

1 BEFORE THE ARKANSAS STATE BOARD OF COSMETOLOGY

2

3

4

5 ADMINISTRATIVE HEARINGS
6 AND
7 BOARD MEETING

8 NOVEMBER 20, 2006

9

10

11 BE IT REMEMBERED that on Monday, the 20th day of
12 November 2006, before the Arkansas State Board of Cosmetology and
13 its department staff at 8:30 a.m. in the South Basement
14 Conference Room of the Main Street Mall, located at 101 East
15 Capitol Avenue, Little Rock, Pulaski County, Arkansas, business
16 and administrative hearings came on for hearing as follows:

17

18

19 SUSAN B. WHITSON, CCR

20 Arkansas Supreme Court Certificate No. 158

20 9810 Woodland Drive
Mabelvale, Arkansas 72103
21 (501) 455-1170
WhitsonCCR@aol.com

22

23

24

25

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

2

1 APPEARANCES:

2 Board Members:

3 JANE POWELL - President
VEDA TRAYLOR - 1st Vice President
4 PATRICIA TURMAN - 2nd Vice President
LaJOY GORDON - Secretary
5 BARBARA WARD - Treasurer
CLIFFORD KEENE
6 NICK DOWNEY
ANN PICKERING
7 SHERRON WEST
KATHY GOSSAGE (not present)

8

9 Staff Members Present:

10 KATHY WITTUM - Executive Director
AMBER McCUIEN
11 SHAUNTA BELMONT

12 Board Inspectors Present:

13 SHEILA CAUDLE
ROSE HORNER

14 PAT BLAND JACKSON
LAVONNE GREEN

15

16 ON BEHALF OF THE BOARD:

17 ARNOLD JOCHUMS, ESQ.
Assistant Attorney General
18 323 Center Street, Suite 200
Little Rock, Arkansas 72201

19

20 HEARING OFFICER:

21 KENDRA AKIN JONES, ESQ.
Assistant Attorney General
22 323 Center Street, Suite 1100
Little Rock, Arkansas 72201

23

24 ON BEHALF OF RESPONDENT TIN NGUYEN:

25 STEPHANIE WILLIAMS, ESQ.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

3

1 ON BEHALF OF THE BOARD:

2 KENT WALKER, ESQ.

3 Walker Law Firm

4 RESPONDENTS PRESENT:

5 TIN NGUYEN

6 TU NGUYEN

7 KIM PHAM

8 JENNIFER HATFIELD

9 BETTY KIRSCH TEMPLE

10 ADDITIONAL WITNESSES PRESENT:

11 DALE TEMPLE

12 THAO PHAM

13 TOM PHAM

14 ALSO PRESENT:

15 Maria Parker

16 Jim Butenschoen

17 Francine Tilley

18 Nancy Drake

19 Frank Drake

20 Chris Strawn

21 Carla Jones

22 Court Reporter:

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

24

25

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

4

1 INDEX

2	AGENDA ITEM	PAGE
3	CAPTION	1
4	APPEARANCES	2
5	CALL TO ORDER - Roll Call	10
6	BUSINESS	
7	Treasurer's Report	10
8	Review: Unpaid Penalty Ledger	11
9	Distribute: Updated Financial Statement for SFY '07	
10	Exam Reports for September and October	
11	Minutes from September 18th board	
12	Tentative Exam Schedule for 2007	
13	ADMINISTRATIVE HEARINGS	
14	HEARING ORDER NO. 07-114: TIN NGUYEN	25
15	WITNESSES:	
16	KATHY WITTUM	
17	Direct by Mr. Jochums	30
18	EXHIBITS:	

19	Board 1 (Notice of Hearing)	29
20	Board 2 (Complaint form from Freda Bass)	29
21	Board 3 (Letter from Burns Law Firm, 10/3/06)	29
22	Board 4 (Letter from Mr. Nguyen)	29
23	Board 5 (pictures)	29
24	Decision by the Board	43
25		

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

5

1	HEARING ORDER NO. 07-107: TU NGUYEN	44
2	WITNESSES:	
3	PAT JACKSON	
4	Direct by Mr. Jochums	49
5	KATHY WITTUM	
6	Direct by Mr. Jochums	55
7	Examination by the Board	55
8	TU NGUYEN	
9	Direct	59
10	Examination by the Board	61
11	Cross by Mr. Jochums	62

12	Further Examination by the Board	63
13	EXHIBITS:	
14	Board 1 (Conveyance letter, Notice of Hearing,	
15	Inspection Report)	47
16	Board 2 (Rules and Regulations)	49
17	Respondent 1 (Paperwork for reciprocity license	
18	for Kim Hue Vo)	60
19	Decision by the Board	67
20	HEARING ORDER NO. 07-085: BETTY	
21	KIRSCH TEMPLE	68
22	WITNESSES:	
23	LAVONNE GREEN	
24	Direct by Mr. Jochums	74
25		

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

6

1	KATHY WITTUM	
2	Direct by Mr. Jochums	76
3	Cross by Ms. Temple	77

4	Examination by the Board	79	
5	BETTY TEMPLE		
6	Examination by the Board	81	
7	DALE TEMPLE		
8	Examination by the Board	83	
9	Direct by Ms. Temple	90	
10	EXHIBITS:		
11	Board 1 (Letter of conveyance, Notice of Hearing,		
12	Inspection Report)	71	
13	Decision by the Board	92	
14	HEARING ORDER NO. 07-115: KIM PHAM		95
15	WITNESSES:		
16	KATHY WITTUM		
17	Direct by Mr. Jochums	101	
18	THAO PHAM		
19	Direct by Kim Pham	103	
20	Cross by Mr. Jochums	106	
21	Examination by the Board	108	
22	Further Cross by Mr. Jochums	109	
23	Further Exam by the Board	109	
24	Further Cross by Mr. Jochums	110	
25	Further Exam by the Board	111	

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

7

1 EXHIBITS:

2 Board 1 (Conveyance letter and Notice of Hearing) 98

3 Board 2 (Complaint of Linda Balch) 98

4 Decision by the Board 124

5 HEARING ORDER NO. 06-383: CATHERINE

6 HOLMES VIRGE HAIR 125

7 WITNESSES:

8 ROSE HORNER

9 Direct by Mr. Jochums 130

10 Examination by the Board 132

11 JENNIFER HATFIELD

12 Direct 137

13 Cross by Mr. Jochums 137

14 Examination by the Board 138

15 Further Cross by Mr. Jochums 141

16 Further Exam by the Board 142

17 EXHIBITS:

18	Board 1 (Letter of conveyance, Notice of Hearing,	
19	Inspection Report)	127
20	Board 2 (License information, Virge Hair, from	
21	computer screen)	136
22	Board 3 (License information, history, from computer	
23	screen)	136
24	Decision by the Board	145
25	Discussion and motion regarding respondents who	

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

8

1	did not appear	147
2	07-092, Team Baxter East	
3	07-096, Quyen Ho	
4	07-105, Maria Rodriguez	
5	07-110, Letonya Shavers	
6	07-112, Shantrell Huffman	
7	Discussion and motion regarding respondents who waived their	
8	right to a hearing	150
9	07-093, Lydia Blaty	
10	07-098, Charlotte McClain	

- 11 07-099, Shelley Hillis
- 12 07-100, Chelsea McLeod
- 13 07-101, Heather Dennis
- 14 07-102, Dorothy Hutchings
- 15 07-103, My Hanh Thi Pham
- 16 07-104, Han Ngoc Tran
- 17 07-106, Irma Arribas
- 18 07-108, Kim Hue Thi Vu
- 19 07-108, Kim Ngo
- 20 07-109, Dana Cunningham
- 21 REPORT OF LEGAL COUNSEL 152
- 22 PETITIONS:
- 23 Cossatot Community College U of A - new school
- 24 approval, Maria Parker 152
- 25

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

- 1 Career Academy of Hair Design/Siloam Springs -
- 2 new school approval, Jim Butenschoen 156

3 LEGISLATIVE UPDATE:

4 Outsourcing - Francine Tilley presentation 157

5 Licensee working outside establishment 193

6 Felony conviction 199

7 OTHER COMMENTS:

8 Nancy Drake 217

9 Frank Drake

10 Chris Strawn 229

11 Carla Jones 235

12

13 Schedule next meeting 238

14

15 Reporter's certificate 239

16 ---O---

17

18

19

20

21

22

23

24

25

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

10

1 PROCEEDINGS

2 MS. POWELL: The Arkansas State Board of
3 Cosmetology will come to order.

4 I would like to remind everyone to turn off their
5 electronic devices and refrain from talking in the
6 audience.

7 And, Madam Secretary, will you take the roll?

8 Madam Secretary, will you take the roll?

9 MS. GORDON: Oh. Everyone is present, except our
10 new member.

11 MS. POWELL: Kathy Gossage?

12 MS. WITTUM: And she called this morning. She is
13 running fever and ill, so she will not be here today.

14 MS. POWELL: All right. Let's get started.

15 I would like to have the treasurer's report.

16 MS. WARD: On -- our balance was 173.93, and on

17 10/31 we had a -- the arrangement that (inaudible) --

18 COURT REPORTER: I can't hear you.

19 MS. WARD: -- of 51.18, and the balance was
20 121.75. I collected \$5 today from each board member,
21 leaving us a balance of 166.75.

22 MS. POWELL: Yeah. I need every -- has everyone
23 had an opportunity to look at their financial report?

24 I need a motion on the financial report.

25 MS. GORDON: I so move.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

11

1 MS. WEST: Second.

2 MS. POWELL: All those in favor, raise your right
3 hand.

4 (Eight hands raised.)

5 It's unanimous.

6 Everybody, do you want to go into the review now?

7 We don't have a Hearing Officer here.

8 At this time the director would like to give a
9 report for the unpaid penalty ledger.

10 MS. WITTUM: As you will see, we have several
11 disciplinary cases that have been heard since, I
12 believe it's July of last year, where the respondents
13 have failed to either pay at all or pay in full.

14 The -- I've separated your list there between the
15 recommendations to -- to maintain a suspended status
16 for those who haven't paid, and to consider revoking
17 the licenses if they don't pay by February 1st of
18 '07.

19 There is also several, on the second page of this,
20 the handout that I just gave you, where I recommend to
21 refer some to the Attorney General's Office.

22 Some of these we are having trouble contacting or
23 getting their contact information for these people, so
24 it would be dependent upon whether or not we could
25 locate the respondents. However, most of these, as you

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 can see, are unlicensed, so we don't have the ability

2 to suspend or revoke a license.

3 I also have some that I recommend that we close
4 their cases. One, the first one there for Tawana
5 Tines, she has paid the majority of her penalty, so I
6 would recommend that we just consider that payment in
7 full.

8 MS. POWELL: What number is that?

9 MS. WITTUM: 05-108. It's on the second page.

10 And I also have one recommendation for a person
11 who was cited for practicing while unlicensed. He has
12 now enrolled in cosmetology school at Velvatex, so I
13 would recommend that we not allow him to examine until
14 he pays his penalty.

15 Do you have any questions about any of this
16 information?

17 MS. TURMAN: Kathy, we do not renew their license
18 if they have an unpaid balance. Do we?

19 MS. WITTUM: Correct.

20 MS. TURMAN: Okay. So that's a --

21 MR. JOCHUMS: So you don't even have to revoke
22 them.

23 MS. WITTUM: That's true.

24 And it's on a suspended status. And according to
25 Geosuite, which is the new computer system we just

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

13

1 moved into, having a suspended status will prohibit
2 them from being able to renew.

3 MS. PICKERING: Okay.

4 MS. WITTUM: If they come in to renew or if we try
5 to renew it if it comes in the mail, the system will
6 flag it so that we will know that that one is
7 suspended. And the people who try to renew online will
8 be barred from doing so with that suspended status.

9 MS. TURMAN: Okay. Thank you.

10 MR. DOWNEY: I've got one question on that.
11 06-099, the penalty was five dollars?

12 MS. WITTUM: Yes. It was for not posting his
13 license.

14 MS. TRAYLOR: I thought it was more than that.

15 MS. WITTUM: The five dollar penalty.

16 MR. DOWNEY: I didn't know we had one that low.

17 MS. TURMAN: I didn't either. It shocked me to

18 see that.

19 MS. TRAYLOR: That's a new one on me.

20 MS. POWELL: It's on that.

21 MS. WITTUM: It's on that sheet.

22 MS. POWELL: It's on that laminated sheet.

23 MR. JOCHUMS: Does he have a license?

24 MS. WITTUM: Yes. I think he paid his other but

25 did not pay the five dollars.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

14

1 MR. JOCHUMS: Oh, I see.

2 MR. KEENE: Kathy?

3 MS. WITTUM: Uh-huh.

4 MR. KEENE: Why are you recommending that we close

5 the case on Tawana Tines?

6 MS. WITTUM: She has paid 200 of the 375, so I was

7 just --

8 MR. KEENE: Yeah, but --

9 MS. WITTUM: I mean, it's up to you. We can
10 certainly move her up to -- she's on a suspended status
11 at this time, and she can stay there if you would
12 prefer her to do that.

13 MR. KEENE: Well --

14 MS. WITTUM: The -- one -- one thing that I would
15 like to point out on Tawana and Alvin, these cases were
16 from Linda's day.

17 MR. KEENE: Uh-huh.

18 MS. WITTUM: These two cases are the only two, in
19 all of this that we have here, that we cannot find the
20 files on. So if she were to challenge anything, it
21 would be different.

22 MR. KEENE: That's the answer.

23 MS. WITTUM: And that's the same thing with
24 Mr. Hicks. I mean, we don't have the documentation
25 that I feel we would need to have if they were going to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 challenge something.

2 MR. KEENE: Okay. And this Cedric Crutchfield, is
3 this the one that involved all the different
4 enforcements and all that --

5 MS. WITTUM: Yes.

6 MR. KEENE: -- that went to his house?

7 MS. WITTUM: Yes.

8 And he is enrolled in school as of May, I believe
9 it is. And -- yes, May 25th he enrolled in Velvatex.

10 MS. POWELL: Does anybody have a motion?

11 MS. WITTUM: One thing that I do want to point
12 out, on any that are referred to the Attorney General's
13 Office for -- for additional review, it will cost us, I
14 think it's, what, a 140-dollar filing fee per --

15 MR. JOCHUMS: Yeah. Right.

16 If we actually file any in the court to force --

17 MS. TRAYLOR: And we add that on to his fine or
18 his --

19 MS. WITTUM: See, there's six --

20 MR. JOCHUMS: No. You would have to -- you can
21 collect it on the back end of his fine. Some of the
22 problem with suing some of the people, we will never be

23 able to find them.

24 MS. TRAYLOR: He probably has another name by now.

25 MR. JOCHUMS: And I think some of these people

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

16

1 were probably passing through and they are in some
2 other state by now.

3 MS. WITTUM: Well, I know the certified letters
4 that we have mailed out have been returned, so it --
5 except for Rita Landis and Sherry Curry Kimes, they
6 were practicing outside the scope. And both of these
7 ladies requested to be put on a payment plan. Rita
8 failed to make even her first installment. And Sherry
9 made one installment and then failed to make any
10 subsequent installments.

11 Those two ladies, we do know where they are. And,
12 in fact, Becky Binns with the health department
13 e-mailed me recently to let me know that she located or
14 she came across Ms. Kimes at Absolute Elegance, working

15 there. So we may even want to consider contacting the
16 owner of that establishment, just to let her know that
17 she does have someone who is working in her
18 establishment with a suspended license, because that
19 could get her in trouble as well.

20 MR. KEENE: Yes. Definitely.

21 MR. DOWNEY: Definitely.

22 MR. JOCHUMS: Each of these, these are not current
23 with their license at all right now?

24 MS. WITTUM: Right. They are all suspended.

25 MR. JOCHUMS: Okay.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

17

1 MS. POWELL: So, will you do those first and then,
2 if you locate them, you will, are you saying, press
3 charges or file and --

4 MR. JOCHUMS: It's basically a standard lawsuit to
5 collect a debt, where you file a complaint, the court
6 orders somebody to pay, and the judgment --

7 MS. TRAYLOR: Someone still has their cell phone

8 on.

9 MR. JOCHUMS: And but it's best not to do those
10 until you're pretty sure you know where somebody is.

11 Otherwise you're throwing money down --

12 MS. POWELL: Well, that's what I was starting to
13 say.

14 MR. JOCHUMS: I did start those a couple of those
15 a year or two ago with Linda. It wasn't her fault but
16 we never found the people we pursued, so we decided we
17 were just out \$140. It was a little lower than that at
18 that point.

19 MS. POWELL: So you will locate them --

20 MR. JOCHUMS: We will attempt to.

21 Although we don't have much better relations than
22 you all do.

23 MS. POWELL: But that will hopefully save some
24 money, as far as the 140-dollar filing fee?

25 MR. JOCHUMS: Yes. Oh, yeah. Right.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 We won't file it unless we're fairly comfortable,
2 someone has a sighting and we can find them.

3 MS. WITTUM: And it may be that the inspectors can
4 keep their eyes and ears open.

5 MR. JOCHUMS: Right.

6 MS. WITTUM: And let them know what location they
7 were working at the time they were cited. But, of
8 course, they can be anywhere.

9 MR. KEENE: Kathy, going along with the idea of
10 contacting the salon about this one lady that we seem
11 to know where she is at. I know there was a discussion
12 at one point about putting either names in the paper or
13 on the Internet with people that have violations.

14 MS. WITTUM: On the website.

15 MR. KEENE: Would this be a case for in the
16 newsletter -- and I realize it's already gone out and
17 been printed, but something that in the next newsletter
18 on people like this --

19 MS. WITTUM: Yes.

20 MR. KEENE: -- to allow the salon owners to know
21 that they may have somebody involved --

22 MS. WITTUM: Right.

23 MR. KEENE: -- and they could be held responsible
24 for that person at that point?

25 MS. WITTUM: Right. Right. And I -- I would

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

19

1 suggest with this few here that we have to put them on
2 the web. We've been working to develop that part of
3 the website, but this we could probably put together
4 quickly enough that we could go ahead and get it on
5 there, and that way anybody who visits the website
6 could have that information.

7 MR. KEENE: Right. Because otherwise we'll just
8 be throwing the money away.

9 MR. JOCHUMS: Yeah.

10 MR. KEENE: Since it's already been published.

11 MR. JOCHUMS: Yeah. I think those two are the
12 only ones.

13 MS. TURMAN: When does the next newsletter go out?

14 MS. WITTUM: It's in the process of being
15 distributed now. We are mass copying it and Alwin is
16 sending it out as they go.

17 MR. KEENE: Is there something that you could just
18 tag on as a part of the newsletter?

19 MS. TURMAN: An insert?

20 MR. KEENE: Instead of having it printed as a part
21 of the newsletter, just an insert?

22 MS. WITTUM: I would have to contact Alwin, but it
23 would increase the cost.

24 MR. KEENE: Yeah.

25 MS. WITTUM: And we've already paid them for the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

20

1 service, or they -- we are prepared to pay them for the
2 service that they are doing now. We would have to just
3 find out how much it would cost them to do it. And it
4 would depend on how many we're talking about.

5 And I know there is quite a few that have already
6 been mailed, but with what is left, we can consider

7 doing that.

8 MS. POWELL: I think we've got so much of a cost
9 factor here going out on these people already, we
10 certainly don't want to incur any more cost on these
11 people.

12 MR. KEENE: Yeah.

13 MS. POWELL: If it's on the web free, then that
14 would get it out there, although that would be a good
15 idea for the future.

16 MR. KEENE: For the next one.

17 MR. JOCHUMS: Next newsletters.

18 MS. POWELL: Right. It will cost us some more.

19 MS. WITTUM: And I could probably have this on the
20 web possibly by the first week of December.

21 MR. KEENE: Because the salon owner is not going
22 to know about somebody. They come in with their
23 license, it looks good to them, they let them go to
24 work, and it may be a suspend license.

25 MS. WITTUM: Uh-huh.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MR. KEENE: I would hate for them to get in
2 trouble.

3 MS. WITTUM: Yeah. That's why I would like to
4 send the letter to this person, just so she knows.

5 Now, Becky told me that she did inform the lady, but I
6 still think the lady should hear directly from us.

7 MR. KEENE: Yes.

8 Well, she should actually call you personally.
9 She should be proactive and find out.

10 MS. WITTUM: Yes, sir.

11 MR. DOWNEY: I'm hearing some names up there that
12 are being thrown around that I don't even know. Who is
13 Alwin that's doing this newsletter and what is the
14 capacity of -- we're hiring someone to do a newsletter?

15 MS. WITTUM: No. Alwin has always in the past
16 been responsible for doing the mailing.

17 In fact, before we were able to do the -- some of
18 the stuff here in the office, they would fold it and
19 tab it and send -- put the names and addresses on it
20 and then mail it. And that's been -- the office has

21 been using them for several years for whatever they do.

22 MR. DOWNEY: Okay. Another thing, do we not use
23 the prison system any more for any of our printing?

24 I know they were a source at one time and were
25 very inexpensive for us to have things printed and --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

22

1 MS. WITTUM: Well, I mean, we're printing in-house
2 now.

3 MR. DOWNEY: Yeah. But I'm hearing that it's just
4 eating up the cartridges and the paper and all that.

5 Was it ever looked at, a cost comparison with
6 having the prison system do it and doing it in-house?

7 MS. WITTUM: No. Because I -- I considered the
8 time factor to be an issue. I mean, anything you send
9 over to the prison you have to wait until your job
10 comes up and then you receive that back; so it could be
11 anywhere from two to six weeks before you get anything
12 back.

13 MR. DOWNEY: Well --

14 MS. WITTUM: I mean, it just depends on their load
15 as well as what we have.

16 MR. DOWNEY: I would think we need to look into
17 that, every opportunity we have to save some money --

18 MS. WITTUM: Okay.

19 MR. DOWNEY: -- by using the prison system. I
20 know most of it in the past, years ago, most of our
21 printing was done by them.

22 MS. WITTUM: Well, it's my understanding that in
23 the past, what was sent over to them were the
24 inspections, the carbonated inspection reports, which
25 are obsolete now. With the new computer system we

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

23

1 don't have to have that.

2 MR. DOWNEY: Yeah. I mean, if they could do any
3 printing cheaper than we can do in-house, and save that
4 labor time, too, I would say we need to look into that.

5 MS. WITTUM: Okay.

6 MS. POWELL: Do I need a motion on this?

7 MS. WITTUM: I think it might --

8 MR. JOCHUMS: Yeah.

9 MS. WITTUM: -- be better to have one.

10 MS. POWELL: Okay. I would like to ask for a
11 motion.

12 MS. WEST: I have --

13 MS. POWELL: Oh, I'm sorry.

14 MS. WEST: No, I have a motion.

15 MS. POWELL: Oh, okay. I need a motion to approve
16 the recommendations from the director for these.

17 MS. WEST: I so move.

18 MR. KEENE: I'll second.

19 MS. POWELL: A motion and a second. All those --
20 is there any discussion?

21 All those in favor, raise your right hand.

22 (Eight hands raised.)

23 It's unanimous, motion carries.

24 Thank you.

25 Okay. Then I'll turn it over to our -- I think

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

24

1 she has this.

2 At this time we'll turn this over to the Hearing
3 Officer for the hearings.

4 MR. JOCHUMS: Before we do that, is there anybody
5 here from Sport Clips?

6 (No response.)

7 Is somebody here named Quyen Ho?

8 (No response.)

9 Okay. Maria Rodriguez?

10 (No response.)

11 Tu Nguyen?

12 TU NGUYEN: Here.

13 MR. JOCHUMS: Okay. Letonya Shavers?

14 (No response.)

15 Shantrell Huffman?

16 (No response.)

17 Diane Lovett?

18 (No response.)

