS. POWELL: It would be the school's
6 responsibility to see that the client and the
7 student follow the guidelines of attendance and
8 services. If -- you may have to start moving
9 your last appointment up earlier. If that is a
10 --

11 MS. COLEMAN: Okay. But it's not so much
12 as the last client. It depends on that
13 individual's hair. She can go under a dryer
14 and it probably wouldn't take her ten minutes
15 to get dried.

16 MS. POWELL: Well, we can't punish the
17 student.

18 MS. COLEMAN: But you can't -- not -- but
19 it's not punishing them.

20 MS. POWELL: If it's --

21 MS. COLEMAN: They have that choice.

22 MS. LOVE: To stay later.

23 MS. COLEMAN: And most of them want to
24 stay, because they want to see the results of
25 the style that they had did.

1 MR. CHAPMAN: For example, we've got a
2 client named Ms. Wilson. She gets -- she gets
3 sodium hydroxide service, along with a color
4 application. Now, her color application is
5 semi-permanent, so it's no lifting. It's just
6 depositing. However, her sodium hydroxide
7 service -- one month, it might be fine. We get
8 her in and out by 4:30. Other times, we can't
9 get her out till 5:30 or 6:00 because her hair
10 processes different. And so, what we -- so, we
11 don't say to the student, "You have to stay."
12 It's the school's responsibility. We take the
13 person in, we're not going to send somebody out
14 with a wet head or incomplete head. And we
15 accept them in. And they came in from the time
16 frame that we took our last chemical, we still
17 would let them get a complete service. Now, we
18 don't penalize the student. We don't take the
19 hours away. If it goes over that time, we tell
20 them, "You are only allowed to clock eight
21 hours per day. However, if you want to see the
22 end results, you can stick around and stay, and
23 you can participate if you'd like to." So, we
24 don't penalize the student but we know that you
25 can't go over the eight hours.

1 MS. POWELL: In that eight hours, do they
2 receive lunch, as well?

3 MR. CHAPMAN: Yes, ma'am. They receive a
4 30 minute lunch and two 15 minute breaks.

5 MS. POWELL: Do they not clock out for
6 lunch?

7 MS. LOVE: Yes, they do.

8 MR. CHAPMAN: They clock out for lunch.

9 MS. LOVE: (INAUDIBLE).

10 MR. CHAPMAN: (INAUDIBLE).

11 MS. TURMAN: Ms. Coleman, --

12 MS. POWELL: Ms. Turman?

13 MS. TURMAN: Thank you, Madam President.

14 Ms. Coleman, I just want a clarification. You
15 stated that you work have of your time at
16 Marked Tree; is that correct?

17 MS. COLEMAN: Uh-huh.

18 MS. TURMAN: But you're -- now, you just
19 stated that you're at that school seven days a
20 week.

21 MS. COLEMAN: I am. But I leave -- you know
22 what --

23 MS. TURMAN: Okay. That's what I wanted.
24 I want you to just clarify.

25 MS. COLEMAN: You know what? I will. I'm

1 a workaholic.

2 MS. TURMAN: Okay.

3 MS. COLEMAN: My dad was, and my grandmama
4 was, too. Okay.

5 MS. TURMAN: So, you --

6 MS. COLEMAN: I've worked two jobs and
7 three jobs, all my life.

8 MS. TURMAN: Okay. I just wanted to
9 clarify that. Thank you.

10 MS. BORKOWSKI: And you had a question?

11 MS. WEST: Yes, I did. I just wondered, in
12 the scheduling of appointments, when I visit a
13 school for services, they ask me what I want to
14 do -- what I want to have done. And if it is
15 going to exceed their time, when they can't
16 take me, then they'll ask me to come back the
17 next day. And that might be a solution, so
18 that you can -- you know, because we -- we are
19 school-driven, not client-driven. And as a
20 school. And I'm thinking that that might be a
21 solution to your problem.

22 MR. CHAPMAN: Ms. Board Member -- Ms. West,
23 I have a question. I have no problem with
24 doing that. And we -- we've tried -- like with
25 Ms. Wilson, we've tried to do that. But if you

1 could give a recommendation on -- like this
2 person, when they get their chemical service,
3 it's so inconsistent. We even took her at,
4 like, 10:30 in the morning one time.

5 MS. COLEMAN: Uh-huh.

6 MR. CHAPMAN: And it still went past 4:30.
7 I mean, so how -- how do you address -- what
8 would you recommend that that person do? It
9 appears with her, time is not consistent, as
10 far as her hair processing and actually being
11 right. But that's not truly reflective on the
12 majority of our customers, but just that one I
13 know particularly. And she comes, like, every
14 eight weeks.

15 MS. WEST: The only thing that I can say is
16 that you are adhering to rules of the community
17 -- of the Board and the -- you know, how the
18 school does it. And you would just tell --
19 tell her, now, that she -- in other words, you
20 need to start on her maybe at 9:00 or 8:00 or
21 something like that, if you want to do --

22 MS. POWELL: It may take two days to do
23 her.

24 MS. WEST: Yeah. It may take two days.

25 MS. POWELL: She'll have to go home and

1 come back.

2 MS. WEST: Because you are at -- you are at
3 the mercy of the rules, and not of the
4 customer. A salon -- a salon owner, like a lot
5 of our people are, they are at -- they do it
6 for the customer. As a school, you are
7 accommodating the students. And that is our
8 concern.

9 MR. CHAPMAN: Okay. I agree with that. I
10 concur. The question I have, when the --
11 because if we could go turn around and
12 implement that, and our objective is to follow
13 the guidelines of the Board, of course, but
14 when the student -- what do you do or how can
15 we actually get our hands into it when it runs
16 over? And if it runs over 4:30, we have the
17 students stop, but how do we train them to
18 continue the service in a salon, to give them
19 the actual situation?

20 MS. WEST: I would say, again, that you
21 handle it through the customer. In other
22 words, you tell the customer that the students
23 cannot work past a certain time.

24 MR. CHAPMAN: Okay.

25 MS. TURMAN: May I ask? Is there an

1 instructor there -- if the student wants to go
2 home, is there an instructor there, to take
3 over and follow through with the procedure?