19 Tin Nguyen?

20 There in the front row.

21 And Kim Pham?

22 KIM PHAM: Here.

23 MR. JOCHUMS: So did I see three?

24 I think we have three hands. We've got more names

25 than that.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

25

1 Okay. Is one of you a lawyer?

2 MS. STEPHANIE WILLIAMS: I am.

3 MR. JOCHUMS: You're a lawyer. Okay.

4 Madam Hearing Officer, I recommend we take the

5 case that has a lawyer first, just out of professional

6 courtesy. Unless she wants to go last.

7 MS. STEPHANIE WILLIAMS: Thank you.

8 HEARING OFFICER JONES: That's fine. And your

9 name was?

10 MS. STEPHANIE WILLIAMS: I'm Stephanie Williams.

11 HEARING OFFICER JONES: Who are you representing?

12 MS. STEPHANIE WILLIAMS: Tin Nguyen.

13 ---o---

14 ADMINISTRATIVE HEARING NO. 07-114

15 HEARING OFFICER JONES: We'll start this morning

16 with Case No. 07-114.

17 MR. KEENE: What is it?

18 HEARING OFFICER JONES: 07-114.

19 Good morning. My name is Kendra Akin Jones, and

20 I'm the Hearing Officer today in the matter of Tin

21 Nguyen, which is to be heard by the Arkansas State

22 Board of Cosmetology. Today is November 20, 2006.

23 We're located in the conference room of the Main Street

24 Mall.

25 Would the respondent and his counsel please

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

26

1 identify themselves for the record.

2 MS. STEPHANIE WILLIAMS: My name is Stephanie

3 Williams.

4 MR. TIN NGUYEN: My name is Tin Nguyen.

5 HEARING OFFICER JONES: Be sure and speak loud
6 enough so our court reporter over there can hear
7 everything.

8 And did you receive an order of your Notice of
9 Hearing today?

10 MR. TIN NGUYEN: Yes, ma'am.

11 HEARING OFFICER JONES: Okay. And state's
12 counsel, please identify yourself for the record.

13 MR. JOCHUMS: Yes. My name is Arnold Jochums.
14 I'll be presenting these cases for the board this
15 morning.

16 HEARING OFFICER JONES: And for the benefit of the
17 respondent and those of you who are here today for
18 these hearings, I'll just explain that the board will
19 base its decision solely on the evidence that's
20 presented here today. This hearing is being heard
21 under the Administrative Procedures Act. There --
22 which means that I don't have to follow the strict
23 rules of evidence. It's kind of discretionary as to
24 whether -- I have certain latitude as to what will be
25 allowed in or not.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

27

1 To ensure the efficiency of these proceedings, I
2 will grant some -- some objections or give cautions to
3 the parties that may not follow in line exactly with
4 what the strict rules of evidence are.

5 The board members here know this case only as it
6 appears in your Notice of Hearing, and if there is
7 anything you would like to have submitted, you may do
8 so, but you must offer it into evidence here today.

9 These proceedings are subject to the Freedom of
10 Information Act, and as such, all parts of the hearing,
11 including deliberations, are open to the public.

12 Do you have any questions about what's going to
13 take place?

14 MS. STEPHANIE WILLIAMS: No, ma'am.

15 HEARING OFFICER JONES: If not, I'll ask that the
16 court reporter swear in all witnesses for the case.

17 Please raise your right hand.

18 COURT REPORTER: Anybody who will testify in this

19 case, please raise your right hand.

20 Was there an investigator in this case?

21 I'm sorry.

22 (WHEREUPON, the witnesses were sworn.)

23 HEARING OFFICER JONES: Okay. Any preliminary
24 matters?

25 Is there anything, Mr. Jochums?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

28

1 MR. JOCHUMS: One thing I need to ask, is there
2 anybody in the room named Freda Bass?

3 (No response.)

4 HEARING OFFICER JONES: Okay. Do you have any
5 preliminary matters you would like to take care of at
6 this time?

7 MR. JOCHUMS: Yes, ma'am.

8 We want to offer as exhibits the Order and Notice
9 of Hearing and a Complaint form signed by Freda Bass, a
10 letter from Burns Law Firm, and a letter, I think it's

11 from Mr. Nguyen. I can't quite read it myself like it

12 is.

13 HEARING OFFICER JONES: Okay.

14 MR. JOCHUMS: As well as four -- one page with

15 four photos on it.

16 HEARING OFFICER JONES: Okay. Respondent, do you

17 have copies of the Complaint and the letters that he

18 was just referencing?

19 MS. STEPHANIE WILLIAMS: Is it the Burns Law Firm

20 letter dated June 5, 2006?

21 MS. WITTUM: October 3, 2006.

22 MR. JOCHUMS: We've got an extra.

23 MS. WITTUM: You can just have this copy.

24 MS. STEPHANIE WILLIAMS: Thank you.

25 MR. JOCHUMS: It's simply a conveyance letter.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

29

1 MS. STEPHANIE WILLIAMS: Oh, okay.

2 HEARING OFFICER JONES: Do you have any objections

3 to these?

4 MS. STEPHANIE WILLIAMS: No. I don't.

5 HEARING OFFICER JONES: Okay. We will enter the
6 official Notice of the Hearing as Exhibit 1; the
7 Complaint from Freda Bass as Exhibit 2; Burns letter
8 Exhibit 3; and the letter from Mr. Nguyen Exhibit 4;
9 and the pictures Exhibit 5.

10 (WHEREUPON, Board's Exhibits Nos. 07-114 1 through
11 5 were received in evidence.).

12 MR. JOCHUMS: My first witness this morning --

13 HEARING OFFICER JONES: Do you have any
14 preliminary matters you would like to introduce?

15 MS. STEPHANIE WILLIAMS: Just a question.

16 If -- if Mr. Nguyen is not going to dispute the
17 fact that -- that there was an eyebrow waxing and that
18 there was a burn, do we need to -- do you all want to
19 go ahead and call your witnesses?

20 MR. JOCHUMS: I would just -- I think I just want
21 to present the director to explain that she got the
22 Complaint, et cetera.

23 MS. STEPHANIE WILLIAMS: Okay.

24 HEARING OFFICER JONES: And what was your name,

25 one more time?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

30

1 I didn't catch it.

2 MS. STEPHANIE WILLIAMS: Stephanie Williams.

3 HEARING OFFICER JONES: Okay. Go ahead,

4 Mr. Jochums.

5 I'm sorry.

6 MR. JOCHUMS: My witness is Kathy Wittum.

7 WHEREUPON,

8 KATHY WITTUM,

9 having been called for examination, and having been first duly

10 sworn by the undersigned notary public, was examined and

11 testified, as follows:

12 DIRECT EXAMINATION

13 BY MR. JOCHUMS:

14 Q Please state your name and title.

15 A Kathy Wittum, Director of the State Board of Cosmetology.

16 Q Ma'am, did your office receive the Complaint from Freda Bass

17 as has previously been mentioned?

18 A Yes.

19 Q And did you also receive the handwritten two-page letter

20 that appears to be signed by Mr. Nguyen?

21 A Yes. I did.

22 Q Okay. And what do -- to short -- short circuit it, what was

23 the essential complaint that she made and how does that relate to

24 the order that you actually issued?

25 A Ms. Bass alleged that she went to Fancy Nails and had eye

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

31

1 wax -- or eyebrow waxing performed. There is only manicurists

2 employed, from our record, at this location; so it would be

3 outside the scope for a manicurist to perform those services.

4 Q And that is what he is charged with today?

5 A Yes.

6 Q The -- how the -- how a burn happened or how serious it was

7 or any of those things are not issues in this case?

8 A That's correct.

9 Q The issue is what license does he have?

10 A Right.

11 Q And did you check his license?

12 What is his license?

13 A Yes. He is a licensed manicurist.

14 Q Okay. And it's your testimony that performing eyebrow

15 waxing is outside of what manicurists are licensed to do?

16 A Yes.

17 MR. JOCHUMS: I have no other questions of this

18 witness.

19 HEARING OFFICER JONES: Ms. Williams, do you have

20 any questions for this witness?

21 MS. STEPHANIE WILLIAMS: I don't.

22 HEARING OFFICER JONES: Mr. Jochums, do you have

23 any other witnesses you would like to call?

24 MR. JOCHUMS: No.

25 HEARING OFFICER JONES: Ms. Williams, any

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 witnesses?

2 MS. STEPHANIE WILLIAMS: I don't have any

3 witnesses.

4 I would just like to let you know, from
5 Mr. Nguyen's perspective, the person who actually
6 performed the waxing was his wife who, at the time, did
7 have a manicurist's license. And since that time she
8 has -- and the date that it was issued is
9 September 13th -- she has acquired a license so that
10 she can do waxes in the future.

11 She is currently not working because she had a
12 baby, so she is not working in the salon at all. But,
13 yeah, he recognizes that she did not have a license at
14 that time and she does now.

15 MS. TRAYLOR: Is she a manicurist?

16 HEARING OFFICER JONES: Does the board -- would
17 the board like to ask any questions of Mr. Nguyen?

18 MR. JOCHUMS: If I -- I think what they are saying
19 is that they admit that someone unlicensed did this
20 particular client on the day as alleged, and so they
21 are not contesting that. And I suppose you may be
22 asking for leniency in this case?

23 MS. STEPHANIE WILLIAMS: I mean, that's true.

24 You know, she -- she did perform waxing for this
25 particular client. They never engaged in advertising

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

33

1 that they offered that service. It was not anything
2 that was routinely done.

3 From Mr. Nguyen, it's my understanding that she
4 was a very good customer and on that occasion she asked
5 his wife to perform that service. And they both
6 recognize that it was a huge mistake and are very sorry
7 that it happened.

8 But I just wanted to inform everyone that from
9 September 13th forward, she does have a license to
10 perform that.

11 MR. KEENE: What license, though?

12 MS. POWELL: Yeah, what license?

13 MR. JOCHUMS: What license does she now have?

14 MS. POWELL: She has a manicure license.

15 MS. TRAYLOR: But she still can't do it.

16 MR. JOCHUMS: Well, let her bring that up.

17 MS. POWELL: Bring it up to the director.

18 MS. STEPHANIE WILLIAMS: I guess I'm just
19 telling -- showing you all this to know that, you know,
20 at the time she was in the salon she was there because
21 she was an employee and from day to day performed
22 manicures.

23 MS. POWELL: But I think the confusion here is
24 that she is a --

25 MR. JOCHUMS: Now she is a --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

34

1 MS. WITTUM: She was issued an aesthetician
2 license on September 13.

3 MS. POWELL: Okay. But she was a licensed
4 manicurist when she --

5 MS. STEPHANIE WILLIAMS: That's right. That's
6 right.

7 MR. JOCHUMS: Right. When the event happened.

8 Right.

9 MS. POWELL: Okay. So she's a licensed

10 aesthetician as of September 13th?

11 MS. STEPHANIE WILLIAMS: Right. But, you know,

12 just I wanted to let you know that's why she was in the

13 salon, because she was there regularly doing manicures.

14 And counsel is correct, we're just asking for

15 leniency.

16 HEARING OFFICER JONES: Are there any questions

17 the board would like to ask for Ms. Williams or

18 Mr. Nguyen?

19 Are there any questions they have for Mr. Jochums?

20 MS. TRAYLOR: I was just confused. I thought --

21 she has the license now, but I thought it was just she

22 had obtained a manicurist license. I thought she still

23 couldn't do that.

24 HEARING OFFICER JONES: Right.

25 If there are no further questions, Mr. Jochums,

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 would you like to make any closing statements?

2 MR. JOCHUMS: The point is, on July 6, the person
3 performing this is not licensed. According to the
4 notarized Complaint it was Mr. Nguyen and he says it
5 was my wife. But at any rate, the salon did an
6 unlicensed -- outside of their scope of their license
7 situation, so...

8 MS. STEPHANIE WILLIAMS: And we're not -- like I
9 say, we're not contesting that. We're just requesting
10 leniency.

11 MR. JOCHUMS: And what -- I guess we should have
12 Kathy explain, this is not, because of the uniqueness
13 of this case, she did not set a recommended civil
14 penalty.

15 MS. WITTUM: Okay.

16 MR. JOCHUMS: And so, unless she wants to make one
17 now, it's at the board's discretion as to what the
18 penalty should be.

19 MS. TRAYLOR: Was she in school at the time, in
20 aesthetician school at the time this was --

21 MR. JOCHUMS: She must have been.

22 HEARING OFFICER JONES: Ms. Traylor, let's put

23 your question to Ms. Williams and see if her and her

24 client can answer that.

25 MS. TRAYLOR: Oh, okay.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

36

1 HEARING OFFICER JONES: How about that?

2 MS. TRAYLOR: That's fine.

3 HEARING OFFICER JONES: Ms. Williams, can you
4 please answer the board member's question?

5 MS. STEPHANIE WILLIAMS: He -- Mr. Nguyen is
6 telling me that, yes, she had already been in training
7 for that service at the time that she performed the
8 service, but she just had not acquired her license.

9 MS. WEST: Question.

10 HEARING OFFICER JONES: Yes.

11 MS. WEST: I have a question for our director.

12 Could you tell me, on the nature of the complaint,
13 the -- I know that that is -- this is brought about by
14 a complaint, that we're not dealing with that. But it
15 would still help us to know the extremity of the

16 complaint.

17 MS. WITTUM: Well, according to Ms. Bass, the --
18 while the services were being performed, wax was
19 dropped on her face below her right eye that resulted
20 in a burn, and what she considers to be a permanent
21 scar. You have a copy of that, of the picture that
22 they took attached to the Complaint there. And it does
23 show an indication there where it was burned below her
24 right eye, towards the corner of her eye.

25 HEARING OFFICER JONES: Are there any further

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

37

1 questions?

2 MS. STEPHANIE WILLIAMS: May I -- may I speak?

3 HEARING OFFICER JONES: If there are no other
4 questions, Ms. Williams, you may make a closing
5 statement.

6 MS. STEPHANIE WILLIAMS: And I don't know if it's
7 proper or not, but Mr. Nguyen has in a separate venue

8 settled with Ms. Bass to compensate her for her
9 inconvenience and her problem. Just in a -- in
10 conjunction with requesting leniency, as soon as that
11 happened, he did make it right with her and -- and
12 offered her a settlement amount that -- that she was
13 happy with. And this complaint actually came about
14 after that, which somewhat surprised him, because he
15 did make several efforts to try to -- to make it right
16 with her after this incident happened.

17 HEARING OFFICER JONES: Is there anything further
18 you would like to state?

19 MS. STEPHANIE WILLIAMS: No, ma'am.
20 Thank you.

21 HEARING OFFICER JONES: At this time the record
22 will be closed and complete, except for the board's
23 recess for deliberations and decision, at which time we
24 will go back on the record.

25 (WHEREUPON, the Commission retired to deliberate,

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 off the record, and returned with the following
2 motion.)

3 HEARING OFFICER JONES: At this time, if there are
4 no other deliberations, we'll go back on the record for
5 a motion.

6 MR. KEENE: Finding the allegations being true, I
7 move to order the respondent to pay a fine in the
8 amount of a hundred dollars, payable within 30 days
9 from receipt of the board's order. Failure to pay the
10 fine as ordered will result in a suspension of the
11 respondent's cosmetology salon license, beginning 30
12 days from receipt of the order and continuing for a
13 period of 90 days from the date the respondent
14 relinquishes his license to the board.

15 MS. POWELL: Are you talking about the
16 practitioner license or the business license?

17 MR. KEENE: Business.

18 MS. POWELL: Business?

19 MR. KEENE: There wasn't a practitioner license
20 during this time.

21 MS. POWELL: Oh, I was thinking he might be -- he

22 was a licensed practitioner.

23 MR. KEENE: No. It's his salon. The violation
24 isn't against him personally for the burns, as I
25 understood the order.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

39

1 MS. POWELL: Right.

2 MR. KEENE: But it was his shop license.

3 MS. POWELL: Anything else?

4 MS. PICKERING: I'll second that.

5 MS. POWELL: I have a motion and a second. Is
6 there any discussion?

7 All those in favor, raise your right hand.

8 (Four hands raised.)

9 All those opposed?

10 (Four hands raised.)

11 MR. KEENE: You get to break the tie.

12 MR. JOCHUMS: You get to break the tie.

13 MS. POWELL: I vote no.

14 MR. JOCHUMS: Okay.

15 HEARING OFFICER JONES: That motion fails.

16 MS. POWELL: Is there any further discussion from
17 the board?

18 MR. JOCHUMS: Different motion?

19 MS. TRAYLOR: We're not doing anything against the
20 license she didn't have, but now I understand she is
21 licensed?

22 MS. POWELL: Right. So we're dealing with the
23 establishment owner specific.

24 MS. TRAYLOR: But he allowed some unlicensed
25 person --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

40

1 MS. WITTUM: She had a manicurist license at the
2 time it happened.

3 MS. POWELL: She was -- she was practicing outside
4 the scope of her license.

5 MR. JOCHUMS: Outside the scope of her practice.

6 MS. TRAYLOR: Okay.

7 MS. WEST: May I ask a question to the board

8 members?

9 HEARING OFFICER JONES: If we're going to
10 deliberate, let's go off the record for deliberations
11 again. Okay? And then we'll come back on when you all
12 have another motion.

13 (WHEREUPON, the Commission retired to deliberate,
14 off the record.)

15 MS. STEPHANIE WILLIAMS: Okay. I have a letter
16 dated June the 5th that is from Ms. Bass's attorney,
17 where it says, "Thank you for settling this case. This
18 letter will serve as confirmation that any and all
19 claims of Ms. Freda Bass are hereby settled and held
20 for naught."

21 And, you know, I don't know what her -- I mean
22 obviously, you know, you all keep your complaint
23 separate from any civil matter that she might have had.
24 However, you know, Mr. Nguyen has told me that I can
25 disclose what she was paid -- he paid her \$5,000 to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 settle the case, to not have to engage in civil
2 litigation. So I feel like he has paid a substantial
3 penalty and has, you know, learned a lesson from this
4 mistake. And as I read the cosmetology law, the point
5 of the law is to -- to fine him if the board feels that
6 it can prevent that behavior in the future. And I
7 think that the fact that he settled with her so quickly
8 and for such a substantial amount does indicate that he
9 has learned a lesson and that he is very unlikely to
10 have such a mistake in the future.

11 MS. TURMAN: Can I make a comment?

12 I think that settlement was the legal between he
13 and the client. That does not have anything to do with
14 the board.

15 MS. STEPHANIE WILLIAMS: Yes, ma'am, I understand.

16 I just thought that -- that the fine would take
17 into consideration whether or not he would be likely
18 to --

19 MS. TURMAN: Yes, but she's filed a Complaint with
20 us also.

21 MS. STEPHANIE WILLIAMS: Yes, ma'am. And I
22 understand that it's separate. I just wanted to let
23 you know that he has, you know, done everything that he
24 could as far as that particular person is concerned to
25 make it right.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

42

1 MR. KEENE: Could you give us a -- a time frame of
2 when the -- this Complaint would have been filed with
3 us, the Complaint she made with an attorney, and the
4 settlement that was done with her?

5 MS. STEPHANIE WILLIAMS: My understanding is that
6 the incident happened on or about March the 14th, and
7 that she was treated for the burn, and then some time
8 pretty quickly thereafter went to an attorney, and by
9 June the 5th Mr. Nguyen had dealt with her and
10 provided settlement in full by June the 5th.

11 MR. KEENE: When was -- when was this filed with
12 our office?

13 MS. WITTUM: She submitted -- she initially

14 submitted it --

15 MS. POWELL: On July the 6th, it says the

16 Complaint was received by the board.

17 MS. WITTUM: Initially, when she submitted the

18 Complaint form, she did not send any additional

19 information, and I held off bringing it to the board

20 trying to get the information that she said she had to

21 have earned the injury that she had suffered. And so

22 we were able to get that from the attorney in

23 September, and that's the reason why it's here now.

24 One thing I would like to point out is Ms. Bass

25 and her attorney were copied on the letter to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

43

1 Mr. Nguyen, notifying of the meeting today, and it

2 appears that she nor her attorney have appeared.

3 HEARING OFFICER JONES: Are there any other

4 questions?

5 Okay. We will go off the record and let you all

6 deliberate and come up with a motion, at which time we
7 will go back on the record.

8 (WHEREUPON, the Commission retired to deliberate,
9 off the record, and returned with the following
10 motion.)

11 MS. TRAYLOR: Finding the allegations being true,
12 and working a person working out of the scope, I move
13 that we find him \$250, payable within 30 days or
14 suspension of his salon license.

15 MS. POWELL: I have a motion. Do I have a second?

16 MR. DOWNEY: I'll second it.

17 MS. POWELL: I have a motion and a second. Is
18 there any further discussion?

19 (No response.)

20 All those in favor, raise your right hand.

21 (Four hands raised.)

22 All most opposed?

23 (Four hands raised.)

24 MS. POWELL: I vote yes.

25 MR. JOCHUMS: Five yes, four no.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 Motion passes.

2 MS. POWELL: Okay. Motion passes.

3 HEARING OFFICER JONES: Let the record reflect
4 that the decision has been made by the board and a vote
5 of five to four. It will be reduced to writing and
6 service will be made upon all parties. If the
7 respondent cares to take an appeal of this decision,
8 they may take an appeal under the Administrative
9 Procedures Act 25-15-201, or if there are any such
10 appeal provisions under the rules of the board.

11 If there are no other questions or comments, this
12 hearing is concluded and the record of this hearing is
13 closed.

14 Thank you, Mr. Nguyen, Ms. Williams.

15 MS. STEPHANIE WILLIAMS: Can he pay his fine
16 today?

17 MS. WITTUM: Yes. Just go up to the office there,
18 Suite 108.

19 MS. STEPHANIE WILLIAMS: Okay. Thank you.

20 (WHEREUPON, the above-entitled hearing was

21 concluded.)

22 ---o---

23 ADMINISTRATIVE HEARING NO. 07-107

24 HEARING OFFICER JONES: Next for the board will be

25 Tu Nguyen, 07-107. 07-107.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

45

1 If the board is ready to proceed, once again, my
2 name is Kendra Akin Jones, and I'm the Hearing Officer
3 in the matter of Tu Nguyen, 07-107, to be heard before
4 the Arkansas State Board of Cosmetology. Today is
5 November 20, 2006. We're located in the conference
6 room of the Main Street Mall.

7 Would the respondent please identify himself for
8 the record?

9 State your name.

10 TU NGUYEN: My name is Nguyen Tu.

11 COURT REPORTER: I can't hear you.

12 HEARING OFFICER JONES: You've got to speak loud

13 enough for the reporter to hear you.

14 TU NGUYEN: Tu Nguyen. Tu Nguyen.

15 HEARING OFFICER JONES: Tu Nguyen.

16 Do you need a spelling on that?

17 COURT REPORTER: It's on here.

18 HEARING OFFICER JONES: Okay. And counsel for the

19 board?

20 MR. JOCHUMS: Okay. My name is Arnold Jochums.

21 I'll be presenting this matter this morning.

22 As a preliminary matter, I would like to make the

23 Notice of Hearing --

24 HEARING OFFICER JONES: If you would wait just a

25 minute, Mr. Jochums.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

46

1 MR. JOCHUMS: Oh, I'm sorry. I guess you have

2 some things.

3 HEARING OFFICER JONES: That's all right.

4 And, Mr. Nguyen, did you receive your Order and

5 Notice of Hearing to come today?

6 TU NGUYEN: Yes. Uh-huh.

7 HEARING OFFICER JONES: Okay. And you heard me

8 just say earlier that this is not going to be the

9 strict rules of evidence and that it's under the

10 Administrative Procedures Act, so I have some leniency

11 as to what evidence I'll let you -- what I'll let you

12 show the board. And that it is under the Freedom of

13 Information Act, to be heard by everybody.

14 And at this time, if the court reporter will swear

15 you in, if you will raise your right hand.