4 MS. COLEMAN: Uh-huh.

5 MR. CHAPMAN: Yes, ma'am. See, like
6 myself. Here's one of the -- here's one of the
7 common comments that I get. They say, "Dr.
8 Chapman, we know you know how to do color, you
9 know how to do clipper cuts, fades, and all the
10 things like that." And in the middle of a
11 chemical service, I can get the end result.
12 But to try to show them -- if I'm doing my
13 shut-down time at 4:30, and I brought -- we did
14 Ms. Wilson, I know, on four different occasions
15 within the last 18 months. We tried her at
16 2:30, went over. Pushed her all the way to
17 1:00, went over. I said, "Now, I'm going to
18 fix her." "You've got to come in at 10:30."
19 Came in at 10:30, she fixed me. We still went
20 over. So, what I'm understanding is that what
21 we need to do is just -- probably just
22 recommend that Ms. Wilson go to a salon because
23 it's going to cause a conflict with the
24 Regulatory Board.

25 MS. POWELL: You should open and shut, at

1 open and shut times. You should -- you're
2 responsible to the student. You're there to
3 protect the student's interests. The clientele
4 is secondary.

5 MS. COLEMAN: Right.

6 MR. CHAPMAN: Right. That's not -- that's
7 paramount. The students is paramount. Because
8 as we have dual philosophy, our first
9 philosophy is following the regulation
10 guidelines of the Board. And also to our
11 commodity, as a student. Where they say they
12 want to see the end result or how to handle
13 certain situations, so now we're not privvy to
14 the information if it runs over because we
15 can't show them that. We've just got to shut
16 it down at 4:30. And I guess we'll just
17 recommend her to one of our friends that have a
18 shop in town.

19 MS. COLEMAN: No, we won't.

20 MS. POWELL: Okay. The Director wanted to
21 make a comment.

22 MS. WITTUM: I would like to comment, Ms.
23 Coleman, to your comments earlier about the
24 unfair practices. It's been told to me, since
25 I've been here, that the schools have been

1 unfairly treated over the last few years. And
2 I don't doubt that that may be true. My goal
3 is to change it to a fair system. I don't want
4 any one school feeling like they are -- they're

5 MS. COLEMAN: Picked on.

6 MS. WITTUM: -- a target of the Board.
7 That's one of the reasons why I made the choice
8 to have Sheila do all of the inspections, right
9 now. She can get us to a consistent structure
10 that all of the schools will -- will
11 experience. And she will help me to learn what
12 all of the schools are doing that maybe need to
13 be addressed or even rewarded in some way. I
14 mean, I know that there are a lot of you out
15 there who are doing everything right or the
16 majority of you work right. And we all need to
17 be recognizing of that.

18 MS. COLEMAN: Okay. But you say you've got
19 Sheila doing that. Sheila is the one that,
20 when I was working in Marked Tree, was hitting
21 Marked Tree this day. And then the next day,
22 came to my school, and it was two different
23 things.

24 MS. CAUDLE: May I add to that?

25 MS. COLEMAN: And it's to same blasted

1 sheet.

2 MS. CAUDLE: The way that it has been done
3 in the past --

4 MS. COLEMAN: Uh-huh.

5 MS. CAUDLE: -- is, if we had a complaint,
6 someone called us, then we went out and done a
7 full school audit. On the schools that we
8 didn't have a complaint on, we didn't do school
9 audits. Now the way it's done, when I go into
10 each individual school, I check each individual
11 school's records at every school that I've been
12 to. I also talk to students at every school
13 that I've been to. It's a general
14 questionnaire. And everything is done exactly
15 the same now, and it's not done on a complaint-
16 generated basis.

17 MS. COLEMAN: So, you're telling me that
18 sheet that you check off, that says that --

19 MS. CAUDLE: The inspection --

20 MS. COLEMAN: -- that it doesn't even
21 matter?

22 MS. CAUDLE: The inspection form is not
23 even the same.

24 MS. COLEMAN: It doesn't -- but it doesn't
25 even matter.

1 MS. CAUDLE: The inspection form is not
2 that anymore. It's a totally different
3 inspection form. Ms. Love, didn't you make a
4 copy --

5 MS. LOVE: Yes, I did.

6 MS. CAUDLE: -- the other morning, when I
7 was there --

8 MS. LOVE: Yes, I did.

9 MS. CAUDLE: -- to give to Ms. Coleman?

10 MS. LOVE: Yes. She has it.

11 MS. WITTUM: We tailored an inspection --
12 or we prepared an inspection report --

13 MS. CAUDLE: It's been tailored --

14 MS. WITTUM: -- that strictly addresses
15 school issues.

16 MS. CAUDLE: Only.

17 MS. WITTUM: In the past, they were using
18 the inspection report that was for
19 establishments, for the schools. And it wasn't
20 consistent. The issues that are in a school
21 are not necessarily the ones in a salon. So,
22 we prepared one that would strictly address
23 just the school issues.

24 MS. COLEMAN: Okay. You know I was a
25 school owner for 17 years. And it was just

1 these last -- what -- six years? I mean, 16
2 years, everything was A-okay. And then all
3 Hell broke out. And I can't understand it.
4 Well, but it's okay. Because I see some
5 changes is trying to be made, so it's okay.
6 And I do love you.

7 MS. CAUDLE: I love you, too.

8 MR. JOCHUMS: May I ask Dr. Chapman?

9 MR. CHAPMAN: Yes, sir?

10 MR. JOCHUMS: What is the goal number of
11 students you'd like to have, for both education
12 and also financial success and try to maintain
13 throughout a year. Do you have some kind of
14 business plan?

15 MR. CHAPMAN: A comfortable goal to run it
16 effectively could be anywhere between 20 and
17 60, at the size of our location. Blytheville
18 is more of a rural town. So, that is a quota,
19 per say. An ideal number, 35. And you know, a
20 striving number, 60.

21 MS. COLEMAN: Yeah.

22 MR. CHAPMAN: Because we've got even --
23 we've got students coming from as far as
24 Memphis, Caruthersville, Dyersburg, I mean --

25 MS. POWELL: Okay.

1 MR. CHAPMAN: I mean, it's a 45 minute
2 drive. You know, because see, as Marked Tree
3 where she teaches at is a state-run school, and
4 they go under the state -- what the state
5 offers. And then it gets that there's a
6 certain amount of people they can take in.
7 Then it has to go to the private sector, then
8 that's where we come in and these other schools
9 come in.

10 MR. JOCHUMS: Also, how many students to
11 have resident?

12 MR. CHAPMAN: Right now, 25, 28, --
13 Something like that.

14 MS. LOVE: (Inaudible) -- 21.

15 MR. CHAPMAN: And we're constantly growing.

16 MR. JOCHUMS: Okay. That's fine.

17 MS. BORKOWSKI: Do you have any testimony -
18 - I know it's kind of spilled over, but do you
19 have additional testimony? And I know you have
20 one more witness. Dr. Chapman, do you yourself
21 --

22 MR. CHAPMAN: Yes. I want to --

23 MS. BORKOWSKI: Do you yourself have
24 anything, at this time?

25 MR. CHAPMAN: Yeah. I want to make a

1 comment. On the opening statement, I wasn't
2 really sure, at that time, what you -- because
3 I --

4 MS. BORKOWSKI: Okay.

5 MR. CHAPMAN: I watch my favorite show
6 called The Practice. Opening statements.
7 Okay, I can kick one now.

8 (LAUGHTER.)

9 MR. CHAPMAN: My opening statement was:

10 We're here to address some concerns, some
11 revelations that the Regulatory Board has, and
12 to insure some comfort. And one of the things
13 that we have done is -- we was up for re-
14 certification, the NA ** Accrediting Body came
15 into the school and the school owner, you know
16 that you paid \$4,500 just for that team to come
17 through there. And there was only one
18 limitation. And that limitation was what's
19 called the Easy Audit. Our auditor didn't have
20 it on the site, where we could retrieve it.
21 And he was out of town, so we couldn't call
22 him, so they had to write up a limitation. And
23 we went to the Department of Education, and we
24 didn't have any limitations, as well. So, as
25 we are a good school striving to be better, we

1 just want to give your inspector and the Board
2 the true climate of the way our school
3 actually, really operates.

4 Because one objective is, we want to
5 prepare people for a profession, to go out and
6 work, and be marketable in the community and --
7 as well as being a business owner, we want them
8 to stay in business, as well.

9 But we're not here not trying to comply.
10 Even with the Order that we have. And we, as a
11 team, address the issues and try to -- because
12 we have to give the Board some idea of what
13 actually -- what she's seeing, based on what's
14 actually what is happening. And she has some
15 things that she's not sure about. She said she
16 didn't know there was a problem with the time
17 clock. And I took the blame for it. Maybe I
18 should have -- not maybe. I should have sent a
19 letter to the Board saying, "We've got a
20 problem with this time clock and here's our
21 plan of improvement." Because like I said, we
22 spent over \$2,500 for that Smart Clock. That's
23 expensive by itself. So, my testimony is,
24 we're not here to just really cause a problem
25 and have it -- like Ms. Coleman, we've been in

1 business for over 17 years. And any
2 uncomfortability [sic] that the Board has, we'd
3 like to bring comfort and shed that.

4 And we do -- if you want to see some
5 pictures of some statements about students.
6 Students made comments about -- or statements
7 stating that they knew that the time clock was
8 messed up and things like that. If the Board
9 would like to see it, --

10 MS. BORKOWSKI: These were supposed to be
11 admitted as exhibits?

12 MR. CHAPMAN: Yes.

13 MS. BORKOWSKI: Will you allow Mr. Jochums
14 to have a look at that? And if he has no
15 objection, we'll admit those.

16 MR. CHAPMAN: Sure.

17 MS. BORKOWSKI: And Mr. Jochums, do you
18 have any questions for Dr. Chapman?

19 MR. JOCHUMS: I have no -- he -- we
20 addressed the questions I had.

21 MS. BORKOWSKI: Okay. Do members of the
22 Board have questions for Dr. Chapman?

23 MS. POWELL: Dr. Chapman?

24 MR. CHAPMAN: Yes, ma'am.

25 MS. POWELL: You said that you had a NAACAS

1 review?

2 MR. CHAPMAN: Yes, ma'am.

3 MS. POWELL: When was that?

4 MR. CHAPMAN: That was November 5, 2005.

5 MS. POWELL: Did you have any limitations?

6 MR. CHAPMAN: We had one.

7 MS. POWELL: Oh. The one you were speaking
8 of?

9 MR. CHAPMAN: Uh-huh.

10 MS. POWELL: Okay.

11 MR. CHAPMAN: And that was the Easy Audit.

12 They contacted graduates, employer of
13 graduates. They looked at the survey. They
14 looked at the Advisory Board minutes. They
15 talked to current students. They talked to
16 clientele that was there that day. Observed
17 the class that was in a classroom, I think, the
18 entire time.

19 MS. POWELL: Okay. So, they were there
20 actually during the time you're talking about,
21 here in November and October?

22 MR. CHAPMAN: Uh-huh.

23 MS. POWELL: And they've reviewed the
24 records of student files for those times?

25 MR. CHAPMAN: Uh-huh. And when Ms. -- I'm

1 sorry.

2 MS. POWELL: Was there any mention of a
3 time clock issue?

4 MR. CHAPMAN: No, ma'am. They even went
5 through the Smart System. They asked about the
6 -- about the time clock, with the Smart Time
7 Clock. We said we hadn't purchased it yet, but
8 that was on our Advisory Board minutes to do in
9 the next school year, which was 2006, that we
10 were going to purchase the time clock.

11 MS. POWELL: Okay. And when Ms. Caudle
12 came in to do the inspection, on November 9,
13 2005, did you let her know that the time clock,
14 at that time, was not functioning?

15 MR. CHAPMAN: Ms. Love did. And she said
16 she doesn't recall.

17 MS. POWELL: Thank you.

18 MR. JOCHUMS: Let me ask a question.
19 Stapled in here is a time card, it looks like.
20 What is this meant to show? I'm just curious.

21 MS. LOVE: May I speak?

22 MR. JOCHUMS: Sure, if you know what the
23 answer is.

24 MS. LOVE: We just put it in there just to
25 verify that we did get a new time clock and

1 that it was working.

2 MR. JOCHUMS: Oh, I see.

3 MS. LOVE: We also changed the time cards.

4 It was kind of confusing to students where it
5 said Monday, Tuesday, Wednesday, so forth.

6 We've ordered time cards now that say Wednesday
7 through -- we felt like that would be an
8 additive. And when we changed from daylight
9 saving time, we realized that the clock was
10 going back four days. It was totally off. And
11 we did make notation. And I do apologize, I
12 did not bring it to your attention. I put it
13 on the time clock. And when the inspector come
14 to class, the last initial inspection, she did
15 talk to the students. Several of the students
16 asked her if that would be held against them
17 when they come to Board. Because the time
18 clock was messed up. They did ask that
19 question when she come in to talk to the
20 students, on her last visit.

21 MR. JOCHUMS: Okay. And let me ask anyone
22 who knows the answer. This sort of documents
23 also in here. What -- what --

24 MS. LOVE: It's just one of the new forms.
25 The inspector told me to bring in the new forms

1 in, that we had started implementing.