16 (WHEREUPON, the witnesses were sworn.)

17 HEARING OFFICER JONES: Okay. Mr. Jochums,

18 preliminary matters?

19 MR. JOCHUMS: Yes. I would like to make a

20 board -- I think we'll make just one bulk exhibit,

21 Exhibit No. 1 the letter dated October 26 to Mr. Nguyen

22 informing him of this hearing and his options, along

23 with the Notice of Hearing and a, I think it's a

24 three-page inspection report.

25 HEARING OFFICER JONES: That will be so admitted

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

47

1 for the board as Exhibit 1.

2 (WHEREUPON, Board's Exhibit No. 07-107 1 was
3 received in evidence.).

4 HEARING OFFICER JONES: Mr. Nguyen, do you have
5 anything you would like to introduce to the board?
6 Anything you would like to show them today while you're
7 talking?

8 TU NGUYEN: Yes, ma'am. Is that before I had a
9 motorcycle accident, an emergency, my wife called her
10 sister --

11 COURT REPORTER: I can't hear. I'm going to have
12 to be able to hear you.

13 HEARING OFFICER JONES: You're going to have to
14 speak up.

15 TU NGUYEN: It's just before they came by and
16 checking on my business, then before that I have the
17 motorcycle accident, then my wife she have to --

18 HEARING OFFICER JONES: Okay. But, Mr. Nguyen,

19 we'll give you -- I'll give you a chance in just a
20 minute to tell your whole side of the story. But do
21 you have any paperwork that you want the board to see
22 today?

23 TU NGUYEN: For the hospital bill, for hospital
24 for something to show them or --

25 HEARING OFFICER JONES: Do you have copies for the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

48

1 board to see today?

2 If you have something you want the board to see,
3 if you would bring it up front to Ms. Wittum and
4 Ms. Powell.

5 TU NGUYEN: I take them one, let's see --

6 MS. JACKSON: But do you want them to see your
7 hospital information?

8 TU NGUYEN: Yes, ma'am.

9 MS. JACKSON: Then you need to take it up to
10 Ms. Powell and Ms. Wittum.

11 HEARING OFFICER JONES: If you will bring it right

12 up here.

13 MR. JOCHUMS: I'm not sure what this has anything

14 to do with, so why don't we just let it sit up here

15 until we get a little further into the case.

16 HEARING OFFICER JONES: Yeah. Yeah.

17 Okay. Mr. Nguyen, we're going to let your

18 hospital record -- I'll wait to admit those until I see

19 if they are going to be necessary. Okay? And if so,

20 then we'll deal with that then.

21 Mr. Jochums, you may make an opening statement.

22 MR. JOCHUMS: Okay. Before I do that, I need to

23 also ask in this case that we make the rules and

24 regulations an exhibit to this -- this hearing.

25 (WHEREUPON, Board's Exhibit No. 07-107 2 was

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

49

1 received in evidence.)

2 MR. JOCHUMS: Board members, this case involves

3 about three different things. Involves an unlicensed

4 practitioner -- or actually it was a previously
5 licensed practitioner that was working on an expired
6 license. It observes the possible issue of waxing
7 services being prepared in a manicure place, outside
8 the scope of practice. And it involves a number of
9 health and safety issues that are listed in Paragraph 5
10 of the notice.

11 Our inspector today is Ms. Jackson.

12 MS. JACKSON: There you go. Correct.

13 MR. JOCHUMS: And you've been sworn, ma'am.

14 WHEREUPON,

15 PAT JACKSON,

16 having been called for examination, and having been first duly
17 sworn by the undersigned notary public, was examined and
18 testified, as follows:

19 DIRECT EXAMINATION

20 BY MR. JOCHUMS:

21 Q Tell us about your visit to OP Nails.

22 A I visited OP Nails in Magnolia on August the 2nd of this
23 year, and found a Ms. Vo performing cosmetology services, which
24 was waxing. And she had an Oklahoma license posted. No -- no
25 Arkansas license.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

50

1 Mr. Nguyen was -- was not there at the time.

2 Q Okay. I notice on your back page --

3 A Right.

4 Q -- of your inspection report, you've got three names listed?

5 A Right.

6 Q The first one, Kim Hue Thi Vo?

7 A Kim. Uh-huh.

8 Q Is that the person who was not licensed?

9 A Yes. That is the person who had the Oklahoma license. Yes.

10 Q Okay. And she was there?

11 A Yes. She was.

12 Q Doing a waxing?

13 A Correct.

14 Q Okay. Mr. Nguyen was not there?

15 A No.

16 Q And is he --

17 A This --

18 Q Is he the owner?

19 A Yes. I believe that's who the license is under.

20 Q Okay. And then there is another name. Who is that?

21 A I believe that is -- Lang, are you speaking of?

22 Q Yes. Lang My.

23 A I think that is Mr. Nguyen's wife. I'm not positive now on

24 that. He would have to answer that.

25 That was a license that was posted, though.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

51

1 Q Okay. But she was not present either?

2 A No.

3 Q So, the only one person was the person with the Oklahoma

4 license?

5 A Was Kim. Uh-huh.

6 Q Okay. Thank you.

7 Tell us more of what you saw that day.

8 A Also there were several sanitation violations. I observed

9 used files and buffers that were not being disposed of after use.

10 On the electric drills, they were not removing their electric

11 buffers, nail buffers, and disinfecting them in between clients.

12 No sanitation of used or cleaned hand instruments. That was from

13 instruments being left in the manicure drawer along with used

14 buffers, so everything in there was rendered soiled.

15 Q Okay. Had you been in this establishment previously?

16 A Yes.

17 Q And have they been in business for some time, or is this a

18 new --

19 A I -- this salon has been -- it's been there for some time.

20 I think it's changed owners, it may have changed ownership a time

21 or two.

22 I don't recall exactly how long it's been there. Maybe a

23 year, year and a half.

24 Q Are there other items of health and safety that need to be

25 pointed out?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

52

1 Well, let me ask you another question.

2 A Okay.

3 Q Your inspection report has got somebody's initials at the
4 bottom. Who is that? Who initialed --

5 A I was -- I would guess that that was the lady that was
6 there, Kim.

7 Q Okay.

8 A I don't recall this particular day. I'm sorry.

9 But I do believe she was the only one present. And also, as
10 I noted on the back of my inspection form, and I did put this
11 down, after this form was signed, Ms. Vo -- Ms. Vo went right
12 back to work pedicuring. She was going back and forth between
13 two clients, and this is the same lady that has the Oklahoma
14 license. So my visit didn't detour any of that.

15 Q Now, was this for the second client or the same one you
16 initially observed?

17 A I'm sorry. I don't remember.

18 Q Not sure?

19 Okay. But you --

20 A I know she had two pedicure clients that she was alternately
21 working on.

22 Q But, basically, what you're saying is when you came in the
23 shop, you observed conduct outside of the scope?

24 A Right.

25 Q You talked to the lady?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

53

1 A Correct.

2 Q Filled out all the forms?

3 A Right.

4 Q And as you were leaving, she was again doing --

5 A She returned, yes. Yes, she began --

6 Q -- practice outside the scope of her license?

7 A Well, it would be, because she is an Arkansas -- I mean

8 she's not licensed in Arkansas. She has an Oklahoma license.

9 Q Okay.

10 A Which would not permit her to work in any area.

11 Q Okay. Right.

12 Okay. If she had had a license, pedicures are allowed?

13 A Correct.

14 Q But she was not licensed?

15 A If she had a manicure license. Correct.

16 Q I'm sorry, I confused you, and I apologize.

17 A That's all right.

18 MR. JOCHUMS: I have no further questions of this
19 witness.

20 HEARING OFFICER JONES: Mr. Nguyen, is there
21 anything that you would like to ask? Any questions you
22 have?

23 TU NGUYEN: Yes. It was because she can't speak
24 English well, because she sign the paper --

25 HEARING OFFICER JONES: Okay. Mr. Nguyen, I'm

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

54

1 going to give you the chance in just a minute to say
2 whatever you want. But do you have any questions
3 for -- for Ms. Jackson?

4 TU NGUYEN: I really don't have -- the day that
5 happen, I don't even know what happened in the
6 business.

7 HEARING OFFICER JONES: But do you have any
8 questions that you want to ask of this witness sitting
9 right next to you?

10 TU NGUYEN: No, ma'am.

11 HEARING OFFICER JONES: Okay. Mr. Jochums, any
12 further witnesses?

13 MR. JOCHUMS: Yes. I want to call Kathy Wittum.

14 WHEREUPON,

15 KATHY WITTUM,

16 having been called for examination, and having been first duly

17 sworn by the undersigned notary public, was examined and

18 testified, as follows:

19 DIRECT EXAMINATION

20 BY MR. JOCHUMS:

21 Q Kathy, you're the board director?

22 A Yes.

23 Q And you issued this Notice of Hearing?

24 A Yes.

25 Q Did you, in the course of handling this matter, check on the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 license status of the person that is reported as working that

2 day, Kim Hue Thi Vo?

3 A Yes.

4 We have no record of a reciprocity application being
5 received.

6 Q And, in fact, has she offered to pay a fine?

7 A Yes.

8 She paid \$500.

9 MR. JOCHUMS: I have no other questions.

10 HEARING OFFICER JONES: Does the board have any
11 questions of Ms. Wittum or Ms. Jackson that they would
12 like to ask?

13 EXAMINATION BY THE BOARD

14 MS. WEST: Was the \$500 in relation to this?

15 MS. WITTUM: Yes.

16 MS. POWELL: What established that amount?

17 So she's paying -- is she willing to pay the
18 thousand dollars and that she's paid 500?

19 MS. WITTUM: No. She was issued 500 for working
20 unlicensed. And I did it twice, \$250 twice, because
21 she had two people that Ms. Jackson saw her working on.

22 The thousand dollars for --

23 MS. POWELL: I'm sorry. It was for him.

24 MS. WITTUM: -- for this person involves not only
25 that but also health and safety issues.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

56

1 MS. POWELL: Okay. So she did pay her 500?

2 MS. WITTUM: Yes.

3 MS. POWELL: Thank you.

4 HEARING OFFICER JONES: Any further questions from
5 the board for Ms. Jackson or Ms. Wittum?

6 MS. POWELL: Yes.

7 And it does say that she has filed for
8 reciprocity?

9 MS. WITTUM: But she has not. I have checked
10 again this morning and we have no record.

11 MS. POWELL: Okay. So that's why --

12 MS. JACKSON: I just wrote the information here
13 that she gave me that she had. I didn't know if she
14 had at that time.

15 MS. POWELL: Okay. And I also see that -- and

16 you're mentioning that you have a -- there is an

17 expired license posted.

18 Do you know what license were expired?

19 MS. JACKSON: I'm sorry.

20 Which one is that, Ms. Powell?

21 Is that under the shop or under the --

22 MS. POWELL: I'm looking at now, under No. 2,

23 where you cited Kim for working in an establishment

24 without an Arkansas license --

25 MS. JACKSON: Okay. Let me get that.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

57

1 MS. POWELL: -- and for having expired license

2 posted.

3 MS. WITTUM: I may can answer that for

4 Ms. Jackson.

5 MS. POWELL: Okay.

6 MS. WITTUM: On the revised inspection report, or

7 form, it's got all posted licenses current.

8 MS. JACKSON: Right.

9 MS. WITTUM: And Ms. Jackson indicated, no, that
10 the Oklahoma license was posted.

11 MS. JACKSON: Right.

12 MS. WITTUM: Underneath it, it's got all posted
13 licenses are current. That's also indicated to be no,
14 no Arkansas licenses.

15 She may have -- Ms. Jackson can speak for herself,
16 but she may have been referring to the fact that it was
17 an Oklahoma license.

18 MS. JACKSON: Right. Correct.

19 MS. WITTUM: Not necessarily that it was an
20 expired license.

21 MS. JACKSON: An expired license. Thank you.
22 That is correct.

23 MS. WITTUM: Okay. Thank you.

24 HEARING OFFICER JONES: Any further questions that
25 the board has for either of these ladies?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. GORDON: The thousand dollars fine is for the
2 salon?

3 MS. WITTUM: Yes.

4 MS. GORDON: The lady has already taken care of
5 hers?

6 MS. WITTUM: Right.

7 HEARING OFFICER JONES: Further questions?

8 MR. JOCHUMS: I have nothing further to present
9 for the board at this time, Madam Hearing Officer.

10 HEARING OFFICER JONES: Okay. Mr. Nguyen --

11 TU NGUYEN: Yes.

12 HEARING OFFICER JONES: -- speak your mind.

13 Whatever you want to tell the board, what you want them
14 to hear before they make up their minds today, you tell
15 them right now.

16 WHEREUPON,

17 TU NGUYEN,

18 having been called for examination, and having been first duly
19 sworn by the undersigned notary public, was examined and
20 testified, as follows:

21 DIRECT EXAMINATION

22 THE WITNESS: It, I have a person, the lady,

23 really she can't speak English. Then the person sign
24 the paper, she didn't know what kind of paper, you
25 know, she don't understand. And she said, she couldn't

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

59

1 walk -- she keep on working, but she don't really
2 understand what paper she sign for. Then really, the
3 paper, she applied before is already been applied for
4 the license.

5 HEARING OFFICER JONES: Do you have that paperwork
6 with you?

7 THE WITNESS: Yes, ma'am. I do.

8 HEARING OFFICER JONES: If you will bring it up
9 front please.

10 Ms. Wittum, if you would look over that.

11 I'm going to introduce the paperwork for
12 reciprocity for Kim Hue Vo. It's Exhibit 1 for the
13 respondent.

14 And the date on that paperwork is --

15 MS. WITTUM: This -- this has not been turned in
16 to the office yet, because her payment is here with the
17 paperwork.

18 HEARING OFFICER JONES: Okay.

19 MS. WITTUM: So we do not have record. But if you
20 want to leave this with us today?

21 THE WITNESS: Yes, ma'am, because this already
22 send them in. Then I don't know what happened, they
23 return them back. That's why I brought them.

24 MS. WITTUM: Now, she -- she will be required to
25 come into the office for a reciprocity interview.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

60

1 THE WITNESS: Yeah. Because she move back after I
2 get out of hospital, then she have to move back because
3 I have to go to work and she move back to Oklahoma.
4 That's why she came back -- she can't come back up
5 here.

6 MS. WITTUM: Okay.

7 HEARING OFFICER JONES: Okay. Mr. Nguyen, go --

8 MS. POWELL: Okay.

9 HEARING OFFICER JONES: That is dated October the
10 5th. But please --

11 MR. JOCHUMS: We can certainly put a copy of this
12 in.

13 HEARING OFFICER JONES: Yeah. If we can put a
14 copy of that in the file and note that it has not been
15 entered at this point.

16 MR. JOCHUMS: As Exhibit 1.

17 (WHEREUPON, Respondent's Exhibit No. 07-107 1 was
18 received in evidence.)

19 HEARING OFFICER JONES: Mr. Nguyen, go ahead with
20 what you would like to say.

21 THE WITNESS: Yes. I really think that the fine
22 for \$1,000 for that dirty, I don't know what I have to
23 do about it, but I really -- the work up there, that
24 emergency, I had some come to help me, you know, I have
25 an emergency, motorcycle accident. You know I really

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 don't know they keep clean or dirty, you know. For us,
2 you know, I really don't know nothing about. My wife
3 is not there either. But I'm really sorry about, you
4 know, she make lady dirty, you know, that have to pay
5 that money though.

6 HEARING OFFICER JONES: Is there anything else you
7 would like to say to the board?

8 THE WITNESS: That's it, ma'am. That's it.
9 Thank you.

10 HEARING OFFICER JONES: All right. Does the board
11 have any questions for Mr. Nguyen?

12 MS. POWELL: I do.

13 HEARING OFFICER JONES: Go ahead, Ms. Powell.

14 EXAMINATION BY THE BOARD

15 MS. POWELL: Mr. Nguyen, does your -- do you and
16 your wife understand that she's not licensed in
17 Arkansas?

18 THE WITNESS: Yes, we do. That's why what --

19 MS. POWELL: You understand?

20 THE WITNESS: Yes. I told her, see, after I have
21 the accident motorcycle, then couple week later she

22 call her sister to come help emergency. And after that
23 day she filled out her paper. I think she came up
24 here. Not -- she came up here and filled out her paper
25 and she send them in. I think the day she send them in

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

62

1 or somehow, I don't know how long later the lady come,
2 but they come check them out, that's it.

3 MS. POWELL: You have a current establishment
4 license?

5 THE WITNESS: What that mean?

6 MS. POWELL: Do you have a current shop license?

7 THE WITNESS: Yes, ma'am. Yes, ma'am.

8 MS. POWELL: Do you know proper procedure to
9 acquire that license?

10 THE WITNESS: I don't understand.

11 MS. POWELL: Do you know how to get a license for
12 your salon?

13 THE WITNESS: Yes, ma'am. That's why she come in

14 here. I come in because I buy through the other guy

15 and he showed me how to do it.

16 MS. POWELL: Buy?

17 MS. JACKSON: It was sold to this man.

18 MS. POWELL: Oh, oh.

19 HEARING OFFICER JONES: Questions from the board?

20 Further questions?

21 MS. POWELL: How long has he been --

22 MR. JOCHUMS: Do --

23 HEARING OFFICER JONES: Go ahead, Mr. Jochums.

24 CROSS-EXAMINATION

25 BY MR. JOCHUMS:

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

63

1 Q Do you do manicures or do you do -- work somewhere else?

2 A Just the manicure and pedicure.

3 Q Oh, you do do that?

4 Okay. Are you saying that the woman with the Oklahoma

5 license was your sister-in-law?

6 A Yes, ma'am -- yes, sir. Sorry.

7 Q She came in to help your wife?

8 Your wife has a license?

9 A Yes.

10 MS. JACKSON: Mr. Nguyen had had a motorcycle
11 accident, so he was out for some time.

12 EXAMINATION BY THE BOARD

13 HEARING OFFICER JONES: Okay. Ms. Ward?

14 MS. WARD: Okay. You know that a manicurist
15 cannot do waxing. Why do you have waxing equipment
16 there to do waxing for?

17 THE WITNESS: Because this, through my wife
18 sister, because she work, she had a license to work
19 everything, waxing and eyebrow and haircut. That's why
20 she brought that close to -- from Oklahoma with her.

21 MS. WARD: But the salon is only a manicure salon.
22 Am I correct?

23 THE WITNESS: Yes, ma'am. I agree.

24 MS. WARD: In a manicure salon you cannot do
25 anything besides manicuring and pedicuring.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 THE WITNESS: I really don't know.

2 MS. WITTUM: Excuse me, Ms. Ward.

3 An establishment license is just an establishment
4 license. There is no distinction between manicure or
5 hair. So if, as long as there is a cosmetologist who
6 is working and performing those services, they are
7 okay, even though it is a nail salon.

8 MS. WARD: All right.

9 MS. POWELL: But we don't have a licensed
10 cosmetologist in the establishment.

11 MS. WITTUM: Yeah. Right.

12 MS. WARD: Okay.

13 MS. POWELL: But we do -- we don't have a licensed
14 practitioner in the establishment?

15 MS. JACKSON: No. Her Oklahoma license were
16 posted just like we post Arkansas. And in Oklahoma,
17 they are allowed, and she had a full cosmo license from
18 Oklahoma. So --

19 MS. POWELL: But she's just typically unlicensed
20 in Arkansas, is what we're trying to establish here?

21 MS. JACKSON: Yes.

22 HEARING OFFICER JONES: Okay. Further questions

23 from the board?

24 Go ahead.

25 MS. WEST: Mr. Nguyen.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

65

1 THE WITNESS: Yes.

2 MS. WEST: How long have you owned the salon?

3 THE WITNESS: I've been owning it almost 11 months

4 now.

5 MS. WEST: Not a year?

6 THE WITNESS: Not a year.

7 Next month, ten, 11 going to be a year.

8 MS. POWELL: I think the director said it was

9 since December of '05.

10 MS. WITTUM: December of '05.

11 MS. WEST: December of '05.

12 MS. POWELL: Uh-huh.

13 HEARING OFFICER JONES: Other questions?

14 MS. TURMAN: Do you have other employees, other
15 than you and your wife at the salon?

16 THE WITNESS: Only me and my wife at the salon.

17 MS. TURMAN: Was your wife was the one that was
18 using -- or your sister-in-law the one leaving the
19 establishment dirty?

20 THE WITNESS: That was my sister-in-law.

21 MS. TURMAN: Sister-in-law?

22 THE WITNESS: Because my wife, she go and see me
23 when I have the motorcycle accident.

24 HEARING OFFICER JONES: Further questions?

25 MS. POWELL: Mr. Nguyen, is your wife licensed?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

66

1 THE WITNESS: Yes. She have license.

2 MS. POWELL: What kind of license?

3 THE WITNESS: Manicure.

4 MS. POWELL: She has a manicure license?

5 THE WITNESS: Yes, ma'am.

6 MS. POWELL: And do you -- and do you have a
7 practitioner license?

8 Do you have a license?

9 THE WITNESS: Yes, ma'am. I have one.

10 MS. POWELL: Manicure license?

11 THE WITNESS: Yes, ma'am.

12 MS. JACKSON: Is this your wife?

13 THE WITNESS: Uh-huh.

14 HEARING OFFICER JONES: Other questions?

15 The board has no further questions.

16 We will move to closing statements, Mr. Jochums.

17 MR. JOCHUMS: The -- I think the testimony is
18 clear that there was an unlicensed practitioner and
19 that there were health and safety violations, and there
20 certainly is perhaps some allowable mitigation, that
21 they were having a family catastrophe, to put their
22 license in violation.

23 And the notice, I believe, contains the director's
24 recommendation, which is actually, I think, probably
25 the maximum. So you can do any amount less than that,

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

67

1 in terms of a civil penalty, or including that.

2 Thank you.

3 HEARING OFFICER JONES: Mr. Nguyen, is there
4 anything else you want to say before the board makes
5 their decision?

6 TU NGUYEN: No, ma'am.

7 HEARING OFFICER JONES: Okay. At this time the
8 record will be closed so the board may deliberate in
9 order to come up with a motion. And once a motion is
10 determined, we will go back on the record for a
11 decision.

12 (WHEREUPON, the board retired to deliberate, off
13 the record, and returned with the following motion.)

14 HEARING OFFICER JONES: Okay. We will go back on
15 the record for a motion.

16 And, Ms. Gordon, you had yours first.

17 MS. GORDON: Finding the allegations to be true, I
18 move the order be respondents to pay a fine in the
19 amount of \$500, payable within 30 days of receipt of

20 the board order. Failure to pay the fine as ordered
21 will result in a -- the suspension of the respondent's
22 establishment license beginning 30 days of receipt of
23 the order and continuing for a period of 90 days from
24 the date the respondent relinquishes his or her license
25 to the board.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

68

1 MR. KEENE: I'll second.

2 MS. POWELL: I have a motion and a second. Any
3 discussion?

4 All those in favor, raise your right hand.

5 (Six hands raised.)

6 All those opposed?

7 (Two hands raised.)

8 HEARING OFFICER JONES: The motion passes. It
9 will be reduced to writing and service will be
10 attempted upon all parties. If the respondent cares to
11 appeal the decision, an appeal may be taken under the

12 Administrative Procedures Act 25-15-201, and if there
13 is any such provision under the Arkansas State Board of
14 Cosmetology rules, it can be taken under that as well.

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

18 Thank you, Mr. Nguyen.

19 Be sure to get your paperwork that you brought up
20 front.

21 (WHEREUPON, the above-entitled hearing was
22 concluded.)

23 ---o---

24 ADMINISTRATIVE HEARING NO. 07-085

25 HEARING OFFICER JONES: And next we will have

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

69

1 Betty Kirsch, and this is 07-085. 07-085.

2 07-085. Ms. Kirsch is a carry over from the

3 September hearing.

4 They were here in September and it was a really

5 long day.

6 07-085.

7 MS. WITTUM: I have an extra one here, if anybody

8 wants one.

9 COURT REPORTER: Ms. Kirsch, how do you spell your
10 name?

11 MS. TEMPLE: K-I-R-S-C-H.

12 COURT REPORTER: And what's your first name?

13 MS. TEMPLE: Betty. And it's Betty Kirsch Temple.

14 COURT REPORTER: T-E-M-P-L-E?

15 MS. TEMPLE: Yes, ma'am.

16 COURT REPORTER: Thank you, ma'am.

17 HEARING OFFICER JONES: 07-085. Betty Kirsch.

18 MS. WITTUM: I have an extra one here, if anybody
19 needs it.

20 HEARING OFFICER JONES: Okay. Does everybody on
21 this side have theirs? Kirsch?

22 Okay. Just checking.

23 MS. WITTUM: Okay. We'll share this one. Okay.

24 HEARING OFFICER JONES: Okay. Everybody has
25 Ms. Kirsch's hearing notice.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

70

1 MS. TRAYLOR: Not yet.

2 HEARING OFFICER JONES: Not yet.

3 MS. McCUIEN: Everybody except Veda have one?

4 MS. WITTUM: Here. I'll give her mine.

5 MS. TRAYLOR: No. I'll read Nick's with him.

6 Okay. I'll look right here.

7 HEARING OFFICER JONES: Okay. We will now start
8 the hearing.

9 My name is Kendra Akin Jones. Once again, I'm the
10 Hearing Officer for today, in the matter of Betty
11 Kirsch, Hearing No. 07-085, to be heard before the
12 Arkansas State Board of Cosmetology. Today is
13 November 20, 2006. We're located in the conference
14 room in the Main Street Mall.

15 Would the respondent please identify themselves for
16 the record?

17 MS. TEMPLE: Betty Kirsch Temple.

18 HEARING OFFICER JONES: Okay. And counsel for the

19 board?

20 MR. JOCHUMS: My name is Arnold Jochums for the

21 board.

22 HEARING OFFICER JONES: Okay. Ms. Kirsch, you

23 heard me say earlier that the decision of the board

24 today will be based solely on the information and

25 evidence presented before them today. This hearing is

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

71

1 under the Administrative Procedures Act, and gives some

2 leniency in what I will allow into evidence and/or

3 objections and cautions.

4 The board members know this case only as it is

5 presented in the -- in the Notice of Hearing. And it

6 is open for -- for the public under the Freedom of

7 Information Act.

8 Would all witnesses for this case please raise

9 your right hand so the court reporter can swear you in.

10 (WHEREUPON, the witnesses were sworn.)

11 HEARING OFFICER JONES: Thank you.

12 Okay. Mr. Jochums, preliminary matters?

13 MR. JOCHUMS: I would like to make the conveyance

14 letter, Order and Notice of Hearing, and inspection

15 report Exhibit 1 for the board.

16 (WHEREUPON, Board's Exhibit No. 06-085 1 was

17 received in evidence.)

18 HEARING OFFICER JONES: That will be made

19 Exhibit 1 for the board.

20 Anything further?

21 MR. JOCHUMS: No.

22 HEARING OFFICER JONES: Ms. Kirsch, is there

23 anything you would like to have produced into evidence

24 today?

25 Or is it Ms. Temple?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

72

1 MS. TEMPLE: Ms. Temple. Yes, ma'am.

2 HEARING OFFICER JONES: Okay.

3 MS. KIRSCH: The only thing is I recall, I was in

4 the hospital --

5 HEARING OFFICER JONES: But is there anything

6 paper wise that you want the board to see?

7 MS. TEMPLE: Oh, no.

8 HEARING OFFICER JONES: Okay. Okay. We'll get to

9 what you have following Mr. Jochums.

10 Mr. Jochums, do you have an opening statement?

11 MR. JOCHUMS: I'll waive opening, start with my

12 witness.

13 HEARING OFFICER JONES: Okay. Ms. Temple, would

14 you like to make an opening statement before we start

15 or just go to the witnesses?

16 MS. TEMPLE: Yes, because --

17 HEARING OFFICER JONES: Okay.

18 MS. TEMPLE: -- what I did, I mailed my license

19 in, got my shop license.

20 Well, no, the shop license didn't come in at all.

21 And then my operator's license, my husband picked those

22 up. And I had called several times to your office, you

23 know, asking why they hadn't been sent.

24 So, anyway, finally I guess it was on a -- my

25 husband picked my license up, and they said that the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

73

1 shop license would be mailed out on Friday. Well they
2 weren't, and she came on Friday. So, anyway, he picked
3 them up on a Monday.

4 But I had trouble year before last with my license
5 being late. My beauty shop license would come in --
6 no, my operator's license would always come in first
7 and then the shop license later. But this time it
8 didn't work that way.

9 But I was in the hospital for several weeks, and
10 my mom lives in my son's house, and my shop is behind
11 my house -- my son's house. And my mother gets the
12 mail, and she's 99, and constantly losing things. So
13 it's possible that they came and she, you know, got
14 them and misplaced them.

15 But that's it.

16 HEARING OFFICER JONES: Okay. Mr. Jochums, you
17 may call your first witness.

18 MR. JOCHUMS: Okay.

19 WHEREUPON,

20 LAVONNE GREEN,

21 having been called for examination, and having been first duly

22 sworn by the undersigned notary public, was examined and

23 testified, as follows:

24 DIRECT EXAMINATION

25 BY MR. JOCHUMS:

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

74

1 Q Ms. Green?

2 A Yes.

3 Q Please state your name for the record.

4 A Lavonne Green.

5 Q And, Lavonne, did you have occasion to go to Betty Kirsch's

6 studio?

7 A Yes. I was there on May 11th.

8 Q And where is it located?

9 A At 5 Christopher Drive in Sherwood.

10 Q And has she accurately described it? Is it behind the

11 house?

12 A Yes.

13 Q Or attached to the house?

14 A Yes.

15 Q Okay. And what did you observe when you went there on May

16 the 11th?

17 A Well, that her license weren't current.

18 I called in to the office and found out that she -- well,

19 she thought that she had them and that, you know -- so I called

20 the office to find out and they said, no, they had not been

21 renewed.

22 So I went back and told her that.

23 Q When you initially went in, were there licenses on the wall?

24 A Yes. But they weren't current.

25 Q But they were for 2005, I would assume?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

75

1 A Uh-huh.

2 Q Okay. Now, was it both licenses or was it just one or the

3 other?

4 A The shop license had not been renewed.

5 Q But her first --

6 A She did have her operator's.

7 Q Okay. Her operator's license, practitioner's license was
8 renewed, but the shop license wasn't?

9 A Yes.

10 Q Did she have any customers on that particular day?

11 A Yes. I believe she was working on a lady.

12 MS. TEMPLE: Uh-huh.

13 BY MR. JOCHUMS:

14 Q Was there any other -- was the license issue being expired
15 and also not posted the only issue that you wrote her up for?

16 A Yes, that's it.

17 Q Or was it health and safety? Those were all fine?

18 A No. Her shop was nice.

19 MR. JOCHUMS: Okay. Thank you.

20 I have no other questions of the witness.

21 HEARING OFFICER JONES: Ms. Kirsch, is there
22 anything you would like to ask this witness?

23 MS. TEMPLE: I can't think of anything.

24 HEARING OFFICER JONES: Okay. Mr. Jochums, next

25 witness.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

76

1 MR. JOCHUMS: Kathy Wittum.

2 WHEREUPON,

3 KATHY WITTUM,

4 having been called for examination, and having been first duly

5 sworn by the undersigned notary public, was examined and

6 testified, as follows:

7 DIRECT EXAMINATION

8 BY MR. JOCHUMS:

9 Q Kathy, you're the board administrator?

10 A Yes.

11 Q Did in the process of issuing this Notice of Hearing, did

12 you check on the status of the license for the Kirsch studio --

13 A Yes.

14 Q -- for 2006?

15 And what did you discover from examining the board records?

16 A Our records reflected that it was not -- it was not current

17 at the time Ms. Green was there for the inspection.

18 Ms. Kirsch submitted renewal on May 18th of 2006, and then
19 the establishment license was issued then.

20 Q Okay. I note that in Paragraph 4 of the Notice of Hearing
21 you recommended a civil penalty of \$137?

22 A Uh-huh.

23 Q Would you explain how -- why you picked that number?

24 A That's based on the board's fee schedule. A 25-dollar base
25 rate, plus a dollar a day for each day after February 1. So

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

77

1 there are 107 days between February 1 and May 18, 2006.

2 Q Okay. And then five dollars for not having it on the wall?

3 A Yes.

4 MR. JOCHUMS: I have no other questions of

5 Ms. Wittum.

6 MS. TEMPLE: I have a question.

7 MR. JOCHUMS: It's your turn.

8 HEARING OFFICER JONES: Go right ahead. You're

9 fine.

10 CROSS-EXAMINATION

11 BY MS. TEMPLE:

12 Q I called the office several times to -- you know, about my
13 license. I talked to the little girl in the back, I don't know,
14 several times. And I don't understand why my license were lost,
15 whether it was your -- they were lost here or whether they were
16 lost in the mail. I don't know. But I do know that I had
17 trouble the year before, but they were -- they finally got there,
18 and I don't know what could have happened.

19 HEARING OFFICER JONES: What is your question for
20 Ms. Wittum?

21 BY MS. TEMPLE:

22 Q Why it is so hard -- you know, why can't I get both license
23 at the same time, when e-mailed them the same time?

24 A Did you write one check for both -- both of them or were
25 they sent with two separate checks?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 Q No. They were sent with two separate checks.

2 A Okay. Then more than likely, I mean I don't know for
3 certain, but more than likely they, when they came in and were
4 opened, they were put in separate piles.

5 Q Okay.

6 A But, now our -- our computer system did not reflect us ever
7 receiving the payment for the establishment license, not until
8 the May 18th.

9 Q Well, it did reflect -- when I bought -- I got my next
10 year's license, I did that today, and the computer didn't bring
11 up the shop a while ago.

12 A Well, now, it won't bring it up simultaneously.

13 It -- if we have the information in front of us that tells
14 us that a practitioner also has an establishment license, then we
15 can pull those records up individually. But we don't know just
16 on an individual basis who has what kind of license or how many.

17 MS. TEMPLE: Okay.

18 HEARING OFFICER JONES: Do you have any further
19 questions for Ms. Wittum?

20 MS. TEMPLE: No.

21 HEARING OFFICER JONES: Does the board have any
22 questions they would like to ask Ms. Green or

23 Ms. Wittum?

24 EXAMINATION BY THE BOARD

25 MR. KEENE: Yes.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

79

1 MS. POWELL: I have one. Is it Ms. Kirsch?

2 HEARING OFFICER JONES: Well, we're going with
3 Ms. Green and Ms. Wittum right now, and then you can
4 ask Ms. Kirsch questions in just a minute.

5 MS. POWELL: No.

6 HEARING OFFICER JONES: Okay. So there are no
7 questions for Ms. Green and Ms. Wittum from the board?

8 MS. POWELL: I can't remember her name is Green.
9 I'm going, who is Ms. Green?

10 HEARING OFFICER JONES: Ms. Gordon, go ahead.

11 MS. GORDON: Kathy, did -- when -- the check that
12 we got for the license for the establishment, is the
13 dates different or you never got that check for the
14 establishment license? The mail --

15 MS. WITTUM: Our records don't reflect we received

16 any until May 18th, this year.

17 MS. GORDON: So the date would have been like

18 May 18th, around that time, on the -- on the --

19 MS. WITTUM: Well she renewed her individual, her
20 practitioner license earlier in the year.

21 MS. TEMPLE: Uh-huh.

22 MS. WITTUM: So, if I'm understanding what was
23 said --

24 MS. TEMPLE: They were sent together. Right.

25 MS. WITTUM: -- she was saying they were sent

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

80

1 together. So if that occurred, then her establishment

2 license and the payment for that either got lost in the

3 office or it got lost in the mail or something.

4 Because we -- we didn't have a record of it until

5 May 18th.

6 MS. TEMPLE: And that's when my husband --

7 HEARING OFFICER JONES: Are there any -- we'll

8 give you a chance to -- to address that in just a
9 second.

10 Are there any other questions from the board for
11 Ms. Wittum or Ms. Green?

12 If there are none, Mr. Jochums, any more
13 witnesses?

14 MR. JOCHUMS: No more witnesses.

15 HEARING OFFICER JONES: Ms. Kirsch, you may call
16 your first witness, if you have any.

17 MS. TEMPLE: Just my husband. And he picked up my
18 license, the shop license.

19 HEARING OFFICER JONES: If you don't want to call
20 any witnesses, you can use this time to kind of tell
21 your side, if you would like.

22 MS. TEMPLE: Well, I think I've already told it.

23 HEARING OFFICER JONES: Okay. Just want to make
24 sure you said everything you wanted to say.

25 MS. TEMPLE: Yes.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 HEARING OFFICER JONES: Okay. Mr. Jochums, do you
2 have any questions for Ms. Kirsch?

3 MR. JOCHUMS: No.

4 HEARING OFFICER JONES: Does the board have any
5 questions that they would like to ask?

6 Okay. We'll start with Ms. Turman.

7 EXAMINATION BY THE BOARD

8 MS. TURMAN: I would like to ask you, did you
9 check with your bank statement to see if that check had
10 cleared?

11 MS. TEMPLE: It didn't clear.

12 MS. TURMAN: It never did clear?

13 MS. TEMPLE: (Shaking head from side to side.)

14 HEARING OFFICER JONES: Further questions?

15 MS. PICKERING: I was going to ask the same
16 question.

17 HEARING OFFICER JONES: Ms. Powell, did you have a
18 question?

19 MS. POWELL: That was the same question.

20 MR. KEENE: Well, mine is along that line but a
21 little different.

22 If -- did your husband, when he came up -- you
23 said your husband came up and got this license for you.
24 Did he pay with a check?
25 MR. TEMPLE: Yes.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

82

1 MR. KEENE: And did that one clear?
2 MS. TEMPLE: Did you pay with a check?
3 MR. TEMPLE: Yes.
4 MR. KEENE: And did that one clear?
5 MR. TEMPLE: Yes.
6 MR. KEENE: Do you have that with you?
7 MR. TEMPLE: No.
8 HEARING OFFICER JONES: Okay. Wait. Now, if
9 we're going to ask the husband questions, we need to
10 bring him in and have him as a witness, if you all want
11 to ask him questions, and Ms. Kirsch doesn't mind, we
12 need to swear him in as --
13 MS. TEMPLE: I want to call him.
14 HEARING OFFICER JONES: Mr. Kirsch, if you will

15 come up and be sworn in by the court reporter.

16 MS. GREEN: You need me to get another chair or do

17 you want --

18 MR. TEMPLE: No, that's fine.

19 MS. POWELL: Well, I don't think there is any

20 dispute that those license is --

21 WHEREUPON,

22 DALE TEMPLE,

23 having been called for examination, and having been first duly

24 sworn by the undersigned notary public, was examined and

25 testified, as follows:

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

83

1 HEARING OFFICER JONES: Okay. Now then, do you

2 all want to ask Mr. Kirsch questions and Ms. Kirsch?

3 MR. TEMPLE: Let me correct something.

4 MS. TEMPLE: It's Temple.

5 MR. TEMPLE: My name is Temple.

6 HEARING OFFICER JONES: Temple. I'm sorry.

7 MR. TEMPLE: We remarried.

8 HEARING OFFICER JONES: I'm sorry. I'm sorry.

9 I wrote Temple down and I've been saying Kirsch
10 this whole time.

11 Ms. Temple or Mr. Temple, if you all have any
12 questions of them, then board you may ask questions.

13 Ms. Pickering?

14 EXAMINATION BY THE BOARD

15 MS. PICKERING: I'm totally confused about,
16 your -- you're saying your shop license and your
17 operator's license. Which license did you actually get
18 first?

19 MS. TEMPLE: The operator's license.

20 MS. PICKERING: Okay. And that cleared for the
21 first of the year '06?

22 MS. TEMPLE: That, it was in, yeah, in like the
23 last of February, I think. I don't know. I --

24 MR. TEMPLE: I don't know.

25 MS. TEMPLE: They were purchased after I got out

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 of the hospital.

2 MS. PICKERING: Okay. Now, the next question is,
3 when you came into the office, was that for the shop
4 license?

5 MR. TEMPLE: Ma'am, I don't know. I mean I -- I'm
6 at home, Betty calls me and she said, the inspector is
7 here, I don't have the right kind of license, and here
8 is the phone number, call them and see if you can go
9 get it, and that's what I did.

10 MS. PICKERING: Okay. And so -- okay.

11 Okay. Ms. Kirsch, let me direct this to you,
12 then. Did you -- which license was operate -- was
13 acquired by --

14 MS. TEMPLE: It was the shop license that he got.

15 MS. PICKERING: That he got?

16 MS. TEMPLE: Yes.

17 MS. PICKERING: All right.

18 MS. TEMPLE: I kept waiting for them to come
19 through the mail, and it didn't. So I had called, and
20 I think I talked to Shaunta, and she told me that they

21 probably -- first of the week I called and she said,
22 well, she was sure they would be out by Friday. Well,
23 Friday I didn't get them either. So I had my husband
24 to pick them up on a Monday.

25 HEARING OFFICER JONES: Further questions?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

85

1 MS. POWELL: But they weren't there in time for
2 the inspector?

3 MS. TEMPLE: No. They were not.

4 MS. POWELL: She's got them now, is what she's
5 trying to say.

6 MS. PICKERING: All right.

7 MS. POWELL: But at the time Lavonne Green -- I'll
8 get it.

9 MS. TRAYLOR: Mrs. Green.

10 MS. POWELL: Mrs. Green visited for the
11 inspection, there was not a -- an establishment license
12 posted because she never got one. She does, however,
13 have a check that states that she -- and she does have

14 a practitioner license, but she doesn't have her
15 establishment license.

16 MS. PICKERING: Okay.

17 MS. POWELL: And then he went and got it after
18 Ms. Green came in.

19 HEARING OFFICER JONES: Questions? Ms. Gordon?

20 MS. GORDON: You discovered before Ms. Green came
21 that you didn't have a license for your establishment.

22 Is that when you called the office?

23 MS. TEMPLE: Yes. And I kept -- I had called
24 several times to see, you know, if they had been sent
25 out.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

86

1 MS. GORDON: Uh-huh.

2 MS. TEMPLE: And then I called back particular --
3 I think it was on a Monday, and asked again, and she
4 said that they hadn't. So then she said they would
5 probably be in by Friday.

6 MS. GORDON: And --

7 MS. TEMPLE: And they were not.

8 MS. GORDON: And Friday is when Ms. Green came?

9 MS. TEMPLE: Uh-huh. Yes.

10 HEARING OFFICER JONES: Okay.

11 MS. TEMPLE: So then my husband picked them up on
12 Monday for me.

13 HEARING OFFICER JONES: Ms. Powell and then
14 Ms. Traylor.

15 MS. POWELL: Ms. Temple?

16 MS. TEMPLE: Yes.

17 MS. POWELL: You're saying that you did send in a
18 check for your practitioner license?

19 MS. TEMPLE: Yes.

20 MS. POWELL: And you're --

21 MS. TEMPLE: And I got those.

22 MS. POWELL: And but you're saying at the same
23 time you sent in another check for your establishment
24 license?

25 MS. TEMPLE: I've always done that for years and

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 years and years. And now, but the last two years it
2 was -- I would get the operator's license, and then
3 maybe a couple of weeks later I would get the shop
4 license. And I was expecting them to come in any time.
5 And I was late about checking on it because I've had a
6 lot of health problems, was in the hospital, and the
7 shop wasn't open that much.

8 MS. POWELL: So you would never write one check
9 for both license?

10 MS. TEMPLE: No. I never did, until today.

11 MS. POWELL: And then you would normally wait --

12 MS. TEMPLE: Ma'am?

13 MS. POWELL: And then you didn't send them in at
14 the same time?

15 MS. TEMPLE: Yes, I did.

16 MS. POWELL: Oh, you did send them in at the same
17 time?

18 MS. GORDON: In the same envelope?

19 MS. TEMPLE: No. Not in the same envelope. In a

20 different envelope.

21 MS. POWELL: Okay.

22 MS. TURMAN: Okay. I know you had health

23 problems, but at any time when you would call in and

24 asking about your license, did you ever inform anyone

25 that the check had not cleared?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

88

1 MS. TEMPLE: No. I didn't mention the check.

2 MS. TURMAN: Okay. Because if you had --

3 MS. TEMPLE: It didn't cross my mind.

4 MS. TURMAN: If you had mailed this check in in

5 January -- is that when you mailed it in?

6 MS. TEMPLE: It was in February.

7 MS. TURMAN: February. And this was still going

8 on like in May or June?

9 MS. TEMPLE: Uh-huh.

10 MS. TURMAN: The check hadn't cleared, but you

11 never did mention it to anybody?

12 MS. TEMPLE: I didn't think about the check.

13 MS. TURMAN: Okay. Thank you.

14 HEARING OFFICER JONES: Go ahead.

15 MS. WEST: Were you able or were you so inclined
16 to stop payment on the first check? For the shop
17 license?

18 MS. TEMPLE: No. I just -- I didn't. And it
19 hadn't cleared the bank, so I don't know if it got
20 lost, if my mother -- I had it in the mailbox and maybe
21 she took it out thinking it was mail. I have no idea.
22 I just know that it -- it wasn't there. I didn't get
23 it. And my husband just, you know, he picked it up in
24 person.

25 MR. KEENE: Do you know how much you wrote the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

89

1 check for?

2 MS. TEMPLE: I think it was 15. I'm not sure. It
3 was ever how much the shop license were.

4 MR. KEENE: Well, because what I'm wondering here

5 is if -- when in February do you think -- because
6 actually it expired the last day of January, so if you
7 mailed it in, a check for what would be the normal
8 amount, that would have been the wrong amount at that
9 point because it would have been expired and it would
10 have been a penalty. So the check would have been sent
11 back to you, along with your paperwork and the
12 application --

13 MS. TEMPLE: I didn't get it.

14 MR. KEENE: -- along with the application, because
15 the office can't process it if it's the wrong amount.
16 It would have been sent back.

17 MS. WITTUM: We have no record that we received it
18 at all.

19 MS. TEMPLE: Okay.

20 MR. KEENE: Therefore I would say ask your
21 99-year-old grandmother or mother where it's at,
22 because sounds to me like it was probably sent back.

23 MS. TEMPLE: I think it was -- I feel like that's
24 what happened.

25 MR. TEMPLE: Can I --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

90

1 HEARING OFFICER JONES: Any further questions from
2 the board?

3 MS. TURMAN: That was what I was going to ask.

4 MS. TEMPLE: My husband wanted to talk.

5 HEARING OFFICER JONES: Do you have any questions
6 you would like to ask your husband as a witness,
7 Ms. Temple? Mr. Temple.

8 MR. TEMPLE: Do I have to wait for her to ask a
9 question?

10 HEARING OFFICER JONES: Procedurally, yes.

11 EXAMINATION

12 BY MS. TEMPLE:

13 Q What were you fixing to say? Go ahead and say it.

14 A Okay. First of all, what's transpired I had no knowledge
15 of, but we had did have to make an address change after Betty
16 moved into my house and her son moved into her house, because
17 these mail -- this isn't the only mail that disappeared or didn't
18 get delivered to us on time. So, when we found all that out,

19 then we -- then we made an address change.