2 MR. JOCHUMS: Oh, okay.

3 MS. LOVE: And I just included it in, to --
4 I had showed it to her prior.

5 MR. JOCHUMS: Based on my review, most of
6 this is pictures of what you've fixed. And
7 since we -- I think we've accepted that --

8 MR. CHAPMAN: Yeah.

9 MR. JOCHUMS: -- you've fixed it, at the
10 risk of costing the Board more money to make
11 copies of these, I'd just as soon not --

12 MR. CHAPMAN: You don't have to. But the -
13 -

14 MR. JOCHUMS: You can put this in if you
15 think --

16 MR. CHAPMAN: It can come out of there.

17 MR. JOCHUMS: I think what you really
18 wanted the Board to see were these handwritten
19 letters from the three students. I certainly
20 have no objection to us making those part of
21 the record, and sharing --

22 MS. BORKOWSKI: Okay.

23 MR. JOCHUMS: -- those with the Board
24 members.

25 MS. BORKOWSKI: Those three pages will be

1 admitted as Respondent's Exhibit "A".

2 (WHEREUPON, Respondent's Exhibit "A" to
3 HO#06-084 was marked for identification and
4 admitted into evidence without objection.)

5 MS. BORKOWSKI: And we'll pass those
6 around. Do y'all need copies of these back?

7 MS. LOVE: No. We have copies.

8 MR. CHAPMAN: No.

9 MS. BORKOWSKI: Okay. Okay. Do you have
10 an additional witness? Do you -- does Ms. Love
11 have any testimony?

12 MS. COLEMAN: No.

13 MS. BORKOWSKI: No? Do you wish to make a
14 closing statement?

15 MR. JOCHUMS: Just briefly. This is a
16 matter that comes before you on this issue of,
17 basically, records. In many hearings, and the
18 other ones we've had today, there's been a
19 recommended decision. A recommended fine or
20 other penalty. I don't think the Executive
21 Director has a recommendation in this case.
22 The situation is that this is a school that is
23 on probation, as we speak. There's no real
24 dispute that the records are goofed up. And
25 the issue now for you is what to do about that.

1 Whether there should be additional sanctions.
2 I don't have a personal recommendation on that.
3 I think this is within the Board's discretion
4 on how to handle this situation. But I do --
5 as I listened to these testimony, I don't
6 believe -- and I understand there's been
7 explanations for how the records got off. But
8 there certainly have been -- I believe one of
9 the witnesses said they weren't disputing what
10 the inspector found. And I think that, that
11 being the case, we do have a record-keeping
12 violation. How serious it is or how you want
13 to deal with it is, I think, the Board's
14 discretion, and I won't make a suggestion as to
15 that.

16 MS. BORKOWSKI: Okay. Dr. Chapman? Ms.
17 Coleman? Do either of you wish to make a
18 closing statement to the Board? Or is there
19 any testimony or statements that have -- that
20 you need to get in the record before we move
21 on?

22 MR. CHAPMAN: Yes. I'd like to make a
23 closing statement. I'd like the Board to
24 respectfully request our gallant attempts on --
25 once we recognized the problems, how we did our

1 plan of improvement. The first plan of
2 improvement was to recognize the problem, then
3 let the inspector know that she doesn't
4 recollect. And then, we went out and bought a
5 new time clock right away, because the Smart
6 Time Clock would take time to come in, before
7 they actually ship it. So, our objective is to
8 keep striving to stay in compliance with the
9 Regulatory Board.

10 MS. BORKOWSKI: Okay. At this time, we
11 will now -- the record will be closed and
12 complete, except for the Board's recess for
13 deliberation and decision. Again, I point out
14 that these proceedings are subject to the
15 Freedom of Information Act and, as such, the
16 deliberations of the Board are open to the
17 public, although they are not transcribed and
18 made part of the record. We are now off the
19 record for deliberations.

20 (WHEREUPON, the Board deliberated and
21 proceedings resumed as follows, to-wit:)

22 MS. BORKOWSKI: Okay. We're back on the
23 record. The Agency attorney would like to make
24 the record reflect something.

25 MR. JOCHUMS: Actually, I'd like to reflect

1 that the -- there was an outburst from the
2 Respondent of record, Lucille Coleman, one of
3 the owners, that she exited herself. And I
4 think that, for the benefit of everybody, we
5 may as well have this whole discussion on the
6 record so everybody will know exactly what was
7 said during our deliberations.

8 MS. BORKOWSKI: If there's no objections
9 from members of the Board, we will continue to
10 have deliberations on the record.

11 (No response.)

12 MR. KEENE: Do you want me to restate --

13 MS. BORKOWSKI: No.

14 MR. JOCHUMS: No. Just continue from where
15 we were.

16 MR. KEENE: I do feel that, like I said,
17 the probation needs to be extended and a fine
18 does need to be apposed. I personally feel
19 that, in the -- after that time period or
20 during that time period, if something were to
21 happen again, further action, a more severe
22 action needs to be taken. Because these
23 students are not being treated fairly if -- if
24 this is a consistent basis. I wouldn't want to
25 see anything more than that happen right now,

1 to this school. Because as they've already
2 said, this is the only school in the area. And
3 you do anything more than a fine or a probation
4 to this school, it's going to, right now, make
5 a hardship on the students in the area.

6 MS. POWELL: Ms. Turman?

7 MS. TURMAN: I agree with what Cliff is
8 saying. We have got to try to maintain and
9 make sure we have students that -- need to be
10 educating students to be productive citizens,
11 and go out in the workplace. That's what we're
12 all about. And we're all trying -- there may
13 have been things that happened in the past, but
14 right now, we're trying to correct things that
15 did happen in the past. All we can do is go
16 forward. And I'm not saying there was things,
17 like Kathy said earlier, that happened that
18 shouldn't have happened. But let me assure
19 you, this Board now is going forward. And
20 those kids -- those students pay money. They
21 have to be educated. And if they're not
22 educated, then it isn't fair to that consumer
23 when they go out and -- and in the workplace.
24 How are they going to pass the State Board?
25 So, we are going forward. We are trying to be

1 fair and consistent. And that's what this
2 Board is all about. And I agree with what
3 Cliff was saying.

4 MS. POWELL: Do we have a motion?

5 MS. TRAYLOR: We don't have a base or
6 anything on this, do we?

7 MR. CHAPMAN: Is this closed to us, or is
8 it just -- is it open -- can we make a comment?
9 Or is it closed to us?

10 MS. BORKOWSKI: It's still -- it's still
11 closed. They're in deliberation. It's just
12 being -- we are making a record of the
13 deliberations, but it's closed to testimony and
14 statements, and comments. Unless the Board
15 tells me otherwise, I'm confined to that.

16 (PAUSE.)

17 MR. KEENE: I'll make a motion. Finding
18 the allegations being true, I move to order the
19 Respondent to pay a fine in the amount of
20 \$500.00 and license be put on probation till
21 January 2010. The \$500.00 will be payable
22 within 30 days of receipt of the Board's order.
23 Further, the Respondent is ordered to cease and
24 desist from operating the cosmetology
25 establishment until such time the Respondent is

1 properly licensed -- I'm sorry. Wrong one.

2 MS. COLEMAN: No, but y'all gonna --

3 MR. KEENE: And continuing for a period of
4 90 days from the date the Respondent
5 relinquishes her license to the Board.

6 MS. GORDON: I second that.

7 MS. POWELL: I have a motion and a second.
8 All those in favor?

9 (No response.)

10 MS. POWELL: All right. Is there any
11 discussion? Any further discussion? All those
12 in favor of the motion, raise your right hand.

13 (Show of hands.)

14 MS. POWELL: All those opposed?

15 (Show of hands.)

16 MR. JOCHUMS: Two.

17 MS. POWELL: Any abstentions? I have an
18 abstention, correct?

19 MR. JOCHUMS: We had a recusal.

20 MS. POWELL: One recuse? Okay.

21 MS. WEST: And I abstain.

22 MS. POWELL: And an abstention. I'm sorry.

23 MR. JOCHUMS: So, it's four to two?

24 MS. POWELL: The motion carries. The
25 school will be put on probation until January

1 of 2010, with a civil penalty of \$500.00.

2 MS. BORKOWSKI: This decision will be
3 reduced to writing and service will be made
4 upon the Respondent. If the Respondent cares
5 to appeal the decision, appeal can be taken
6 under the administrative procedures act for any
7 specific provision provided in the statute,
8 pertaining to this Board. If there are no
9 other questions or comments, this hearing is
10 concluded and the record is closed.

11 MR. JOCHUMS: Okay. We have one other.
12 There's nobody here, so we can do a default
13 hearing.

14 MS. POWELL: Okay.

15 MS. TRAYLOR: Do what?

16 MS. POWELL: A default hearing. We're
17 going to move forward.

18 ORDER AND NOTICE OF HEARING #06-118

19 MR. JOCHUMS: This is H-0-0-6-1-1-8, in the
20 matter of Cedric Crutchfield. I'm going to
21 just have -- I understand Mr. Crutchfield is
22 not here and hasn't signed this?

23 MS. WITTUM: Right.

24 MR. JOCHUMS: I'm going to ask a couple of
25 questions of Kathy and then we'll move to

1 Inspector Morgan. Madam Hearing Officer, I'd
2 like to make the letter from Ms. Wittum and the
3 accompanying hearing order and attached
4 inspection report that's two pages long as
5 Exhibit "A" in the record.

6 MS. BORKOWSKI: So noted.

7 (WHEREUPON, Agency's Exhibit "A" to HO#-06-
8 118 was marked for identification and admitted
9 into evidence without objection.)

10 MR. JOCHUMS: Let me ask Kathy. Has the
11 notice been mailed to Mr. Crutchfield at the
12 address of 2805 Tatum Road?

13 MS. WITTUM: Yes, it has.

14 MR. JOCHUMS: And was that received by him?

15 MS. WITTUM: We do not have a certified
16 card showing that he accepted it.

17 MR. JOCHUMS: Okay. But it was mailed to
18 him in more than adequate time for him to be
19 here?

20 MS. WITTUM: Yes.

21 MR. JOCHUMS: Have you or your staff
22 received any letters or phone calls or requests
23 for continuance?

24 MS. WITTUM: No.

25 MR. JOCHUMS: Okay. With that I want to

1 state that the Board could make a finding that
2 the Respondent is in default and we will
3 proceed with some testimony. Before I give
4 that testimony, as an opening statement, let me
5 explain that this matter involves joint
6 inspections of a number of entities, which the
7 witness will tell us about shortly, including
8 the Little Rock Police Department, the Barber
9 Board, the Cosmetology Board, and I think the
10 Zoning Police, whatever they're called, --

11 MS. WITTUM: City officials.

12 MR. JOCHUMS: -- city officials, of an
13 unlicensed establishment. And the charge is
14 having a salon without a license.

15 Now, with that background, Inspector
16 Morgan, --

17 (Witness sworn.)

18 TESTIMONY AND EVIDENCE

19 GIVEN ON BEHALF OF THE BOARD BY

20 BRENDA MORGAN ,

21 having been called by and on behalf of the
22 Plaintiffs, and having been first duly sworn to
23 tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. JOCHUMS:

3 Q Were you one of the lucky people that got to go --
4 did you have occasion on March 30 of this year --
5 perhaps a little later than that. On April 6th of this
6 year, to make the inspection that led to the hearing
7 today?

8 A Yes, I did.

9 Q And are you aware that prior to that date, the
10 Board was contacted by the Little Rock Police and other
11 officials with regard to this location?

12 A Yes, I am.

13 Q Okay. And the director assigned you to go with the
14 joint inspection, is that correct?

15 A Yes, sir.

16 Q Tell us about that day, what you saw and what
17 occurred.

18 A This was on April 6, on a Thursday afternoon. We
19 were working a complaint that was given to Kathy from
20 the Little Rock Police Department. I believe a neighbor
21 had complained about goings-on there and knew that they
22 were doing hair. It was 2805 Tatum Road, Little Rock.
23 Charles Kirkpatrick from the Barber Board, the Little
24 Rock Police Department had three officers there, and a
25 housing or zoning person from Little Rock was also

1 there.