20 Q Started checking.

21 A Ms. Wittum can probably tell you we did make an address
22 change.

23 MS. WITTUM: I believe you did. Yes, sir.

24 MR. TEMPLE: And I also just wanted to say that,
25 folks, we're -- we are law abiding citizens. We didn't

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

91

1 purposefully go out to try to avoid doing this, and I
2 don't -- I don't think we should be fined.

3 HEARING OFFICER JONES: Okay, Mr. Temple.

4 Are there any further questions?

5 If there are no further questions, Mr. Jochums,
6 you may make your closing statement.

7 MR. JOCHUMS: Waive the closing.

8 HEARING OFFICER JONES: Ms. Temple, would you like
9 to say anything in closing before the board makes their
10 decision?

11 MS. TEMPLE: No. Huh-uh.

12 HEARING OFFICER JONES: At this time the record
13 will be closed and we will go off the record for
14 deliberations and a decision for the board. Once a
15 decision has been made, we will go back on the record.

16 (WHEREUPON, the Commission retired to deliberate,
17 off the record, and returned with the following
18 motion.)

19 HEARING OFFICER JONES: Okay. We'll go back on
20 the record for a motion.

21 MS. TURMAN: I would like to make a motion,
22 finding the allegations to be true, and move to order
23 the respondent to pay a fine in the amount of \$137,
24 payable within 30 days of the receipt of the board's
25 order. Failure to pay the fine as ordered will result

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 in a suspension of the license, salon license and
2 practitioner's license, beginning 30 days from receipt
3 of the order and continuing until 90 days after the

4 respondent relinquishes his -- or rather her license to
5 the board.

6 MS. TRAYLOR: I second that motion.

7 MS. POWELL: I have a motion and a second. Is
8 there any discussion?

9 All those in favor, raise your right hand.

10 (Four hands raised.)

11 All those opposed.

12 (Four hands raised.)

13 MS. POWELL: You all are killing me.

14 MS. TRAYLOR: Why -- why do we even bother to
15 vote?

16 HEARING OFFICER JONES: Ms. Powell, you will have
17 to break the tie.

18 MS. POWELL: No. I vote --

19 HEARING OFFICER JONES: Motion fails.

20 MS. PICKERING: I would like to make a motion.

21 HEARING OFFICER JONES: Go ahead, Ms. Pickering.

22 MS. PICKERING: Okay. The case is involving -- I
23 would -- I would like for us to make -- I would make a
24 motion that we not find the defendant guilty and that
25 we drop all charges.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

93

1 MS. POWELL: You're going for a motion -- the
2 motion for --

3 MS. PICKERING: Okay. I'm sorry. Finding the
4 allegations --

5 MS. POWELL: That would be the last one, number
6 four.

7 MS. PICKERING: Okay. I find insufficient
8 evidence to take disciplinary action against the
9 respondent.

10 Is that it?

11 HEARING OFFICER JONES: Okay.

12 MS. POWELL: I have a motion. Do I have a second?

13 MS. GORDON: Second.

14 MR. KEENE: I'll second.

15 MS. POWELL: I have a motion and a second. Is
16 there any discussion?

17 All those in favor, raise your right hand.

18 (Four hands raised.)

19 Let me see, Sherron. What are you doing?

20 Thank you.

21 All those opposed?

22 (Four hands raised.)

23 HEARING OFFICER JONES: Ms. Powell, once again,

24 the vote is tied and you must cast a vote.

25 MS. POWELL: I agree with it. Yes.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

94

1 HEARING OFFICER JONES: With that, the motion

2 passes, five to four.

3 Please let it be reduced to writing and service

4 attempted upon all parties. If the respondent cares to

5 appeal the decision an appeal may be taken under the

6 Administrative Procedures Act 25-15-201.

7 If there are no other questions or comments, this

8 hearing is concluded and the record is closed.

9 Thank you, Mr. and Mrs. Temple.

10 MR. TEMPLE: Thank you.

11 (WHEREUPON, the above-entitled proceedings were
12 concluded.)

13 ---o---

14 HEARING OFFICER JONES: I think they are calling
15 for a break.

16 MR. JOCHUMS: Before we do, before we take a
17 break -- wind up what you were going to say, but let me
18 check to see who has come in.

19 MS. POWELL: I need order. I have not adjourned
20 this meeting. We have business.

21 MS. TURMAN: I thought you adjourned it for a
22 break.

23 HEARING OFFICER JONES: We're going to take a
24 break, and when we come back from the break we will
25 hear Kim Pham, and that is 07-115. 07-115.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

95

1 MS. POWELL: We'll take a short 15 minute break.

2 (WHEREUPON, a brief break was held at this time.)

3 MS. POWELL: The meeting will come back to order.

4 ---o---

5 ADMINISTRATIVE HEARING NO. 07-115

6 HEARING OFFICER JONES: At this time we will
7 address the hearing of Kim Pham, 07-115. 07-115.

8 My name is Kendra Akin Jones and I'm going to be
9 the Hearing Officer in the matter of Kim Pham, 07-115,
10 to be heard before the Arkansas State Board of
11 Cosmetology. Today is November 20, 2006. We are
12 located in the conference room of the Main Street Mall.

13 Would the respondent please identify yourself for
14 the record.

15 KIM PHAM: Kim Pham.

16 THAO PHAM: Thao Pham.

17 TOM PHAM: Tom Pham.

18 MS. TURMAN: I didn't hear.

19 HEARING OFFICER JONES: Okay. You all are going
20 to have to speak up, first of all. But only one of you
21 are listed on our notice of hearing, and that's the
22 respondent, Kim Pham.

23 The other two of you, I suppose you're here to be
24 witnesses today?

25 KIM PHAM: They the one doing her nail. Thao.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

96

1 HEARING OFFICER JONES: And that they will be your
2 witnesses?

3 KIM PHAM: Yes.

4 HEARING OFFICER JONES: But for the respondent,
5 that's just you, Ms. Pham, okay, as the owner.

6 Okay. And counsel for the board?

7 MR. JOCHUMS: My name is Arnold Jochums. I will
8 be presenting the case this morning.

9 HEARING OFFICER JONES: Okay.

10 MR. JOCHUMS: Madam Hearing Officer, suppose we
11 could find out how the three Phams are related?

12 HEARING OFFICER JONES: Yes.

13 Ms. Pham, if you will -- you did get your Order
14 and Notice of Hearing to be here today?

15 KIM PHAM: Yes.

16 HEARING OFFICER JONES: You got the paperwork?

17 And what is your position with US Nails?

18 KIM PHAM: We do nails.

19 HEARING OFFICER JONES: But are you the owner?

20 KIM PHAM: Yeah. I'm owner.

21 HEARING OFFICER JONES: Okay. And if you will

22 state who -- who each of these people are and what they

23 do in the salon.

24 KIM PHAM: They carry salon, I don't work there no

25 more. But they carry here --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

97

1 COURT REPORTER: I can't understand you.

2 KIM PHAM: Oh. I'm owner but they are the one who

3 carry my salon.

4 HEARING OFFICER JONES: Mr. Jochums, is that --

5 MR. JOCHUMS: Well, let me just ask, the lady on

6 the left, tell me your name.

7 THAO PHAM: My name is Thao Pham.

8 MR. JOCHUMS: Are you related to Kim?

9 THAO PHAM: Sister-in-law.

10 MR. JOCHUMS: Sister-in-law?

11 THAO PHAM: Yes.

12 HEARING OFFICER JONES: Okay. And is that your
13 husband on the other side?

14 THAO PHAM: Yes, sir.

15 MR. JOCHUMS: Okay. And are all three of you
16 manicurist?

17 THAO PHAM: Yes, manicure. I have the --

18 HEARING OFFICER JONES: Let's get into their
19 licenses and stuff when we get into this, and we'll
20 wait to get started.

21 As I said, the board will -- as I have said
22 earlier, the board will base its decision solely on the
23 evidence presented here today. This hearing is being
24 held under the Administrative Procedures Act. The
25 board knows of this case only as it appears in the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 paperwork, the hearing notice, and will make their

2 decisions based on what they hear today. It is subject
3 to the Freedom of Information Act and all deliberations
4 and discussions will be public.

5 Okay. Everybody who is going to be a witness or
6 have anything to say today, please raise your hand so
7 you can be sworn in by the court reporter.

8 (WHEREUPON, the witnesses were sworn.)

9 HEARING OFFICER JONES: Okay. Preliminary
10 matters, Mr. Jochums?

11 MR. JOCHUMS: Okay. I want to ask that the
12 conveyance letter of October 26 to Kim Pham, along with
13 the attached notice of hearing and the Complaint form,
14 be made Exhibit 1 in the hearing today.

15 HEARING OFFICER JONES: Okay. Let's make the
16 hearing notice and that packet as Exhibit 1, and the
17 Complaint form Exhibit 2.

18 MR. JOCHUMS: Okay.

19 HEARING OFFICER JONES: And those will be
20 admitted.

21 (WHEREUPON, Board's Exhibits Nos. 1 and 2 were
22 received in evidence.)

23 HEARING OFFICER JONES: Does all the board have

24 the Complaint form of Linda Balch? It was handed out
25 earlier. That is a part of this case.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

99

1 Okay. Any other preliminary matters, Mr. Jochums?

2 MR. JOCHUMS: No, ma'am.

3 HEARING OFFICER JONES: Ms. Pham, do you have any
4 paperwork that you want the board to see?

5 KIM PHAM: We do have the -- we already have the
6 complaint letter --

7 HEARING OFFICER JONES: That is in the packet.
8 Yes, ma'am.

9 KIM PHAM: Okay. We give her the nailtek to
10 protect her nail when we take off her nails. We have
11 this we want to show you.

12 HEARING OFFICER JONES: Okay. If you would, bring
13 that up to the front, please. Yes.

14 And we will address that when it comes up. Okay?

15 MR. JOCHUMS: Why don't we just hold off until we

16 get to that point.

17 HEARING OFFICER JONES: Yeah. We'll address that
18 when it comes up in the context. Okay?

19 Moving on. Mr. Jochums, opening statement.

20 MR. JOCHUMS: Okay. In this matter, we have a
21 complaint from a Ms. Balch, which alleges that an
22 injury occurred during the course of -- probably over
23 time, and you all have the notice in front of you. And
24 you're to determine whether this salon violated the
25 rules in connection of their handling of Ms. Balch.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

100

1 And my first witness will be Kathy Wittum.

2 HEARING OFFICER JONES: Ms. Pham, would you like
3 to say anything in opening?

4 You'll have a chance to tell your whole story, but
5 is there anything you would like to say in the opening?

6 KIM PHAM: She the one doing it and have something
7 to say.

8 HEARING OFFICER JONES: Well, you're the one

9 that's going to have to make the opening statement, if
10 you want one made.

11 KIM PHAM: I do her nail before, you know, but she
12 is a diabetic. And I heard about her like she have a
13 some -- she take a lot of medicine for her body, that's
14 why her body change. And she told me to take her nail
15 off, she not happy, because she want -- she want to
16 wear nail all the time. That's why she told her to
17 take off the nail and rest for a little while, and she
18 not happy. And she go to the doctor. The doctor, say,
19 like, she have a fever but the doctor say like she have
20 her nails on the -- the doctor don't know she had
21 cancer, liver cancer. And so they give her Lamisil,
22 something like that. And after they see her so bad and
23 they bring her to the big city and they find out she
24 has cancer, liver cancer.

25 HEARING OFFICER JONES: Okay. Mr. Jochums, you

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 may call for first witness.

2 MR. JOCHUMS: Yes.

3 WHEREUPON,

4 KATHY WITTUM,

5 having been called for examination, and having been first duly

6 sworn by the undersigned notary public, was examined and

7 testified, as follows:

8 DIRECT EXAMINATION

9 BY MR. JOCHUMS:

10 Q Kathy, you've been previously sworn.

11 You're the director of the cosmetology board?

12 A Yes. I am.

13 Q And did the board receive a complaint from Linda Balch?

14 A Yes. We did.

15 Q Okay. And in that complaint, did she allege that a couple

16 named Lynn and Tom both performed services on her?

17 A Yes.

18 Q Okay. And did she complain that these treatments resulted

19 in problems for her?

20 A Yes. She did.

21 Q Okay. And that's the basis for the Notice of Hearing today?

22 A Yes. It is.

23 Q And would it be a reasonable inference that if an individual
24 had the problems described in the Complaint, that there must have
25 been some kind of a health and safety violation in terms of

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

102

1 cleanliness of implements or the salon --

2 A Yes. I believe so.

3 Q -- for that to occur?

4 A (Nodding head up and down.)

5 Q As far as you know, all the people involved have licenses?

6 A I'm unaware of the gentleman and the lady here. We're
7 obviously aware of Ms. Pham.

8 Q Okay.

9 A So we would need to check their license status.

10 Q Okay. And the Complaint alleges that Ms. Balch began
11 experiencing pain in her right thumb and two neighboring fingers
12 after receiving acrylic nails?

13 A Yes.

14 Q Is that right?

15 A (Nodding head up and down.)

16 Q She was given nail drops to improve the condition and the

17 pain got worse. She then had the nails removed and was given

18 nailtek foundation, this little bottle. Later seen by a doctor

19 and her condition continued to decline?

20 A Yes.

21 Q And also you've now learned that she's since has passed

22 away, not related to the nails. Right?

23 A That's correct.

24 MR. JOCHUMS: Okay. I have no other questions for

25 Kathy.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

103

1 HEARING OFFICER JONES: Ms. Pham, is there any

2 questions that you would like to ask Ms. Wittum?

3 KIM PHAM: No.

4 HEARING OFFICER JONES: Okay. You may call your

5 next witness.

6 MR. JOCHUMS: Okay. I have no further witnesses.

7 HEARING OFFICER JONES: Okay. Ms. Pham, you may

8 call your first witness. Somebody you want to ask
9 questions to.

10 KIM PHAM: Okay.

11 HEARING OFFICER JONES: Will you please state your
12 name. Make sure that the court reporter has your name.

13 WHEREUPON,

14 THAO PHAM,

15 having been called for examination, and having been first duly
16 sworn by the undersigned notary public, was examined and
17 testified, as follows:

18 THE WITNESS: My name is Thao Pham, and I'm the
19 one do her nails.

20 HEARING OFFICER JONES: Okay. Ms. Pham, you have
21 to ask her questions.

22 KIM PHAM: Okay.

23 HEARING OFFICER JONES: And you have to speak loud
24 enough so all the board members and the court reporter
25 can hear you. Okay?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 DIRECT EXAMINATION

2 BY KIM PHAM:

3 Q Can you explain for her when she come in, please.

4 HEARING OFFICER JONES: Just one second.

5 Can you spell your name really quickly?

6 THE WITNESS: T-H-A-O and P-H-A-M.

7 HEARING OFFICER JONES: Thank you.

8 Okay. Go ahead with your questions, Kim Pham.

9 BY KIM PHAM:

10 Q Yes. Can you explain for them when she came in and what
11 happened?

12 A Yes. Yes. She come to our shop like -- at least like six
13 weeks, you know, every time. But our -- I recommend her like
14 come back every two weeks. But between the times every two
15 weeks, she gone somewhere else, I didn't know that. But she come
16 to my shop some time like eight weeks, six week, you know,
17 sometime two months, saying -- see and the last time -- the last
18 two times she come to my shop and she say she hurt her nails.
19 And I -- I look and I say it's no like not -- she say it's got
20 fungus. I say it not look like a fungus, because fungus sometime
21 it not -- it not hurt. And I told her maybe you take a lot of

22 medicine and your body is start changes. So I -- I told her I
23 need to take the nails off, but she's not happy. She say, I -- I
24 always wear nails, you know, and she don't want to take the nails
25 off.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

105

1 And then the last time she come and she -- she tell me, you
2 know, I still hurt, my nails, and so I have to take my -- I have
3 to take your nails off. And she lot of times she not happy. And
4 I say if your nail not hurt -- I give her the foundation, which
5 is make her nails stronger. I told her when your nail stronger,
6 you can come back, I do your nail. Because now you -- you
7 complain that your nail hurt and you just come in, you know,
8 every six week or eight weeks, you know, I cannot control you,
9 you know, where you get that hurt from. So, see, and last
10 time -- see, and the last time she told me that and then I gave
11 her the medicine -- the foundation, and she not -- after that I
12 didn't see her.
13 And then I received the letter from the board and two days

14 and -- two days later and they told me she passed because of
15 liver cancer. Then the doctor in where I live, he did not find
16 out she had liver cancer, and then transfer her to the bigger
17 city, like Texarkana, they found out she had liver cancer. And
18 two days later she passed, so...

19 HEARING OFFICER JONES: Ms. Kim Pham, do you have
20 any other questions?

21 KIM PHAM: No.

22 HEARING OFFICER JONES: Mr. Jochums, questions of
23 this witness?

24 MR. JOCHUMS: Yes.

25 CROSS-EXAMINATION

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

106

1 BY MR. JOCHUMS:

2 Q Do you also use the name Lynn?

3 A Yes. She called me Lynn.

4 Q She calls you Lynn?

5 A Yes.

6 Q That's --

7 A Yes, sir.

8 Q -- your more American name?

9 A Yes, sir. That's more American.

10 Q Okay. In her Complaint she talks about Vietnamese couple

11 Lynn and Tom?

12 A Yes. This is Tom.

13 Q That's his -- his American name?

14 A American name.

15 Q Okay. Now, did -- are you a manicurist?

16 A Yes, sir.

17 Q And do you have an Arkansas license?

18 A Yes, sir.

19 Q Okay. And does your husband, too?

20 A Yes, sir.

21 Q Okay. And if I understand you right, you agree she came and

22 she got treatments, nail treatments from you in your store?

23 A Yeah. She come like every six or eight weeks.

24 Q Okay.

25 A So our -- our -- every time she come, I tell her, you need

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 to come here, as a regular customer, you need to come to my shop
2 every two weeks. Most -- you know, the time between that, she
3 gone somewhere else. I didn't know.

4 Q Now, had she been coming for more than a year?

5 A Sometime she come and sometimes she can't. You know, she
6 not like regular one.

7 Q Okay. And let me see if I understand. Is this the stuff
8 you put -- you told her to put on her nails --

9 A Yes.

10 Q -- near one of the last times she came?

11 A He take her nails off.

12 Yes.

13 Q What does it do? It's called nailtek?

14 A For her nails stronger, because she complain like her nail
15 hurt. So I say I cannot do your nails. I have to take your
16 nails off.

17 Q Okay.

18 A And I give to her, make your nails stronger.

19 Q Okay. Let me ask this: What you were doing with this
20 particular client was you were putting a nail on top of her real

21 nails?

22 A Yes, sir.

23 Q Okay. And then she said they hurt, that's when you had her

24 take them off. Is that right?

25 A Yes.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

108

1 HEARING OFFICER JONES: Any further questions?

2 MR. JOCHUMS: No.

3 Thank you.

4 HEARING OFFICER JONES: Does the board have any

5 questions for Ms. Pham?

6 EXAMINATION BY THE BOARD

7 MS. TURMAN: Yes, I do.

8 Do you know if she had been to another manicurist

9 the week before or anything like that? Had she -- how

10 long had it been since she had been in your salon?

11 THE WITNESS: Excuse me. How long?

12 MS. TURMAN: Before, when she was complaining

13 about her nails, how long had it been -- previously had
14 she been -- had it been since she had been in your
15 salon?

16 THE WITNESS: Like six or eight weeks.

17 MS. TURMAN: Six or eight weeks?

18 THE WITNESS: Yes. Every time she come.

19 HEARING OFFICER JONES: Any other --

20 MS. TURMAN: Okay. But she had been going to
21 another salon --

22 THE WITNESS: Yes.

23 MS. TURMAN: -- in between that time frame?

24 THE WITNESS: In between that time.

25 MS. TURMAN: Thank you.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

109

1 HEARING OFFICER JONES: Any other questions for
2 this witness?

3 FURTHER CROSS-EXAMINATION

4 BY MR. JOCHUMS:

5 Q Now, you are in DeQueen?

6 A Yes. Yes, sir.

7 Q Does she live in DeQueen, too?

8 A Linda? Ms. Linda?

9 Q Yes. Ms. Linda.

10 A She live in DeQueen, too.

11 HEARING OFFICER JONES: Okay. Any other questions

12 from the board?

13 FURTHER EXAMINATION BY THE BOARD

14 MS. PICKERING: I would like to ask Ms. Turman, I

15 didn't really catch that question.

16 Did you ask her if she had been to another salon

17 in between?

18 MS. TURMAN: Uh-huh.

19 MS. PICKERING: And she -- and you said yes?

20 THE WITNESS: Yes.

21 MS. PICKERING: She had been to another nail tech

22 before you she come back to you?

23 THE WITNESS: Yes. Yes. Because as acrylic nail,

24 you have to redo every two weeks. If it's longer than

25 that, it tear off. So, you know, she come to my shop

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

110

1 every six or eight weeks, which means she had gone to
2 another place.

3 MS. PICKERING: Okay. She had gone to another
4 nail tech --

5 THE WITNESS: Another nail place. Uh-huh.

6 MS. PICKERING: -- in between visiting you?

7 THE WITNESS: If she gone somewhere, I didn't know
8 where.

9 MS. TRAYLOR: Did she tell you where she had gone?

10 THE WITNESS: She didn't tell me where she had
11 gone. But, you know, sometime a customer come and I
12 say, did you go somewhere else? They say yes, but
13 they -- they cannot tell me where, you know. It mean,
14 you know, they don't want to hurt my feelings.

15 FURTHER CROSS-EXAMINATION

16 BY MR. JOCHUMS:

17 Q Let me ask you, I didn't quite understand something you had
18 said. How did you know she had been to somebody else?

19 A Yes. Because the acrylic nail, when you done it, and every

20 two week it grow out. You have to come back to refill. And like
21 every six or eight weeks, you know, they come back a long
22 distance time, the nail is not -- is not going to stay there.
23 The nail will fall out. But every time she come back, the nail
24 stay there. So which we know like she gone somewhere else.

25 HEARING OFFICER JONES: Okay. Let's go to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

111

1 Ms. Pickering and then Ms. Ward.

2 FURTHER EXAMINATION BY THE BOARD

3 MS. PICKERING: Okay. So you're stating that when
4 she, when she comes back, the nail has been filled in?

5 That's what you're saying, isn't it?

6 THE WITNESS: Yes.

7 MS. PICKERING: So she definitely has been
8 somewhere else.

9 THE WITNESS: Yes.

10 MS. PICKERING: If you've ever gone to a nail tech
11 you know that.

12 THE WITNESS: Yes.

13 MS. PICKERING: In two weeks, it grows out and
14 then -- so you're saying that where it should have been
15 grown out, it was filled in --

16 THE WITNESS: Yes.

17 MS. PICKERING: -- when she came back to you?

18 THE WITNESS: Yes. Every eight weeks -- six or
19 eight weeks she come back and I'll -- I'll -- I'll know
20 that she been somewhere else, because by the time six
21 or eight weeks, it's not -- you know, it's not grown
22 back out. That's why I know.

23 MS. PICKERING: Okay. And then she -- that's when
24 she stated that her nails were hurting and you removed
25 them that time?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

112

1 THE WITNESS: Removed. Yes.

2 MS. PICKERING: Okay.

3 MS. POWELL: Why was she coming back?

4 Why was she coming in to see you if she had been

5 somewhere else and had the fills?

6 You get fills typically every four weeks.

7 THE WITNESS: Two weeks.

8 MS. PICKERING: Every two weeks.

9 MS. TRAYLOR: No.

10 MS. PICKERING: Every two to four.

11 I'm sorry. Let me clarify what I'm saying.

12 When I was wearing acrylic nails, I went every two
13 weeks to have them filled in faithfully so no one would
14 know I was wearing acrylics.