2 We arrived about 2:30 in the evening, I knocked the
3 door. On the second door, a young Afro-American [sic]
4 gentleman answered the door. I introduced myself, as
5 did all the other people in my group. I explained why
6 were there because of the complaints reported to the
7 police department about a salon set up at this home.
8 Mr. Crutchfield, is the person that did answer the door.
9 He denied the information, however, he did share with us
10 that he did wigs, that he liked to style, cut, and color
11 them. I asked him would he show us the room in which he
12 does that wigs. And he asked me did he have to. The
13 Little Rock police officer informed him that there was
14 not a warrant at that time, but there could be one
15 gotten if we needed to him and he did advise him to
16 cooperate with us. He did let us in his home. He took
17 us through the home to a small room. Adjacent to it
18 there was a kitchen and a private den area. It was a
19 little room to the side and there was a young Afro-
20 American [sic] lady sitting in a hydraulic hair having
21 curls by a Marcel iron being done to her hair. He
22 immediately started telling me that this was his sister.
23 And there were some other people in the den area where
24 there was a television and sofas and chairs and he told
25 me that -- there was probably three or four people in

1 there. He said that one was his mother and some nieces
2 that were the people in the room. The room was
3 overwhelming to me. It was very, very small, but there
4 was many items in the room and it convinced me that
5 services were being done. There was a hair dryer, hair
6 style with a hood, there were Marcells irons that was
7 hot, and an iron. There were clippers, combs, brushes,
8 rollers, scissors, spray gels, and dirty towels. The
9 trash can was full of rubber gloves, cut hair, trash,
10 and an empty relaxer jar. The entire floor had all
11 different colors of hair on it that had been cut
12 previously. There was a stack of wigs there and I saw
13 no wig forms or wig heads. There was a makeup case,
14 which he said he did apply facial makeup to people. He
15 denied having a salon, but he did say that he did do
16 wigs for friends and family. And he admitted that he
17 held no license for Cosmetology or Barbering and that he
18 had had no formal training. In my opinion, with what I
19 saw, he was performing all phases of cosmetology
20 services.

21 Q Now, under that law that you're employed to
22 enforce, does the art of cosmetology include coloring
23 and beautifying wigs?

24 A Yes, sir. It does.

25 Q Is there anything else that you think the Board

1 ought to know about this particular location that you
2 visited?

3 A Yes, sir. About two years ago, I was sent out to
4 the same location. I never got anyone to answer the
5 door because I was alone and I didn't have the Little
6 Rock Police with me so I didn't expect them to open the
7 door.

8 Q Okay.

9 MR. JOCHUMS: I have no other questions of
10 the witness.

11 MS. BORKOWSKI: Are there any questions of
12 the Inspector from members of the Board?

13 (No response.)

14 MS. BORKOWSKI: Do you have a closing
15 statement?

16 MR. JOCHUMS: I think that the testimony
17 here that cites what the Inspector has reported
18 to you is ample to prove that we've got a
19 barber shop or salon, one or the other, but --

20 MS. TRAYLOR: Maybe both.

21 MR. JOCHUMS: -- neither with a license,
22 unlicensed by any regulatory entity. And in
23 this particular case, it would be appropriate
24 for the Board to consider imposing the maximum
25 civil penalty of \$1,000.00.

1 MS. TRAYLOR: He doesn't have anything we
2 can take away from him.

3 MR. JOCHUMS: Yes, that's true.

4 MS. TRAYLOR: He has no license.

5 MR. JOCHUMS: That's true.

6 MS. BORKOWSKI: Do you want to go off the
7 record for deliberations or stay on?

8 BOARD MEMBERS: (In unison) Stay on.

9 MS. TRAYLOR: Finding the allegations being
10 true, I move to order the Respondent to pay a
11 fine in the amount of \$1,000.00, payable within
12 30 days of receipt of the Board's order.
13 Further, the Respondent is ordered to cease and
14 desist from practicing cosmetology or barbering
15 until such time as the Respondent is properly
16 licensed in this state.

17 MS. WEST: I second.

18 MS. POWELL: I have a motion and a second.
19 All those in favor, raise your hand.

20 (Show of hands.)

21 MR. DOWNEY: We need to add a \$25.00
22 administrative fee.

23 MS. TRAYLOR: Yeah. We need to add a
24 \$25.00 administrative fee on that.

25 MS. WITTUM: So it would be \$1,025.00?

1 MR. DOWNEY: No, not the penalty. That's
2 administrative costs.

3 MS. TRAYLOR: We add it to some of them.

4 MR. DOWNEY: It's an administrative costs.
5 It's not the penalty.

6 MS. WITTUM: I'll look into that.

7 MS. TRAYLOR: If you can, add it on.

8 MS. POWELL: It's unanimous.

9 MS. BORKOWSKI: Let the record reflect that
10 the decision of the Board was unanimous and the
11 decision made will be reduced to writing and
12 served or attempted upon all parties.

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

16 MS. POWELL: The meeting is adjourned and
17 the meeting will resume at 1:30.

18 (WHEREUPON, a short break was taken and
19 proceedings resumed as follows, to-wit:)

20

21

22 MS. POWELL: Now we'll move forward.

23 MR. JOCHUMS: These people have waived
24 their right to a hearing and paid the amounts
25 in the right hand column of your agenda.

1 MS. POWELL: At this time, I need a motion
2 to approve the three cases.

3 MR. DOWNEY: Madam Chairman, I make that
4 motion.

5 MS. GORDON: Second.

6 MS. POWELL: All those in favor, raise your
7 hand.

8 (Show of hands.)

9 MS. POWELL: Motion carries. It's
10 unanimous.

11 Our next item of business is petitions to
12 address the Board.

13 MS. WITTUM: Due to her accountant not
14 being able to be present, we won't be hearing
15 from Scottie Burchett. Donna Horn on the issue
16 of the mobile spa is not present. And Angela
17 Frierson was scheduled to address the Board on
18 the Cosmetology Apprenticeship Program and she
19 is not here, as well.

20 That moves us back to the Scope of the
21 Practice for Aestheticians and Electrologists,
22 the Committee Report. There are several items
23 of discussion from the committee.

24 MS. POWELL: The issues on hair removal and
25 microderm abrasion, chemical peels and other

1 things are currently in electrolysis you have
2 to be an electrology practitioner to use the
3 laser as an approved apparatus. Aestheticians
4 and cosmetologists are not, according to our
5 statutes are not to use lasers. I wanted to
6 say also that the committee -- based on our
7 addressing the questions.

8 What is the scope of practice for
9 aestheticians as currently defined? 17-26-
10 102(a)(1) defines "aesthetician" as any person
11 who engages in the practice of beautifying the
12 face, neck, arms, bust, or upper part of the
13 human body by massaging, cleaning, or
14 stimulating the face, neck, arms, bust, or
15 upper part of the human body by means of hands,
16 devices, apparatus, or appliances, with or
17 without the use of cosmetic preparations,
18 antiseptics, tonics, lotions, and creams.

19 As we started to clarify, our question is
20 does the definition include hair removal
21 through tweezing and waxing?

22 The answer is "yes."

23 Does this definition include hair removal
24 through the use of lasers? The answer is "no."

25 The clarification the committee wanted

1 clarification on the use of light waves,
2 commonly known as waves and what that means
3 from a legal standpoint.