15 MS. POWELL: So, when she came to you and you say
16 that she was going somewhere else, why was she coming
17 to you, then? If she --

18 THE WITNESS: That's her choice. I didn't know.
19 Because the last time she come, she complain like her
20 nail hurt. That's why I tell her I need to take your
21 nail off.

22 MS. POWELL: Did she come to you for fills?

23 THE WITNESS: Every six or eight weeks. Sometime
24 she not regular, you know. She be gone.

25 MS. POWELL: But if -- when she came to you,

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

113

1 you're saying she had been somewhere else?

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

3 MS. POWELL: So if she's been somewhere else, if
4 she comes to you every six weeks -- okay?

5 THE WITNESS: Okay.

6 MS. POWELL: Six weeks, and she's been somewhere
7 else -- okay?

8 THE WITNESS: Okay.

9 MS. POWELL: Then why was she coming to you?

10 THE WITNESS: Why?

11 MS. POWELL: Uh-huh. What service were you doing?

12 THE WITNESS: Oh, we do a refill.

13 MS. POWELL: So you were going to do a refill --

14 THE WITNESS: Refill.

15 MS. POWELL: -- when she came to you?

16 THE WITNESS: Yes.

17 MS. POWELL: And so she obviously needed fills.

18 Correct?

19 THE WITNESS: A fill.

20 And she -- she told, she say, Lynn is my nail

21 hurt. I say no, I need to take your nails off.

22 Because she not a regular customer, so I don't want to

23 make big trouble, you know, so I need to take your nail

24 off. Well, she say my nails all the way on so I, all

25 my life, I don't want to take it off. But I say I need

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

114

1 to take your nails off. That's why she not happy.

2 See, the last time -- but I give her the -- the

3 foundation just make her, you know, feel better. And

4 say when your nail stronger, you put this one on, and

5 you come back, I do your nail.

6 HEARING OFFICER JONES: Okay. Ms. Ward, I believe

7 you had a question.

8 MS. WARD: Okay. How -- how much did her nails

9 grow out when she come to you? How far were they grown

10 out?

11 Quarter of an inch?

12 THE WITNESS: Just like this (indicating).

13 MS. WARD: Okay. Show me from the other side.

14 Show us from the bottom side.

15 THE WITNESS: (Indicating.)

16 MS. WARD: Okay. Because in two weeks -- in four

17 weeks they can come out to about here (indicating).

18 And usually every -- you can get them done in two

19 weeks, but some people, their nails grow slow, and the

20 older you are the slower they grow.

21 THE WITNESS: Uh-huh. Yes.

22 MS. WARD: So every four weeks to six weeks you

23 would need a fill. It's not necessarily every two

24 weeks you have to get a fill, depending on how fast

25 your nails grow. And if it's grown out that far, that

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

115

1 would mean it's been more than two weeks. It would be

2 at least four to six weeks for that to be grown out

3 that distance, that far.

4 THE WITNESS: No. The nail, she grow like two
5 weeks, not four or six weeks. That's why we know she
6 been somewhere else.

7 I told her, is you been somewhere else? She say
8 yeah.

9 MS. WARD: That's the reason I asked, how far did
10 it grow out?

11 THE WITNESS: Like this (indicating).

12 MS. WARD: I can't really see that.

13 I can't really see that.

14 THE WITNESS: After about two weeks, so that's why
15 she come back. I say, I think, you know, she not a
16 regular customer, come -- she not come back every two
17 weeks. That's why I told her I need to take your nails
18 off.

19 HEARING OFFICER JONES: Go ahead with your
20 question.

21 MS. TURMAN: Okay. Did she complain when she come
22 in -- say, approximately six to eight weeks prior, did
23 she complain about her nails hurting at that point?

24 THE WITNESS: Yeah. She complain. That's why I

25 take the nails off.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

116

1 MS. TURMAN: Okay. Six weeks prior when she come
2 in, she complained about her nails hurting. Is that
3 correct?

4 And then when she come back again, her nails were
5 still hurting. Is that correct?

6 THE WITNESS: I didn't understand what you're
7 saying.

8 MS. TURMAN: I'm sorry.

9 HEARING OFFICER JONES: Six weeks before you took
10 her nails off, did she complain, just to try to
11 clarify?

12 MS. TURMAN: Yes. She did?

13 Yes.

14 HEARING OFFICER JONES: Did she? Did she complain
15 six weeks prior to you taking them off?

16 THE WITNESS: No. That's the last time.

17 MS. TURMAN: She did not complain?

18 THE WITNESS: That's the last time, she complained
19 the nails, took them off -- she complained the nails
20 hurt, that's why I took the nails off. And, see, the
21 last time she gone and then I heard she died. She
22 passed away.

23 MS. WARD: She didn't complain before then about
24 her nails hurting?

25 THE WITNESS: Yes. In here --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

117

1 MS. WARD: About them hurting?

2 THE WITNESS: -- she write something, it's not --
3 it's not true. She come -- she come to me the last
4 time, she say take the nails off, and in here she say
5 something, she want me to -- but me, me and him, the
6 one telling her, I need to take your nails off.
7 Because, you know, I -- I don't want trouble, because
8 she not a regular. If she regular, she come back two
9 or three weeks, we okay, you know, we -- we say, you

10 know, in over here she say she come back at least six
11 week. That's true, you know, sometimes she gone for
12 two months. See, we didn't know that.

13 HEARING OFFICER JONES: Ms. Powell?

14 MS. POWELL: Were you aware that your client,
15 Ms. Balch, was a cancer patient?

16 THE WITNESS: No. I didn't know that.

17 MS. POWELL: You were not aware that she had --
18 was cancer -- had cancer?

19 THE WITNESS: No, ma'am. She had diabetics. So,
20 but the last time I heard from the newspaper, from
21 the -- from the people in local, say she -- they just
22 find out that she have liver cancer. And after I think
23 a couple days, she passed.

24 MS. POWELL: Okay. So you knew she was a
25 diabetic, and but you didn't know that she had cancer?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

118

1 THE WITNESS: I didn't know she had cancer. They
2 just find out.

3 MS. POWELL: Pardon me?

4 THE WITNESS: They just find out she has.

5 MS. WITTUM: If I could clarify something.

6 We learned from her husband when he called to say
7 that he still would like for the board to review this
8 even though she had passed away, it appears that they
9 learned about the cancer because she was going to the
10 doctor to try and find out what was causing her
11 problems with her hands. And it was through the
12 testing that they did that the cancer became known.

13 MS. POWELL: Okay. Was that -- was that diagnosis
14 staph or strep? Because I really couldn't decide what
15 they were trying to say here --

16 MR. DOWNEY: I think it said strep.

17 MS. POWELL: -- on her letter right here.

18 MR. JOCHUMS: It said strep.

19 MR. DOWNEY: It says strep.

20 MS. POWELL: Is it strep?

21 MR. DOWNEY: That's what it said.

22 MS. WITTUM: According to the medical record, she
23 was diagnosed with cellulitis, soft tissue infection,

24 and prescribed Lamisil.

25 MS. POWELL: And I'm -- and that's a fungus?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

119

1 MS. TRAYLOR: Yes. Lamisil is for a fungus.

2 MR. DOWNEY: Lamisil is for a fungus, and also one
3 of the side effects of it is liver damage.

4 HEARING OFFICER JONES: Okay. Let's keep to
5 questions for this witness and the board can ask
6 questions and deliberate later.

7 Ms. Powell, do you have any further questions?

8 MS. POWELL: Do you have any practice precautions
9 when you're treating a client with diabetes?

10 THE WITNESS: Diabetics?

11 What's your question, ma'am?

12 MS. POWELL: Do you practice any safety measures
13 when you are treating a client that has a known health
14 problem --

15 THE WITNESS: Yes.

16 MS. POWELL: -- as diabetes?

17 THE WITNESS: Uh-huh. Yes.

18 MS. POWELL: What is your precautions?

19 THE WITNESS: The -- we have to do their nails

20 very careful. Because diabetic, I -- I heard like

21 their blood is, you know, they cannot -- when they

22 bleeding, they cannot stop, so we do very careful on

23 diabetics.

24 MS. POWELL: Do you use a metal file? Do you use

25 a drill, electric drill? Electric file?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

120

1 THE WITNESS: A drill, everybody has -- everyone

2 has different file and a buffer.

3 MS. POWELL: Is it an electric drill?

4 THE WITNESS: Electric. Yes.

5 MS. POWELL: That's all I have.

6 HEARING OFFICER JONES: Any further questions from

7 the board for this witness?

8 If there are no other -- no further questions for

9 this witness, Ms. Kim Pham, you can call your next

10 witness.

11 KIM PHAM: Just want to do --

12 HEARING OFFICER JONES: Okay. Ms. Pham, would you

13 like to say anything on your behalf?

14 KIM PHAM: No.

15 HEARING OFFICER JONES: Okay. Does the board have

16 any questions for Kim Pham?

17 MS. TURMAN: I would like to know something. Can

18 we, since there isn't anybody, a medical doctor here,

19 could we -- is there any way that the liver cancer

20 could have contributed to her nails, the infection

21 or -- or could it have contributed to the pain in her

22 nails because she was already ill?

23 MS. TRAYLOR: Could the diabetes have?

24 MS. TURMAN: Yeah.

25 HEARING OFFICER JONES: I'm not sure what your

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 question or your request --

2 MS. TURMAN: I know. I guess I'm just speaking, I
3 just wonder.

4 HEARING OFFICER JONES: Okay.

5 MS. PICKERING: I would like to comment on that.
6 How could anyone know except the medical, except
7 medical people?

8 I mean, we could not make that kind of decision.

9 MS. TURMAN: That's right. That's what I'm
10 saying.

11 MS. POWELL: I believe we will --

12 HEARING OFFICER JONES: I'll let you all
13 deliberate in just a minute.

14 Mr. Jochums, do you have any questions for
15 Ms. Pham?

16 MR. JOCHUMS: No. I don't.

17 HEARING OFFICER JONES: Okay. You can make your
18 closing statement.

19 MR. JOCHUMS: I think we have the Complaint, and
20 obviously Ms. Balch thought that there was something
21 about the treatment that led to her fingers being
22 infected. What I think we can probably call it an

23 infection. She did get Keflex, which I think all of us

24 know is an antibiotic.

25 Now, whether the evidence was enough to show that

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

122

1 she got it here is a matter for you all to decide. I

2 think this is a difficult case for that reason.

3 HEARING OFFICER JONES: Ms. Kim Pham --

4 MR. JOCHUMS: But, otherwise, I leave it in your

5 hands.

6 HEARING OFFICER JONES: Ms. Kim Pham, would you

7 like to say anything to the board before they

8 deliberate to make a decision?

9 KIM PHAM: I think the doctor maybe did mess up,

10 because they not find out for her cancer. That's why

11 they give her Lamisil. I know that Lamisil is damage

12 to liver very bad. That's why after, for couple of

13 days, we get the -- your problem, and she died from,

14 she pass away. That's why I just -- I don't think her

15 fungus -- because the fungus, it turn green. But her

16 nail not turn green and her not turn green. Look like
17 she take a lot of medicine, that's why they separate a
18 little bit underneath her nail. Just a little bit
19 underneath her nail. Not like a big green -- the
20 fungus it turn green. But I look on the Internet, it
21 not turn green.

22 Yeah. There is something wrong for her body and
23 the doctor give her Lamisil, that's why she damage her
24 liver.

25 HEARING OFFICER JONES: Okay. At this time we'll

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

123

1 close the record and make it complete, except for the
2 board's recess for deliberations and the decision,
3 after which we will go back on the record.

4 (WHEREUPON, the Commission retired to deliberate,
5 off the record, and returned with the following
6 motion.)

7 HEARING OFFICER JONES: We'll go back on the

8 record for a motion.

9 MR. KEENE: Finding there is insufficient evidence
10 to support the charges filed against respondent in this
11 matter, I move that this matter be dismissed.

12 MS. PICKERING: Second it.

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

14 Is there any discussion?

15 All those in favor, raise your right hand.

16 (Four hands raised.)

17 All those opposed?

18 (Four hands raised.)

19 HEARING OFFICER JONES: Ms. Powell?

20 MS. POWELL: I vote opposed.

21 HEARING OFFICER JONES: Motion fails.

22 MS. POWELL: Okay. You all want to visit that
23 again? Let's come up with a compromise.

24 HEARING OFFICER JONES: We'll go back off the
25 record for further deliberations.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 (WHEREUPON, the Commission retired to deliberate,
2 off the record, and returned with the following
3 motion.)

4 MS. TURMAN: I would like to make a motion that we
5 continue this until the January meeting.

6 MS. TRAYLOR: I second that.

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

8 Is there any discussion?

9 All those in favor, raise your right hand.

10 (Eight hands raised.)

11 It's unanimous. Motion carries.

12 MS. TURMAN: Kathy, I would like to say --

13 HEARING OFFICER JONES: Please note that it was
14 unanimous, that the case against Kim Pham, 07-115, has
15 been continued until the January 15, 2007 meeting, at
16 which time it will be readdressed by the board.

17 Please reduce that to writing and get it to Kim
18 Pham, the respondent, so they will know to be in
19 attendance at that meeting, if you would so wish that.

20 If there are no further questions or comments --

21 MS. WITTUM: We'll send you a letter to let you

22 know the date and the time of that meeting.

23 KIM PHAM: Okay.

24 HEARING OFFICER JONES: If there is nothing

25 further, this hearing is concluded or it's continued at

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

125

1 this time and the record is closed.

2 (WHEREUPON, the above-entitled proceedings were

3 continued until January 2007.)

4 ---o---

5 ADMINISTRATIVE HEARING NO. 06-383

6 HEARING OFFICER JONES: Okay. Jennifer Hatfield,

7 Virge Salon, 06-383. This one was handed out to you.

8 Okay. This is 06-383. Everybody ready?

9 My name is Kendra Akin Jones. I'm the Hearing

10 Officer today in the matter of -- it says Catherine

11 Holmes.

12 MS. HATFIELD: She's out of state.

13 HEARING OFFICER JONES: Okay. Virge Hair Salon,

14 which is matter 06-383, to be heard before the Arkansas

15 State Board of Cosmetology. Today is November 20,
16 2006, and we're in the conference room of the Main
17 Street Mall.

18 Would the respondent please represent -- or please
19 identify yourself.

20 MS. HATFIELD: Jennifer Hatfield.

21 HEARING OFFICER JONES: And you are on behalf --
22 here on behalf of Ms. Holmes?

23 MS. HATFIELD: Yes.

24 HEARING OFFICER JONES: Okay. And I guess you
25 received a copy of the Order and Notice of Hearing and

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

126

1 all?

2 MS. HATFIELD: Yes.

3 HEARING OFFICER JONES: Okay. And counsel for the
4 board, identify yourself.

5 MR. JOCHUMS: My name is Arnold Jochums. I'll be
6 presenting the board's case.

7 HEARING OFFICER JONES: As I've stated before, the
8 board's decision will be based solely on the evidence
9 presented here today. This hearing is held under the
10 Administrative Procedures Act. The board members know
11 of this case only as it appears in the Notice of
12 Hearing, and if you want anything submitted that you
13 have in your possession, you will need to do so today.
14 And it is open for the Freedom of Information Act as a
15 public hearing.

16 For anybody who is going to be a witness today,
17 please raise your hand so the court reporter can swear
18 you in.

19 Ms. Hatfield, you've got to raise your hand so you
20 can be sworn in, all witnesses.

21 (WHEREUPON, the witnesses were sworn.)

22 HEARING OFFICER JONES: Okay. Preliminary
23 matters, Mr. Jochums?

24 MR. JOCHUMS: Yes. I would like to ask that we be
25 allowed to admit as exhibit the conveyance letter to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 Catherine Holmes, along with the Notice of Hearing and
2 the inspector's report, all as Exhibit 1.

3 HEARING OFFICER JONES: That will be admitted as
4 Exhibit 1.

5 (WHEREUPON, Board's Exhibit No. 1 was received in
6 evidence.)

7 HEARING OFFICER JONES: Anything further?

8 MR. JOCHUMS: No.

9 HEARING OFFICER JONES: Ms. Hatfield, is there
10 anything you would like to have admitted to the board
11 for them to review today?

12 MS. HATFIELD: (Shaking head from side to side.)

13 HEARING OFFICER JONES: Okay. Opening statements.

14 MR. JOCHUMS: This is a matter of an establishment
15 with an expired license. Pretty straightforward, but
16 we'll ask the inspector to tell us about the
17 circumstances.

18 HEARING OFFICER JONES: Ms. Hatfield --
19 Ms. Hatfield, is there anything you would like to say?

20 MS. HATFIELD: I guess I would like a

21 clarification. The letter that I got from the board
22 said that it was a business license that we didn't
23 have. And then after talking to her, it looks like
24 it's a stylist's license. So --

25 MS. HORNER: She has here, it looks like -- like a

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

128

1 city license that she thought maybe expiration or
2 something, but it's on a cosmetologist on an expired
3 license. So she just needs some clarification on it,
4 what's going on.

5 HEARING OFFICER JONES: Ms. Wittum, can you
6 clarify that?

7 MS. WITTUM: It's the -- is the practitioner this
8 Kevin Holmes?

9 MS. HORNER: Yes.

10 MS. WITTUM: Our information is reflecting that it
11 was the establishment.

12 You need to check on Kevin Holmes.

13 Do you want the number, Amber?

14 MS. McCUIEN: No. I'll look it up.

15 MR. JOCHUMS: Let me ask, Ms. Hatfield, what's
16 your relationship with the studio or the --

17 MS. HATFIELD: I'm the vice president.

18 MS. POWELL: You're the vice president of Virge?

19 MS. HATFIELD: Of the corporation. Virge, is
20 under -- it's all under a corporation, OAG.

21 MR. JOCHUMS: Okay. And as far as we know, that
22 establishment did have a license on the day we were
23 there?

24 MS. HATFIELD: It did. Yeah. But the reason I'm
25 in here is there was an older license that was sitting

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

129

1 on a file cabinet, and we thought that that's what we
2 were being fined for. And the -- we had a copy of the
3 ones up front, and so that -- that's what I was
4 assuming. But I'm not going to dispute that Kevin
5 Holmes one, if that's --

6 I guess I just need to figure out what we're being

7 fined for, because he --

8 HEARING OFFICER JONES: Okay. We'll just hang on

9 a minute while Amber goes to check and she can check

10 and see on that.

11 MS. HATFIELD: Okay. Because we do have all of

12 our establishment licenses and all of that, but his was

13 not, I guess. I don't know.

14 MS. HORNER: That's what was on this 2005.

15 MR. JOCHUMS: We're ready to go on here.

16 HEARING OFFICER JONES: Okay. I'm going to let

17 Ms. Wittum try to clarify, just so we all know where

18 we're coming from.

19 MS. WITTUM: Okay. According to our records,

20 Kevin Holmes was issued a 2006 license on January 17,

21 2006. The shop license for Virge Hair expired

22 December 31, 2005, and it appears that it was renewed

23 on June 22nd of 2006, which would have been after the

24 inspection on April 26th of '06.

25 HEARING OFFICER JONES: So what we're here for is

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 for the establishment license?

2 MS. WITTUM: Okay. So what -- what license do you
3 have for the business that leads you to believe it's
4 current?

5 MS. HATFIELD: Oh, I just have our business
6 license. I didn't have our --

7 MS. HORNER: City.

8 HEARING OFFICER JONES: Okay. We'll get to that
9 in a minute.

10 Okay. Mr. Jochums, your questions for your first
11 witness.

12 WHEREUPON,

13 ROSE HORNER,
14 having been called for examination, and having been first duly
15 sworn by the undersigned notary public, was examined and
16 testified, as follows:

17 DIRECT EXAMINATION

18 BY MR. JOCHUMS:

19 Q Yes. Please state your name.

20 A Rose Horner.

21 Q And did you go to Catherine Holmes d/b/a Virge Hair?

22 A Yes.

23 Q And when did you do that?

24 A April 26th of this year.

25 Q Okay. And in the process of doing an inspection, what did

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

131

1 you observe?

2 A Well, Kevin Holmes, evidently, had a 2005 license listed or
3 posted, and there is a Virge Hair and Esthetiques that are two
4 salons, owned by the corporation.

5 MS. HATFIELD: Uh-huh.

6 THE WITNESS: And, evidently, I missed the salon
7 license being -- they are posted on the -- were posted
8 on the same bulletin board in Esthetiques.

9 BY MR. JOCHUMS:

10 Q Okay.

11 A So I missed that salon license.

12 MR. JOCHUMS: I have no other questions of this

13 witness.

14 HEARING OFFICER JONES: Ms. Hatfield, do you have
15 any questions that you would like to ask Ms. Horner?

16 MS. HATFIELD: No. Because I just realized now
17 what we're -- I don't have any.

18 I have our nice little city license, but I -- I
19 have no information on the establishment license or
20 when it was I -- you know, I assume that that's correct
21 but I don't know. I pay all the license fees and I
22 didn't in June, so I'm not -- you have that, I just --
23 I don't have anything in my records to look at now, so
24 I'm very ill prepared to testify.

25 HEARING OFFICER JONES: Does the board have any

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

132

1 questions they would like to ask Ms. Horner?

2 Go ahead.

3 EXAMINATION BY THE BOARD

4 MS. PICKERING: Are you saying that you -- that

5 you missed seeing the establishment license? Was it
6 there and you missed seeing it or what? What -- tell
7 me?

8 THE WITNESS: I -- actually right now, I don't
9 recall. But the -- both salon licenses are usually
10 posted in the Esthetiques, on a bulletin board type
11 thing with the inspection sheets. I don't know how I
12 missed it, but they are together. The two salons have
13 a doorway. I think one is for newer stylists just out
14 of school and the other salon is for more experienced.
15 So this is like a training, basically, I guess.

16 MS. HATFIELD: Uh-huh.

17 THE WITNESS: Teaching for the newer
18 cosmetologists, and both licenses are on a bulletin
19 board in Esthetiques.

20 So, how I missed it, don't know.

21 HEARING OFFICER JONES: Any other questions for
22 the board?

23 MS. PICKERING: I'm just totally confused now.
24 I'm really confused.

25 You say you missed it. Well, was it there?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

133

1 Are you saying it was there and she missed it, or
2 it wasn't there and she didn't see it?

3 MS. HATFIELD: I'm saying that all of our licenses
4 are there and they are all up to date.

5 Now, in June, we did renew our barber shop license
6 around June.

7 MS. WITTUM: We are going to check on the dates.
8 The information that I was looking at, one piece of it
9 indicates that it hasn't been -- the shop hasn't been
10 renewed since December 31, '05. The information that
11 we gathered when this hearing order was prepared
12 indicates that it was renewed June 22nd. So we're
13 going to check our old computer system to see exactly
14 what it has in there.

15 MS. HATFIELD: Okay.

16 MS. WITTUM: Because it should be accurate in
17 there.

18 MS. HATFIELD: Okay.

19 HEARING OFFICER JONES: Ms. Gordon?

20 MS. GORDON: But still the question is, when the
21 inspector went, the license had not been renewed?

22 HEARING OFFICER JONES: I don't think they know.

23 MS. PICKERING: What she is saying she missed it,
24 so she's not --

25 MS. GORDON: I know she's saying they missed it,

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

134

1 but I thought I heard somewhere where they hadn't
2 renewed until June? From January until June they were
3 without license.

4 MS. WITTUM: That's -- that's what we're
5 clarifying. And I think what Ms. Horner is saying is
6 that she just doesn't recall seeing the establishment
7 license posted up there.

8 HEARING OFFICER JONES: Let's let Ms. Horner
9 address that. How about that?

10 THE WITNESS: I would think if it was there or was
11 not there I would have marked salon license not posted

12 or something. All I wrote, I put all posted licenses
13 are current and I marked no. But the salon license
14 current, I marked yes.

15 So I honestly don't remember if it was posted or
16 not. That was April. Don't know.

17 MS. PICKERING: Well, on six, when it says
18 practitioner license current, you marked yes and no.

19 THE WITNESS: Well, there was just one. I do
20 that. That may be not the right way to do it. They
21 are current but they -- they are current but there was
22 that one that was not current.

23 MS. PICKERING: Okay. Okay.

24 THE WITNESS: That's how I marked that.

25 MS. PICKERING: Okay.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

135

1 HEARING OFFICER JONES: Does the board have any
2 more questions for Ms. Horner, until we get some
3 clarification on dates?

4 Okay. We will wait until we get some

5 clarification from Amber on the dates.

6 MR. KEENE: But did he, did the practitioner have

7 his license posted but it wasn't current or did he --

8 HEARING OFFICER JONES: That's what it sounds

9 like.

10 MR. KEENE: That would be a violation, that five

11 dollars.

12 I won't go there. I won't make that motion.

13 HEARING OFFICER JONES: Okay.

14 MR. JOCHUMS: We're ready.

15 HEARING OFFICER JONES: Okay. I think Ms. Wittum

16 has some further information on dates, and we'll try to

17 clarify this.

18 MS. WITTUM: Okay. Our records in both the old

19 and the new computer system do not reflect 2006 ever

20 being renewed.

21 The 2005 license was issued February 16 of '05,

22 and that expired December 31st of '05.

23 MR. JOCHUMS: I would like to make the two

24 computer documents Ms. Wittum is testifying from

25 Exhibits 2 and 3 in this matter.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

136

1 HEARING OFFICER JONES: And those will be marked
2 as Exhibits 2 and 3.

3 (WHEREUPON, Board's Exhibits Nos. 2 and 3 were
4 received in evidence.)

5 MR. JOCHUMS: We'll pass them around so we can
6 look at them.

7 And, Ms. Hatfield, would you like to look at
8 these?

9 MS. HATFIELD: Yeah.

10 MR. JOCHUMS: I'm sorry, I just have one.

11 After you're done looking at them, give them to
12 one of these ladies on the end so they can look at them
13 as well.

14 HEARING OFFICER JONES: Okay. Mr. Jochums, do you
15 have any other witnesses?

16 MR. JOCHUMS: No. No.

17 HEARING OFFICER JONES: Ms. Hatfield, I'll give

18 you a few moments to look over those.

19 MS. WITTUM: Do you want me to explain the dates?

20 MS. HATFIELD: No.

21 HEARING OFFICER JONES: Okay. Ms. Hatfield, I

22 don't guess you have any witnesses you would like to

23 call?

24 MS. HATFIELD: No.

25 Can I give an explanation?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

137

1 HEARING OFFICER JONES: Yes. Go right ahead.

2 WHEREUPON,

3 JENNIFER HATFIELD,

4 having been called for examination, and having been first duly

5 sworn by the undersigned notary public, was examined and

6 testified, as follows:

7 DIRECT EXAMINATION

8 MS. HATFIELD: We, the -- Virge was a company set

9 up a couple of years ago, and the -- it's -- we've

10 since changed it, as I was explaining to her. In

11 December of '05, we took all -- everyone off payroll on
12 Virge and put them on Esthetiques, and we just have --
13 it's kind of become a -- kind of a spill over area.
14 When we -- when the Esthetiques store is full, people
15 work over there, so I'm not sure, maybe that's why the
16 owner decided not to renew it, because, I mean we're
17 not really operating as Virge. It's pretty much been
18 consolidated all as under Esthetiques, so that could be
19 why she didn't renew it and send in another one.

20 CROSS-EXAMINATION

21 BY MR. JOCHUMS:

22 Q Is the same person the manager of both salons?

23 A The -- it's the president of OOH, which Esthetiques and
24 Virge are corporations of.

25 Q Okay. Who is Cathy Holmes?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

138

1 A She is the owner presently.

2 Q Okay. In the corporate structure?

3 A (Nodding head up and down.)

4 Q She's not in Rogers?

5 A No. She's in San Diego.

6 Q She's in San Diego?

7 Did you come from San Diego today?

8 A No. I came from Rogers.

9 Q Rogers? Okay.

10 A I would be a little disappointed if I came from San Diego

11 and didn't have --

12 HEARING OFFICER JONES: Okay. Mr. Jochums, do you

13 have any other questions of Ms. Hatfield?

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

15 I assume the board members will have some

16 follow-up questions. I'm sort of lost.

17 HEARING OFFICER JONES: Would the board -- go

18 right ahead, Ma. Ward, and ask Ms. Hatfield questions.

19 EXAMINATION BY THE BOARD

20 MS. WARD: Am I understanding you right, that

21 these are two separate salons right next to each other?

22 Or is it just one salon?

23 THE WITNESS: Well, it could be two salons. There

24 are two entrances. We've since not allowed the Virge

25 as an entrance, because like I say it's kind of an over

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

139

1 spill and everyone comes in through Esthetiques.

2 MS. WARD: When did they do that?

3 THE WITNESS: December of 2005.

4 MS. WARD: And it's open inside to go from one
5 side to the other?

6 THE WITNESS: There is a door where you can go
7 inside either side. Yes.

8 HEARING OFFICER JONES: Any other questions from
9 board members for Ms. Hatfield?

10 MR. DOWNEY: Yes.

11 HEARING OFFICER JONES: Go ahead, Mr. Downing.

12 MR. DOWNEY: Is there signage on the outside of
13 the building that there is two separate salons?

14 THE WITNESS: Yes.

15 MR. DOWNEY: And there is maybe two entrances,
16 too, that this side Virge and that side --

17 THE WITNESS: There is a sign -- there is not a
18 sign on the actual door, but there is a sign outside
19 that hasn't been taken down because we're just not
20 sure --

21 MR. DOWNEY: Then you're operating two salons.

22 THE WITNESS: Well, we have -- we advertise as
23 Virge, we have Virge stylists that operate on
24 Esthetiques' floor. So, I mean, it should be that cut
25 and dried. It's really not. There -- we pay no

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

140

1 payroll taxes for Virge, they are all under
2 Esthetiques. It's all -- we pay rent for Virge out of
3 Esthetiques. It's --

4 MR. DOWNEY: Why do you carry the name?

5 THE WITNESS: Because it was set up as a company a
6 couple of years ago. We found that at this point it's
7 not really profitable; but if we decided to put more
8 energy and focus on it, it might be, or we might just
9 before -- I mean, as you know, it's expensive to start

10 up a new company. To close it down and find out that
11 we could have just tweaked a few things, may make more
12 sense than just completely closing it down.

13 HEARING OFFICER JONES: Further questions?

14 MR. KEENE: Yes. From what you're saying there,
15 and following up with what he's asking you, is your
16 intent then to keep the name of both salons?

17 THE WITNESS: We don't currently advertise it as
18 Virge Salon. There is a sign, like I said, out front
19 because it cost -- it's an expensive sign, and if we're
20 not going to -- we just haven't decided to completely
21 close doors on it. But we don't advertise it as Virge
22 as a separate salon. We advertise that we have both --

23 MR. KEENE: Well, what I'm -- I guess what I'm
24 going to get to here is, if you're going to -- if
25 you're keeping the signage up and your intent is to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 have the two names at this point, because you haven't

2 decided to get rid of it, then you would be in
3 violation. If your intent is to have the one salon and
4 you're dropping the other name and releasing it,
5 basically, and you're not keeping a business license in
6 that other name --

7 THE WITNESS: Then that would be --

8 MR. KEENE: -- then you would not be in violation.

9 THE WITNESS: Well --

10 MR. KEENE: You just simply didn't return the
11 license to us because you decided not to renew it. But
12 if your intent is to keep the name and leave the sign
13 up, it looks as if you are running two different
14 businesses out of one and you need both licenses.

15 THE WITNESS: Well, I guess there is really no
16 clear intent right now, because -- I mean I don't know.

17 FURTHER CROSS-EXAMINATION

18 BY MR. JOCHUMS:

19 Q What business license did you bring today?

20 A I brought our city business license for both.

21 Q To what? For Virge?

22 A For both.

23 Q For both?

24 HEARING OFFICER JONES: Okay. Ms. Ward, go ahead

25 and --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

142

1 BY MR. JOCHUMS:

2 Q Okay. I think that could be considered --

3 MR. DOWNEY: She had two.

4 MR. JOCHUMS: She has had two business licenses.

5 HEARING OFFICER JONES: Ms. Ward, go ahead with
6 your question.

7 FURTHER EXAMINATION BY THE BOARD

8 MS. WARD: Okay. If you're not sure and you don't
9 want to drop one, then you need to maintain both
10 licenses until you make the decision to actually drop
11 one.

12 THE WITNESS: Right.

13 MS. WARD: So you actually should have renewed
14 both licenses, then.

15 THE WITNESS: Right.

16 MS. WARD: Because you're keeping the other one,
17 and kind of in limbo, but you're still keeping that
18 license, or you're keeping that until you decide to
19 shut it down completely, and you have to maintain that
20 license.

21 THE WITNESS: I agree.

22 MS. WARD: Yeah. Okay. So --

23 HEARING OFFICER JONES: Are there any further
24 questions?

25 Okay. Closing statements?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

143

1 MR. JOCHUMS: I think it's a situation where,
2 especially since the respondent has provided
3 information that they have a city license under both
4 names, that we have -- and there is signage under both
5 names, that we have a violation. And although --
6 although there may be good -- no bad intent, there
7 certainly is a violation, and intent is really not an
8 issue in this case. So I think you can find them

9 guilty and impose the director's recommended penalty,
10 which is the standard calculated on number of days from
11 when it expired until when it got reissued.

12 HEARING OFFICER JONES: Ms. Hatfield, would you
13 like to say anything?

14 MR. JOCHUMS: Or did it get reissued?

15 MS. WITTUM: It hasn't been reissued.

16 MR. JOCHUMS: Okay. I'm sorry.

17 MS. WITTUM: It hasn't been reissued. The hearing
18 order indicates that it was reissued on June 22nd,
19 but it has not, according to the research we did this
20 morning.

21 HEARING OFFICER JONES: Anything further you would
22 like to say, Mr. Jochums?

23 MR. JOCHUMS: No. That's it.

24 HEARING OFFICER JONES: Ms. Hatfield, go ahead.
25 Is there anything you would like to say in closing?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. HATFIELD: No.

2 I will say, it looks like we're going to be the
3 case that unites this group.

4 Can I ask for some leniency there maybe? Just out
5 of the chaos, out of the fact that we can help a little
6 bit?

7 HEARING OFFICER JONES: Okay. At this time are we
8 ready for a motion?

9 MS. POWELL: What a smart observation.

10 MR. JOCHUMS: Let me just say, in light of what
11 she said, we could freeze the penalty, especially since
12 she didn't know what she was on trial for.

13 HEARING OFFICER JONES: Okay. Are we ready for a
14 motion?

15 Wait.

16 MS. HORNER: Can I say something?

17 Can I say something?

18 HEARING OFFICER JONES: Sure.

19 MS. HORNER: On this, the review, the historical
20 review, May 3rd, it said inspection revealed the
21 respondent was allowing a practitioner to work in her
22 salon with an expired license. So that this is what

23 I -- you know, I received and I was looking at, not an
24 expired salon license. I -- just to --

25 MS. TRAYLOR: Is everybody on the same page yet?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

145

1 HEARING OFFICER JONES: Okay.

2 MS. WITTUM: Well, I would like to say something
3 before we close this one.

4 HEARING OFFICER JONES: Go ahead, Ms. Wittum.

5 MS. WITTUM: Given the fact that our inspector
6 made mistakes, we obviously made mistakes in preparing
7 the hearing order and stuff, I would ask that the board
8 consider that before you start imposing a penalty
9 against the salon.

10 MS. HATFIELD: Thank you.

11 HEARING OFFICER JONES: Okay. Are we ready for a
12 motion or do we need to --

13 MS. TRAYLOR: I don't know. I'm still confused.

14 HEARING OFFICER JONES: We'll go off -- okay.

15 Let's go off the record and we'll have deliberations
16 and we'll go back on when you all come up with a
17 motion. How about that?

18 (WHEREUPON, the Commission retired to deliberate,
19 off the record, and returned with the following
20 motion.)

21 HEARING OFFICER JONES: We'll go back on the
22 record.

23 MR. DOWNEY: Finding that there is insufficient
24 evidence to support the charges filed against the
25 respondent in this matter, I move that this matter be

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

146

1 dismissed.

2 MR. KEENE: Second.

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

4 Is there any discussion?

5 All those in favor, raise your little right hand.

6 (Seven hands raised.)

7 Well, I guess you were wrong. Okay. It wasn't

8 unanimous.

9 Those opposed?

10 (One hand raised.)

11 MS. POWELL: Motion carries.

12 HEARING OFFICER JONES: Please let the record

13 reflect that the motion did carry and that this was

14 dismissed. Please reduce it to writing and send it to

15 all parties involved. If the respondent would care to

16 an appeal, there is one available under the

17 Administrative Procedures Act at 25-15-201.

18 Are there any other questions or comments?

19 MR. KEENE: Kathy's recommendation to her about

20 making a decision within 30 days I think is good, and

21 also that sign would have to come down --

22 MS. HATFIELD: Right.

23 MR. KEENE: -- or stay up, if you decide to keep

24 the name. Otherwise it's a violation, too.

25 MS. HATFIELD: Right.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. TURMAN: Do we need to make a motion to that,
2 too?

3 HEARING OFFICER JONES: No. I think he was just
4 making a comment.

5 MS. POWELL: It's obvious they are commingling two
6 businesses here.

7 HEARING OFFICER JONES: Okay. No other comments?
8 Then this hearing and this record are closed.

9 MS. HATFIELD: Thank you.

10 (WHEREUPON, the above-entitled proceedings were
11 concluded.)

12 ---o---

13 MR. JOCHUMS: Are any of you folks here for a
14 hearing?

15 HEARING OFFICER JONES: We'll make one final call
16 for the others that are listing on hearing that have
17 not responded, that they waive their rights.

18 Team Baxter East, 07-092, still no one here.
19 Quyen Ho, 07-096, still not present. Maria Rodriguez,
20 07-105. Letonya Shavers, 07-110. Shantrell Huffman,
21 07-116. Diane Lovett, 07-113.

22 None of those respondents have made themselves
23 present today, and at this time the hearings are
24 concluded.

25 MR. JOCHUMS: Great.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

148

1 Madam Hearing Officer, let me just ask the
2 executive director, each of these people were sent
3 notice?

4 MS. WITTUM: Yes.

5 MR. JOCHUMS: None of them have asked for a
6 continuance?

7 MS. WITTUM: None of them have.

8 MR. JOCHUMS: The Notice of Hearing all recite
9 that the board will consider respondent's failure to
10 appear at the hearing or retain a continuance as a
11 desire not to contest the factual allegations contained
12 in the notice. In that case the board may impose
13 appropriate sanctions in the respondent's absence.

14 Was that language in all these notices?

15 MS. WITTUM: Yes.

16 MR. JOCHUMS: Okay. With that situation, I think

17 the board can make a bulk motion that the cases read

18 off by the Hearing Officer will be entered findings

19 of -- that the charges have been proved and civil

20 penalties in the amount listed in the right-hand column

21 next to their names.

22 MS. WITTUM: I believe the board typically adds

23 \$25 administrative fee.

24 MR. JOCHUMS: Plus an administrative fee.

25 MR. DOWNEY: I'll make a motion.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

149

1 HEARING OFFICER JONES: Ms. Amber?

2 MS. McCUIEN: Diane Lovett paid today, Something

3 Else.

4 MS. WITTUM: She did?

5 MS. McCUIEN: She did.

6 MR. JOCHUMS: Okay. We'll take Lovett off.

7 MR. DOWNEY: Okay. Madam Chairman, I make a
8 motion that the amounts that are listed under the
9 individuals that didn't show plus a \$25 administrative
10 fee be levied, that will be justification for the
11 wrong.

12 MS. TRAYLOR: Second.

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

14 All those in favor, raise your right hand.

15 Motion is unanimous.

16 Thank you.

17 HEARING OFFICER JONES: Please note that this has
18 been determined unanimously that hearing 07-092, Team
19 Baxter East; 07-096, Quyen Ho; 07-105, Maria Rodriguez;
20 07-110, Letonya Shavers; 07-112, Shantrell Huffman have
21 all been adjudicated in the matter of this motion.

22 Please reduce that to writing and make service upon all
23 parties and let them know that if they care to take an
24 appeal, that they may do so under the Administrative
25 Procedures Act 25-15-201.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 Any questions or comments? The matter is closed.

2 ---o---

3 MR. JOCHUMS: One other thing, just before -- for
4 a second, Madam Hearing Officer. The agenda document
5 lists respondents who have waived their right to a
6 hearing, along with a civil penalty, which they have to
7 pay.

8 HEARING OFFICER JONES: Yes.

9 MR. JOCHUMS: And we ask for a motion approving
10 those dispositions.

11 MS. TRAYLOR: I so move.

12 MS. POWELL: I have a motion.

13 Do I have a second?

14 MS. GORDON: Second.

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

16 All those in favor, raise your right hand.

17 (Eight hands raised.)

18 The motion is unanimous.

19 Thank you. Motion carries.

20 HEARING OFFICER JONES: Please also let the record

21 reflect that it was a unanimous motion, that the
22 respondents who waived their rights to a hearing, which
23 are listed in the agenda as 07-093, Lydia Blaty;
24 07-098, Charlotte McClain; 07-099, Shelley Hillis;
25 07-100, Chelsea McLeod; 07-101, Heather Dennis; 07-102,

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

151

1 Dorothy Hutchings; 07-103, My Hanh Thi Pham; 07-104,
2 Han Ngoc Tran; 07-106, Irma Arribas; 07-108, Kim Hue
3 Thi Vu; 07-108, Kim Ngo; 07-109, Dana Cunningham, that
4 those respondents have waived their rights, and please
5 notify them of the outcome.

6 Thank you.

7 (WHEREUPON, the above-entitled proceedings were
8 concluded.)

9 ---o---

10 MS. POWELL: Are we done?

11 HEARING OFFICER JONES: I'm done.

12 MS. POWELL: Okay. We're going to take a break

13 until one o'clock.

14 (WHEREUPON, a lunch break was held at this time.)

15 MS. POWELL: The meeting will come to order.

16 At this time I would like to turn the meeting over
17 for a report from our legal counsel, Arnold Jochums.

18 REPORT OF LEGAL COUNSEL

19 MR. JOCHUMS: The -- I had originally planned to
20 update you on this matter, but we received -- we
21 notified Ms. Burchett and her lawyer that we would be
22 talking about it, and they asked that we not talk about
23 it, so I would pass on that, if that's agreeable with
24 the chair.

25 PETITIONS

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

152

1 MS. POWELL: Okay. What do we need to do about
2 these petitions?

3 MS. WITTUM: They are new school approvals.

4 MS. POWELL: Okay. We have two new school
5 requesting petition of the board.

6 And the names?

7 MS. WITTUM: Cossatot.

8 MS. POWELL: Cossatot Community College U of A.

9 MR. JOCHUMS: Is the applicant here?

10 MS. WITTUM: Maria?

11 MS. PARKER: Yes.

12 MS. WITTUM: Would you come up here?

13 MR. JOCHUMS: Why don't you tell board who you are
14 and what you all want to do.

15 MS. PARKER: Okay. I'm Maria Parker. I'm
16 Division Chair for Academic Groups and Services at
17 Cossatot Community College, and I am leading up our
18 effort to open a new cosmetology program in Nashville,
19 Arkansas.

20 I think I have all of the applicable paperwork up
21 to this point. And at this time we are just requesting
22 permission to complete the renovations on the facility
23 and whatever else we need to do to move forward with
24 our curriculum approval.

25 MS. WITTUM: Okay. The information that I passed

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

153

1 out, one of them is for Cossatot.

2 And as you will see, they did provide the
3 documentation that they will be owned and operated by
4 the University of Arkansas Board of Trustees, they will
5 be a corporation. The chancellor, Frank Adams, has
6 authorized Mike Kinkade, Dean of Facilities, to accept
7 service of notice from the board and to transact all
8 business negotiations on behalf of the school. And
9 I've got outlined there on the page for you the --
10 basically the six steps to this process to get
11 approval.

12 They did comply with notifying the board. Sheila
13 Caudle has been to the facility and did provide a
14 detailed floor plan for us up to this point. And then
15 today is -- we're here to give them the approval.

16 Following this they will proceed with the
17 modifications, and they will let us know when that is
18 completed and provide the \$500 registration fee, as
19 well as the 25 bona fide students, and at that point we

20 would issue them a license.

21 MR. JOCHUMS: Does anybody have any questions?

22 MS. WITTUM: Do you have any questions?

23 MS. WEST: This sounds good.

24 Where is Nashville?

25 MS. PARKER: Nashville is about an hour northeast

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

154

1 of Texarkana, close to Hope and Prescott, in that area.

2 MS. WEST: Yes. Okay.

3 And where are you hoping to get the students

4 from -- from that area, that geographic area?

5 MS. PARKER: From that area. And we are about, I

6 believe I detailed that in my proposal, 90 miles from

7 the nearest school, so we have a pretty good perimeter

8 to draw from.

9 MS. WEST: Okay.

10 MS. PARKER: And we also hope later to also open a

11 secondary vocational site there as well and serve the

12 high schools in that area.

13 MS. WEST: And the facility now, is that a new
14 facility?

15 MS. PARKER: It is a new facility.

16 MS. WEST: It is a new facility?

17 MS. PARKER: It just is not complete.

18 MS. WEST: Not complete.

19 MS. PARKER: Uh-huh.

20 MS. POWELL: I need a motion.

21 MS. WEST: Madam Chairman?

22 MS. POWELL: Yes.

23 MS. WEST: I move that we accept the proposal.

24 MS. POWELL: I have a motion.

25 MS. GORDON: Second.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

155

1 MS. POWELL: And a second. All those in favor,
2 raise your right hand.

3 (Seven hands raised.)

4 All those opposed?

5 Any abstentions?

6 (One hand raised.)

7 One abstention.

8 Motions carries.

9 MS. PARKER: Okay. Thank you.

10 MS. POWELL: Thank you.

11 Career Academy of Hair Designs, Siloam Springs, a

12 new school approval.

13 MR. BUTENSCHOEN: Hello.

14 BOARD MEMBERS: Hello.

15 MR. BUTENSCHOEN: I'm Jim Butenschoen. I have the

16 schools in Springdale and Rogers, and we're looking to

17 open up a school in Siloam Springs.

18 MS. WITTUM: The information you have in front of

19 you reflects that this will also be a corporation, as

20 Career Academy of Hair Design is owned and operated by

21 Trans Corporation. Mr. Butenschoen.

22 MR. BUTENSCHOEN: That's very good.

23 MS. WITTUM: Is the president of the corporation

24 and will be authorized to accept service and notice

25 from the board and to transact all business

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

156

1 negotiations on behalf of the school.

2 Again you have the outline showing the six steps.

3 They have completed the notification to the board.

4 Ms. Caudle has been out to see the facility and has
5 provided a floor plan up to this point, and we're here
6 today for the approval. Following this they would
7 comply with the same steps as previously stated.

8 Any questions?

9 MR. JOCHUMS: What kind of building? Are you
10 having a new building or are you modifying?

11 MR. BUTENSCHOEN: It's an existing building that's
12 going to be remodeled, or is in the process of being
13 remodeled.