4 Can an aesthetician employ the use of laser
5 while working in a physician's office?

6 The committee has determined that the
7 answer to this questions depends on the
8 capacity in which the aesthetician chooses to
9 perform services. The answer is "no", if the
10 licensed institution chooses to operate in this
11 professional capacity. In this case, a
12 licensed institution will display his/her
13 aesthetician license and advertise
14 himself/herself as such, doing so as the
15 licensed aesthetician under the jurisdiction of
16 the State Board of Cosmetology thus rendering
17 him/her accountable to the Cosmetology Board
18 and the Board's Rules and Regulations. The
19 answer is "yes", if the licensed aesthetician
20 chooses to disregard his/her institution
21 license. In this case, the licensed
22 institution would not display his/her license
23 or advertise himself/herself as such. This
24 would place the institution completely under
25 the physician's umbrella and make him/her

1 subject to the Arkansas Medical Board's
2 requirements under regulation 22, which permits
3 a physician to currently supervise a person to
4 operate a laser within the clinic. In this
5 case, the State Board of Cosmetology would have
6 no jurisdiction over the licensed institution
7 or the operation within the physician's office.

8 Does this mean that the State Cosmetology
9 Board must start inspecting physician's office
10 to determine if they fall under the Cosmetology
11 Board's jurisdiction?

12 In the event that a licensed aesthetician
13 is working as such within the medical facility,
14 then the medical facility must hold an
15 establishment license as required under
16 regulation 17-26-401. Ms. Wittum stated that
17 she made contact with Bill Trice, legal counsel
18 for the Medical Board and he agreed with this.

19 On what part of the body can the
20 aesthetician perform services?

21 17-16-102 states from the face, neck, bust,
22 arms, and upper part of the human body.

23 Following a discussion as to whether the
24 language meant from the bust up or the waist
25 up, the committee determined that this

1 provision allows for an aesthetician to perform
2 services from the bust up on a human body. The
3 committee further determined that a legislative
4 change was warranted in this section, which
5 would remove language "face, neck, arms, bust,
6 or upper part of." The committee feels the
7 aesthetician shouldn't be limited in performing
8 services that may be requested by a client. In
9 addition the committee determined that the
10 definition outlined in 17-26-102 could be
11 improved by changing the language to "human
12 body by massage" to "external manipulations of
13 the skin of the human body", therefore, the
14 committee recommends a legislative change for
15 the upcoming session.

16 Do we need to amend and add microderm
17 abrasion to the services? The answer was
18 "yes."

19 MS. WITTUM: The committee discussed the
20 different classes of devices that could be used
21 by an aesthetician, but I'm going to let Arnie
22 address the fact that he feels like we need to
23 have the staff do some work on changes on rules
24 and reg changes before we could do that.

25 MR. JOCHUMS: Okay. What has been

1 discussed has been that apparently there are
2 Federal Drug Administration has three
3 categories labeled one, two, and three. Three
4 is the highest number, and I think you even
5 have to get permission before you can buy
6 something that's in this list. It's
7 essentially a high-power laser, like a cancer-
8 treating laser or other high-powered stuff. I
9 think it would be difficult -- there are
10 several difficulties. One, is that there is no
11 clear delineation of what the different between
12 a one and two is. To elaborate you'd have to
13 read the CFR and go down the list. And then
14 you also have to figure out whether it was made
15 before 1957, because it's exempt even though
16 it's really a one. So I think the more proper
17 approach would be that if you want to say that
18 aestheticians can only use certain levels of
19 lasers -- or that an electrologists can only
20 use types of lasers then we'd have to specify
21 in the regulation, which -- what kinds they
22 could use. Maybe we could use the federal
23 reference, but even that's extremely difficult
24 to enforce because the inspectors can't carry
25 that around and read CFR's and see which model

1 that they're using and if it's in that list or
2 who the manufacturer is and in what year and so
3 forth. So there are a lot of enforcement
4 issues that we need to look into further.

5 The other thing I'd like to say, is to the
6 extent that the Board feels it's necessary to
7 further define and enforce, when it's in
8 practice, it will be one thing to say this
9 aesthetician is not following the law because
10 you did something that's more obvious than
11 cutting hair. Something that is perhaps in the
12 regulatory end. Do you need to specifically
13 have a new regulation that says scope and
14 practice. Scope and practice of aestheticians
15 is item 1 through item 10. The scope and
16 practice for all of your licenses and then we
17 need a regulation that says doing something
18 outside your scope of practice is defined by
19 the Board as a violation. That would be the
20 cleanest way to do that. It would be --
21 essentially, you'd need to make -- go through a
22 law-making process and figure out -- except for
23 the one, of what was meant. You'd maybe be
24 able to anticipate possible changes in the
25 licensing world. Some of these areas are

1 extremely vague. For example, can the
2 aesthetician remove hair? Well, how much hair?
3 Can they remove a hair, some hair, all hair?
4 Those things need to be defined and it's not.
5 It's just not. And for the aesthetician's is
6 it only really arguable that they could use
7 lasers since the statute actually says,
8 "electric needle, or by the use of any other
9 kinds of devices or appliances designed to
10 permanently remove hair from the body," if a
11 laser isn't an electric needle? We certainly
12 extrapolate it and it's something we need to
13 look at some more in these areas if we want to
14 enforce them. The other thing we should want
15 to put out for potential comment on that they
16 can know you're working on. And you've got to
17 get notice out to the doctors, and you'd got to
18 think about from this point do all of the
19 doctors' offices have to get a license from
20 this Board? Because that would be inconsistent
21 with the current statute that says that
22 doctors' offices don't have to have a license
23 from this Board. So you need to straighten
24 that out. There are a lot of contradictory
25 matters hidden in these issues. And I'm not

1 sure if there's such a thing as the model
2 Cosmetology law. I do think that looking at a
3 law, you should have a law that you'll be a
4 Board and they can declare what kind of
5 licenses so as time goes on you'll be able to
6 declare you need a establishment license, or
7 whatever.

8 MS. TRAYLOR: A lot of the states do have
9 this.

10 MR. JOCHUMS: Well, not a statute, but they
11 have addressed it.

12 MS. TRAYLOR: We were in D.C. when the
13 voters marched against it.

14 MR. JOCHUMS: No.

15 MS. TRAYLOR: Yeah. This law was written
16 in '55. There wasn't such a thing as a laser
17 then.

18 MR. JOCHUMS: It goes the gambit.

19 MS. POWELL: I think that this committee
20 knew, but Mr. Keene was the one that brought
21 the national aestheticians, NCEA, guidelines to
22 the proposal.

23 MR. JOCHUMS: Isn't there a question about
24 the percentage of something that's different
25 than the legislature saw?

1 MS. POWELL: Right. We do have in our
2 current law the penalties of ten percent of the
3 aestheticians and the regulation does not allow
4 any, so we didn't implement it. They have to
5 be able to clearly define how much it is and
6 allow opportunity for the inspectors to arrive
7 to that opinion.

8 MR. JOCHUMS: Take it all under further
9 consideration.

10 MS. POWELL: We'll take it all under
11 further consideration, as it is a very
12 complicated issue and it's going to include law
13 changes.

14 Does anybody have any comment?

15 MS. TRAYLOR: On what?

16 MS. POWELL: Does anybody have any comment?

17 MS. TRAYLOR: Massage therapists are doing
18 a lot of this.

19 MS. WITTUM: What I would like to know is
20 any instances when they're out in the field and
21 they come across an aesthetician who maybe is
22 practicing outside the scope of the practice.
23 They may be aestheticians are out there
24 practicing outside what their boundaries are,
25 but no action has been taken against them. And

1 there are probably some that don't know that
2 they are outside of their scope, so at this
3 point what action do you want the inspectors
4 and I to take on these particular people?

5 MS. POWELL: I think at this time it would
6 be an opportunity for the office to send
7 notification to these establishments and to the
8 licensed aestheticians, and the electrologists.
9 They need clarification, as well, even if
10 they're not practicing outside of their scope,
11 providing them with the guidelines of what the
12 rules and statutes provide for at this time.
13 There's going to be -- we can include there
14 will be further committee review of this and
15 then comment on it.

16 MS. TURMAN: I can really ask some dumb
17 questions, and this will probably be another
18 one. But why -- how do the people that work in
19 a doctor's office, are they under the doctor or
20 how --

21 MR. JOCHUMS: How --

22 MS. TURMAN: -- how -- it doesn't say
23 doctors' offices, it says medical physicians.

24 MS. POWELL: I think physicians are not
25 required to have their license, but my

1 understanding is that the facility must still
2 maintain an establishment license if they are
3 hiring our licensee.

4 MS. WITTUM: That hasn't been done here.

5 MS. POWELL: It has been done some. Dr.
6 English maintains a license every year. And I
7 know of that one. I don't know of how many
8 more or not in the office that you'll have. I
9 thought by his participation that the others
10 would, too. But I guess maybe Arnie could tell
11 us if that says physicians or physicians'
12 offices. I thought the physician didn't have a
13 license to do these practices, but I would have
14 thought that if they're going to hire our
15 practitioner they would have had to have a
16 facility license. And I think that --

17 MR. JOCHUMS: The statute says, "all
18 persons licensed by the State ** are exempt."
19 How more exempt can you be?

20 MS. POWELL: You could apply for a doctors'
21 office license.

22 MR. JOCHUMS: They license the --

23 MS. POWELL: They don't license their
24 offices, unless they have clinics or hospitals.

25 MR. JOCHUMS: Well, the argument could be

1 made and it would be wandering into the
2 firestorm if you tell the doctors they are
3 going to have to get cosmetology licenses to
4 hang on their wall. It's a political choice
5 for you to make.

6 MS. POWELL: I think that's obviously what
7 Dr. English was told or he wouldn't be
8 practicing that procedure. So I have
9 questions about whether they would were told
10 that in the past or not. I mean, for what
11 reason did he start doing this? I believe that
12 at some time in the past that they were asked
13 to do this by the Board. I don't know. It
14 seems one of the inspectors wants to have a
15 say.

16 Ms. Caudle?

17 MS. CAUDLE: Regulation 22 does specify all
18 that out for you. If they're under a
19 physician, the physician as long as they know
20 it and they're prescribe the treatment to the
21 person working under them, and they sign off on
22 the procedure. And that's all under the
23 physician instead of under the Board of
24 Cosmetology.

25 MS. POWELL: So you're saying that

1 regulation 22 as its been read most recently?

2 MS. CAUDLE: Yes, ma'am.

3 MS. POWELL: That is the practice of an
4 aesthetician or an electrologist in a medical
5 facility. And that's clear that they want to
6 do as long as it's not our licensee or even it
7 is our licensee we have minimal requirement to
8 not post the license. And I think that's been
9 the practice in the past. But my question was
10 on the facility does it -- if they hire our
11 aestheticians, does that mean that they have to
12 -- or are saying, "I'm not posting these
13 licenses." How do they know --

14 MS. CAUDLE: In another city in this state,
15 she was adamant that she wanted to post her
16 aesthetic license also, I think, she was able
17 as long as she posted that license, she was
18 required to get a salon license for that
19 establishment.

20 MS. POWELL: Okay. Point well taken.
21 Thank you.

22 MR. DOWNEY: It can be argued that because
23 they wanted her license posted to show more
24 professionalism as a working aesthetician and
25 to have an establishment license if she was

1 going to work there as an aesthetician. Now,
2 she could've worked there as an assistant and
3 not had that, but had her license posted to
4 show more professionalism.

5 MS. POWELL: I think at that time
6 regulation 22 was different with the medical
7 law and they could have the aesthetician or
8 electrolysis practicing there without their
9 license. So now the regulation there is
10 changed and it's been clear. But that helps us
11 to know which direction we want to take as to
12 what provisions we need to make for these
13 people.

14 MS. MORGAN: There -- Dr. English has
15 maintained that license. And at one point, I
16 don't remember if it was a -- but I had not
17 received a renewal for that license. He was so
18 upset about the fact that those licenses had
19 not been renewed that the lady's whose job was
20 was let go. I can't think of the other
21 doctor's office, but if I remember I'll tell
22 you.

23 MS. POWELL: Then it's obviously clear that
24 right now the inspectors will not be going into
25 the medical facilities to inspect per

1 regulation 22. But if they want a license,
2 fine. We can give the license, but he couldn't
3 have it without an inspection. Wouldn't you
4 believe that he could maintain that?

5 MS. WITTUM: We'll just have it as an
6 optional thing. It's not required.

7 MS. MORGAN: Will they be notified about
8 maintaining their licenses?

9 MS. WITTUM: Of course.

10 MS. POWELL: Are there any other questions
11 that you have?

12 (No response.)

13 MS. POWELL: Is there any other business?

14 (No response.)

15 MS. POWELL: Hearing no further business
16 the meeting is adjourned.

17 (WHEREUPON, the meeting was concluded.)

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