14 MR. JOCHUMS: I see.

15 MR. BUTENSCHOEN: I can give you a lot more detail
16 if you like.

17 MR. JOCHUMS: That's all right.

18 MS. WEST: Where is it located?

19 MR. BUTENSCHOEN: It's on 412, right in Siloam
20 Springs.

21 MS. WEST: Okay.

22 MR. BUTENSCHOEN: It was a car dealership, an old
23 one, and the whole front of it will be glass. So the
24 whole clinic area will be exposed to the -- we'll just
25 get them right out there in front of everybody.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

157

1 MR. JOCHUMS: Do you have a lot of parking there?

2 MR. BUTENSCHOEN: A lot of parking.

3 MR. KEENE: I move that we approve the
4 application.

5 MS. WEST: I second.

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

7 Is there any discussion?

8 All those in favor, raise your right hand.

9 (Eight hands raised.)

10 Motion is unanimous.

11 MR. BUTENSCHOEN: Thank you.

12 May I go?

13 MS. WITTUM: You're free.

14 Welcome.

15 Welcome to you, too.

16 LEGISLATIVE UPDATE: OUTSOURCING

17 MS. POWELL: Go ahead and start with your

18 legislative update. The outsourcing report.

19 Okay. At this time we're going to go into the

20 Director Wittum giving a report on the licensee working

21 outside of the establishment.

22 MS. WITTUM: According to NIC, there are two

23 resources that they recommend for testing services,

24 that's Professional Credential Services and DL Roope

25 Administration.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

158

1 We have Francine Tilley with Professional

2 Credential Services here to present to you their

3 company and what they would have to offer.

4 DL Roope, when I contacted them, Deborah Roope
5 said that they really did not have the ability at this
6 point to either send someone here or to provide
7 information for the board to review, they just took on
8 two new states and felt like they were overextended as
9 it was.

10 So she did -- in our visiting, she did indicate
11 that it would be challenging for them to contract with
12 us and still keep the cost for the students at a
13 minimal, as we had hoped that they would stay.

14 So, with that, we'll ask Ms. Tilley to come up.

15 MS. TILLEY: Thank you.

16 I do have the proposal that was given to you, I
17 think.

18 Would you like for me to pass those out?

19 MS. WITTUM: Yes. Please.

20 If you will give them to Shaunta, she will take
21 care of getting them passed out.

22 MS. TILLEY: Okay. Kathy, is it my understanding
23 that everybody has seen this proposal prior or is this
24 the first time it's been seen?

25 MS. WITTUM: No. No. This is the first time.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

159

1 MS. TILLEY: Okay. And I'm here to answer
2 questions or go over the whole process or --

3 MS. WITTUM: Well, I think the board is interested
4 in learning what PCS could do for us if we were to
5 consider outsourcing, what would be involved with doing
6 that, what the cost would be.

7 We currently charge candidates \$30 to come in and
8 examine, so we are interested in trying to keep those
9 costs to a minimal, if at all possible.

10 MS. TILLEY: Okay. And in the proposal there is a
11 cost breakdown for you as well, and different ways that
12 we actually administer the exam.

13 PCS currently is administering the exam for five
14 different states. We have different ways of doing
15 that.

16 We can either determine eligibility for a board,
17 if that's what the board prefers, or we can just do

18 scheduling of the administration of the exam. We do
19 that now currently in three other states. We receive
20 eligibility through electronic transfers to our data
21 base, and we just schedule the candidates for the exam.

22 We can acquire our own test sites or we can use
23 your current test sites that are available. We do the
24 scheduling of the exam. We actually print the
25 admission notices, ATTs of the candidates, if you

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

160

1 choose to go with a LaserGrade test base or an
2 admission notice, if you choose to go paper and pencil
3 base.

4 After the exam is administered, we actually print
5 score notices and mail them out to the candidates
6 directly or we can send scores directly to the board.

7 And we also, after the exam is over with, on a
8 monthly basis, we send out scores and reports to the
9 schools on a monthly basis as well.

10 That's a quick breakdown of it. If you have

11 questions, feel free to ask.

12 MS. WITTUM: How often do you -- do you examine?

13 MS. TILLEY: We, in other states, we examine once

14 a month up to four to five times a month, and at

15 multiple locations. We can do it up to six locations

16 we do it in some states, and some states it's just one.

17 It depends on the state. Computer based testing is

18 every day. If it's with the LaserGrade, which we, you

19 know, partner with LaserGrade, then that's computer

20 based testing where a candidate can test at any time.

21 I think I have some samples in the proposal there

22 as far as our data base and how the candidates are

23 entered into our system, as far as breakdown of

24 eligibility, breakdown of the exam types, discipline,

25 scores, how we actually enter them into our system, we

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

161

1 receive them electronically from LaserGrade,

2 electronically from S&T, and then we distribute them to

3 the candidates or the board.

4 MS. TURMAN: Let's discuss cost.

5 What do -- what, in theory and in practicum, what
6 would you probably cost -- what would the cost be for a
7 candidate?

8 MS. TILLEY: The breakdowns, I believe, are
9 actually back there --

10 MS. TURMAN: On Page 26?

11 MS. TILLEY: Uh-huh.

12 MS. WITTUM: The very end of the book.

13 MS. TILLEY: Yes.

14 And there are different examples. Well, 25
15 actually starts Option 1 and then goes to two.

16 I believe, if I'm not mistaken, Kathy, you said
17 scheduling only?

18 MS. WITTUM: The administering of the exams --

19 MS. TILLEY: Uh-huh.

20 MS. WITTUM: -- is what we were considering.

21 MS. TILLEY: Okay. So that would probably be
22 under Option 2, the scheduling. That's Page 26.

23 MS. TURMAN: Let me make sure I've got the right

24 page.

25 MR. KEENE: I guess what I'm interested in mainly

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

162

1 is what it would cost for the practical only, for PCS

2 to give the practical exam and using our test site

3 here.

4 MS. TILLEY: Uh-huh.

5 MS. WITTUM: So, would that be the 45? If you

6 look at Option 2 --

7 MS. TILLEY: Uh-huh.

8 MS. WITTUM: -- would that be the \$45 there?

9 MS. TILLEY: For scheduling only?

10 MS. WITTUM: For just the practical.

11 MS. TILLEY: Computer base -- just the practical.

12 Uh-huh. That's correct.

13 And that four times a month.

14 MS. WITTUM: Uh-huh.

15 MR. KEENE: That's scheduling of it, but not the

16 actual coming and giving the exam?

17 MS. TILLEY: No, that's everything. That's
18 administering it, as well.

19 MR. KEENE: Okay. \$45?

20 THE WITNESS: Uh-huh.

21 MR. KEENE: And that's using our site?

22 MS. TILLEY: That's correct.

23 MR. KEENE: Or is that just any site?

24 MS. TILLEY: No. That's using the current board
25 location.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

163

1 MR. KEENE: Okay. I see it now.

2 MS. POWELL: And that would be you providing the
3 information to the office or to mail out to the --

4 MS. TILLEY: Uh-huh. That's correct.

5 MS. POWELL: -- examinee?

6 MS. TILLEY: Uh-huh.

7 MR. KEENE: And different schools, I see it says
8 that.

9 MS. TILLEY: Uh-huh.

10 MS. POWELL: So that looks like \$75 our cost? Our
11 30 or 35 --

12 MS. WITTUM: Forty-five.

13 MS. POWELL: There is 45 and then our fee for the
14 written, for the written would cost the student 75,
15 \$80?

16 MR. KEENE: Well, no, because we don't charge --
17 we charge 30 for the entire exam. Don't we?

18 MS. WITTUM: Right.

19 MR. KEENE: Yeah, that's practical and written.
20 So there would be a separate charge for the written.
21 It wouldn't be the 30 bucks.

22 MS. POWELL: Do you have any idea what the cost
23 would be for just the NIC written?

24 MS. WITTUM: Well, the books cost us 17.50 per, I
25 believe now. They were 15 but they have gone up to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 17.50, I believe.

2 MR. KEENE: Okay. So you're looking at 62.50.

3 MS. WITTUM: Francine, how does the process work
4 for -- once we determine the eligibility, to turn that
5 information around to PCS so that you can get the
6 students scheduled for examination?

7 MS. TILLEY: There is two different ways that we
8 can do -- that we're currently doing it right now.

9 We can receive it electronically, the file
10 electronically. It's uploaded into our system. The
11 candidate can actually call over the phone and register
12 with us on the exam that they wish to take. It could
13 be done another way that we do in another state where a
14 candidate fills out a scheduling form and then fills
15 out a licensure form, send it in both directions, and
16 then we schedule them for the exam once they are
17 determined eligible.

18 MS. WITTUM: Okay.

19 MR. KEENE: When this says four times per month --

20 MS. TILLEY: Uh-huh.

21 MR. KEENE: -- are you looking at just four days a
22 month or four -- because we do exams two to three

23 days -- no --

24 MS. WITTUM: Four.

25 MR. KEENE: Four days a month on a normal basis.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

165

1 You know, a Monday and Tuesday one week and then the
2 next week we come in on a Monday and Tuesday. Is that
3 what you're also talking about in here when you say
4 four times a month?

5 MS. TILLEY: It could be done either way.

6 What we normally do, and it's up to the board how
7 they choose to do it, we can do it every Monday, four
8 times a month. We can do it two weeks, twice a week.
9 So that's --

10 MR. KEENE: Okay.

11 MS. TILLEY: -- just depends on how that's -- you
12 know, how it's working now and what's feasible.

13 What we're normally used to doing is Mondays. We
14 do Monday exams. Every Monday.

15 MR. KEENE: That would get them licensed faster

16 and put them to work quicker.

17 MS. WITTUM: Uh-huh.

18 Any other states that there is typically a
19 deadline date for the candidates to submit their
20 applications?

21 MS. TILLEY: We do 15 business days.

22 MS. WITTUM: Fifteen?

23 MS. TILLEY: Prior to the practical exam.

24 MS. WARD: How would you handle it if you had more
25 than the number that you could examine in one day?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

166

1 MS. TILLEY: We normally -- typically, with our
2 other states, we have not turned anybody away. Depends
3 upon the site size.

4 In this case, if we're going to be using a current
5 site that's only -- that has the capability of
6 determining or -- or testing so many, we would have to
7 put them into the next site or the next date.

8 But what we normally do, we would test -- and we
9 have different practical exam sites. Some are in
10 schools, some are actually in hotels where we actually
11 set up stations in hotels. But we've never turned a
12 candidate away. They have always gotten in for that
13 test date if they made it by the deadline.

14 MS. GORDON: You're saying providing that you have
15 enough room --

16 MS. TILLEY: Uh-huh.

17 MS. GORDON: -- to test them?

18 Say if you got room for only 30 students and you
19 have 35, you couldn't do over --

20 MS. TILLEY: We could have more than one session
21 that day.

22 MS. GORDON: No -- yeah. I understand that.

23 MS. TILLEY: Uh-huh.

24 MS. GORDON: But I'm saying if you ran over, you
25 would have to reschedule them?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. TILLEY: We --

2 MS. GORDON: Say if you have a limit of 35
3 students, that's all the facility will accommodate --

4 MS. TILLEY: Uh-huh.

5 MS. GORDON: -- and you have filled it to that
6 capacity for that day --

7 MS. TILLEY: Uh-huh.

8 MS. GORDON: -- and you have some other students
9 that wanted to get in, it wouldn't be possible for you
10 to schedule them if you don't have the room to do it,
11 the facility?

12 MS. TILLEY: Currently we haven't run -- I
13 understand what you're saying now.

14 MS. GORDON: Yeah.

15 MS. TILLEY: You're maxed out for the day --

16 MS. GORDON: Yeah.

17 MS. TILLEY: -- or maxed out for your sessions.

18 MS. GORDON: Yeah.

19 MS. TILLEY: Currently we've not come across that,
20 we've not had that issue in our sites and our test
21 locations that we have now. I don't know if that's

22 been an issue here, as far as the one location, as far
23 as the amount of candidates that you have. But
24 currently we've not had that situation.

25 MS. WARD: But how would you handle it if you did?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

168

1 Then you would schedule them the next exam date?

2 MS. TILLEY: Uh-huh.

3 MS. WARD: Okay.

4 MS. TILLEY: But we haven't had that.

5 Fortunately, most of our locations are in
6 conference centers. If we have to get a larger room,
7 we do. We know the amount of candidates that are going
8 to be scheduled in advance.

9 MR. KEENE: What would the -- what would the price
10 difference be, if you thought about this, if you did
11 not use our testing site and you had to get a
12 conference room somewhere?

13 MS. TILLEY: That's also here in the proposal. It
14 talks about us getting sites or using the current

15 location.

16 It's obviously going to be higher if we have to
17 pay for, like, locations.

18 And we're trying to keep the -- obviously keep the
19 cost down here for the candidate.

20 MS. WITTUM: So, would that be Option 2(c) on
21 Page 27, where it indicates that you will administer
22 the paper and pencil -- wait just a second -- and
23 secure the sites, the PCS sites?

24 MS. TILLEY: That's correct.

25 MS. WITTUM: And it shows \$75 for the practical?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

169

1 MS. TILLEY: Uh-huh. Uh-huh. So it's going up
2 quite a bit, \$30 a candidate, because we have to pay
3 for the site location.

4 MR. KEENE: Have you seen our testing site?

5 MS. TILLEY: No. I have not.

6 MR. KEENE: Kathy, I think this will be a question

7 for you more than it will for them.

8 Right now, are we having to turn people away from
9 an exam time and schedule them for a later time in
10 order to -- because of our limitations up there?

11 MS. WITTUM: This month is the first time that
12 that's happened. In the past, since I've been here, I
13 have always found another day to schedule any excess
14 people that we've had apply by the deadline date. This
15 month I chose not to do that, because of the stuff that
16 we're -- we're under in the office as well as just
17 trying to find examiners to come in for that extra day.

18 Now, it's my understanding that prior to my
19 becoming involved with the scheduling, that the office
20 typically did not add extra days. They stuck to the
21 four days a month. So I don't know what Linda did if
22 that happened.

23 MS. TRAYLOR: They never have. They just roll
24 them over to the next exam.

25 MS. WITTUM: But up until this month, I've made

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 arrangements to have every person who applied by the
2 deadline scheduled.

3 MR. KEENE: Okay. If -- if for some reason you
4 needed to add an extra day because your -- you found
5 yourself having to put people off --

6 MS. TILLEY: Uh-huh.

7 MR. KEENE: -- and because it's in this building,
8 this building has to be shut down by a certain time, so
9 there is not a matter of just adding another session --

10 MS. TILLEY: Uh-huh.

11 MR. KEENE: Okay. We can only do so many sessions
12 here. If you found you were having to move people to
13 another day, what would the cost be to add that fifth
14 day?

15 MS. TILLEY: It's still the same price for the
16 candidate. This --

17 MR. KEENE: Okay.

18 MS. TILLEY: I mean, they meet the deadline, it's
19 no difference for the candidates.

20 MR. KEENE: Okay.

21 MS. WITTUM: So there would be no additional cost
22 to the board?

23 MS. TILLEY: No.

24 MR. KEENE: Okay.

25 MS. TILLEY: But, like I said, this is not

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

171

1 happening on a regular basis.

2 MS. WITTUM: Well, and I -- out of the 14 months
3 that I've been here, I can't say exactly how many of
4 those months we have added an extra day, but it's not
5 been uncommon for us to need to add that extra day.

6 MS. TILLEY: Okay. So you do a fifth one?

7 MS. WITTUM: Uh-huh. So we typically will examine
8 anywhere from four to five days a month.

9 MR. KEENE: And what is -- Kathy, what's the
10 earliest that we would be able to get into -- or they
11 would be able to get in the building and start giving
12 exams?

13 MS. WITTUM: Eight o'clock, I think is when the

14 guard gets out there. And that's --

15 MR. KEENE: What time do we normally start now?

16 MS. WITTUM: Eight o'clock.

17 MR. KEENE: And then we finish up usually around

18 3:30 or four?

19 MS. WITTUM: Sometimes 4:30, depending on the

20 timing.

21 MR. KEENE: If it's -- okay.

22 MS. WITTUM: But we typically try to have the

23 exams finished by five, at least.

24 MR. KEENE: Because I think I sat down one time

25 and worked out the time schedules to where we could

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

172

1 have actually done three sessions in a day, if there
2 weren't the breaks in between, and depending also what
3 phases of the NIC exam you gave.

4 MS. WITTUM: Uh-huh.

5 MS. POWELL: I think that was removing part of

6 that -- not the core, but the elective --

7 MR. KEENE: The pin curl and --

8 MS. POWELL: It was the elective things that we --

9 MR. KEENE: Just, when I finished it up, I think I
10 just pulled the pin curling out, and I was able to come
11 up with three sessions in a day.

12 So, I mean, they would have to be out of the
13 building by what time?

14 MS. WITTUM: I would say by five.

15 MS. TURMAN: How fresh would that examiner be if
16 they did three sessions?

17 MR. KEENE: They used to do it -- Veda, can attest
18 to that. They used to do three sessions a day, and the
19 exam was three hours long.

20 MR. DOWNEY: And I worked until seven at night
21 when I was doing it in past years ago.

22 MS. TRAYLOR: That's not reasonable, though.

23 MS. WITTUM: The cosmo exam typically takes about
24 3 1/2 hours now, doesn't it?

25 MR. DOWNEY: (Nodding head up and down.)

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. WITTUM: I have a question, Francine.

2 One of the comments that got raised at the last
3 meeting when we were discussing this was the
4 qualifications of the examiners.

5 MS. TILLEY: Uh-huh.

6 MS. WITTUM: Do you use only licensed
7 cosmetologists?

8 MS. TILLEY: That's right.

9 MS. TRAYLOR: You don't use licensed instructors
10 then?

11 MS. TILLEY: If the board requests it we do.

12 They cannot be currently enrolled or working in a
13 school, but if the board requests it.

14 MS. WITTUM: So do you find the examiners?

15 MS. TILLEY: Uh-huh.

16 MS. WITTUM: Or is that something that the board
17 assists with?

18 MS. TILLEY: The board will assist with. I mean,
19 we have to have a list, obviously, of licensees. The

20 board will make that decision whether they need to be
21 licensed for five years, how many years, I mean, they
22 will make that decision. If not, we will make that --
23 determine that decision. And they cannot be currently
24 active in a school, teaching, speaking, or anything at
25 a school, they cannot be involved.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

174

1 MS. POWELL: So you're pulling those people, the
2 examiners, from the state?

3 MS. TILLEY: Uh-huh. That's where we do our mail
4 out invitees to the NIC training, and then they are
5 trained every year, like they are currently doing that
6 anyways.

7 MS. POWELL: So the examiners are still coming
8 from each -- in this case, you've got five states that
9 are participating, so you've got those five schools --
10 or five states pulling examiners from within their own
11 state?

12 MS. TILLEY: That's correct. That's where we get

13 our examiners, from the current cosmetology -- depends
14 on the state. In Delaware they prefer instructors and
15 instructors only. And it's very hard to find an
16 instructor that's not working.

17 MR. KEENE: Who -- who pays for their training?

18 MS. TILLEY: They get paid for their eight hours
19 of training that day. PCS pays for --

20 MR. KEENE: I know, but who pays that?

21 MS. TILLEY: PCS pays for that.

22 MR. KEENE: Okay. So that's -- that's money that
23 we're spending to train the board or the raters here,
24 we wouldn't have to pay anything. That can go back
25 into our budget and used another way.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

175

1 MS. TRAYLOR: No. They still have to have updated
2 training.

3 MR. KEENE: Well, that's what she said, but they
4 pay for it.

5 MS. TILLEY: We do it every year within NIC.

6 MS. TRAYLOR: That's what I said.

7 MR. KEENE: We wouldn't be paying for it anymore,
8 they would.

9 MS. POWELL: That comes out of the students'
10 charges of \$45. Correct?

11 MS. TILLEY: Uh-huh.

12 MS. POWELL: Or --

13 MS. TILLEY: Or the 75, if we did --

14 MS. POWELL: Or the \$75?

15 MS. TILLEY: Uh-huh.

16 MS. POWELL: Okay.

17 MS. WARD: The board would be -- not be collecting
18 anything for them taking the exam either. So what
19 you're saying for the raters, would that be covered by
20 the normal fee for the exam?

21 MR. KEENE: I didn't hear that question.

22 MS. WARD: The board would not be getting
23 anything -- you know, usually the board gets paid when
24 they take the exam, the fee goes to the board. Am I
25 correct? They would not be getting anything for that

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

176

1 exam.

2 MS. POWELL: Well, they would if they were to
3 participate -- if they do the -- if the board continues
4 to give the written, then the applicant would still be
5 paying the board -- what did you all say it was, 17.50?

6 MS. WITTUM: 17.50.

7 MS. WARD: And that's the cost of the books.

8 MS. WITTUM: Right.

9 MS. WARD: Who is going to be administering the
10 theory exam, then?

11 MS. WITTUM: The staff would.

12 MS. WARD: The staff?

13 Okay.

14 MS. WITTUM: We currently do.

15 MR. KEENE: And that's no different than the way
16 it's been, and we don't make a profit off the exam
17 anyway. We've always billed it --

18 MS. WARD: On the written part.

19 MR. KEENE: -- on what it cost us.

20 There might -- I think there was a time that we
21 made a dollar and a quarter an exam.

22 MS. WITTUM: That must have been before my time.

23 MR. KEENE: It was a long time ago. But, yeah,
24 we've never made money on giving the exam. We've
25 always lost money on giving the exam, because you would

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

177

1 have those that would fail and come back and we didn't
2 charge them again. So we always actually come out on
3 the losing end.

4 MS. GORDON: So that's how you -- and you all
5 would handle that, also, if they failed and they come
6 back, they would pay again?

7 MS. TILLEY: That's correct.

8 MR. KEENE: They do that now, as well.

9 MS. TRAYLOR: We don't do that now.

10 MS. WITTUM: Yes, we do.

11 MR. KEENE: Yes, we do.

12 MS. TRAYLOR: Do we? Do they have to pay again?

13 MS. WITTUM: Yes.

14 MS. TRAYLOR: I thought we --

15 MS. WITTUM: I think that was in old regulations
16 or something.

17 MR. KEENE: It was. We changed that about four or
18 five years ago. Well, yeah. Yeah.

19 MS. WITTUM: It was before my time. Since I've
20 been here we've always --

21 MR. KEENE: It was when Deborah was still here, we
22 changed that line. That's when it went from fining of
23 500 to 1,000, we also dropped doing the -- the other
24 exams for free, they had to pay for them from that
25 point on, because we were losing money.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

178

1 MS. WARD: Okay. But if they are paying every
2 time they come, then we're not losing money now.

3 MR. KEENE: Right. Right.

4 MS. WARD: Okay.

5 MS. WITTUM: Francine, is there an additional fee
6 for the board other than what the student would
7 charge -- or would pay?

8 MS. TILLEY: No. That's it. Those are the fees.
9 That pays for the NIC training of the examiners, us
10 administering the exam, and transferring all the data
11 back to the board.

12 MS. TRAYLOR: When we go back to the law and the
13 law says the board will do the examining?

14 MS. WITTUM: Well, that's why this is being
15 discussed now.

16 MS. TRAYLOR: Yeah.

17 MS. WITTUM: If we're going to change -- if we
18 want to do outsourcing, then we would have to change
19 the law.

20 MR. KEENE: Kathy, let me ask you this, as far as
21 the budget would go: Money is allocated for the board
22 members to get paid when we're giving the examinations,
23 and for the training, there is money set aside for the
24 training of the raters. If this money was turned
25 around and put back into the budget to offset the price

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

179

1 of the examination, couldn't that help reduce the cost
2 to the student?

3 MS. WITTUM: I'm not sure I'm following what
4 you're saying.

5 MR. KEENE: All right. You have X amount of
6 dollars to -- for stipends to pay board members for
7 coming up here giving the exam. We get \$60 a day.

8 MS. WITTUM: Uh-huh.

9 MR. KEENE: Well, all those days that are used to
10 give exams, you're paying one, two, three board members
11 to come up here and do that. You took all that money
12 and you turned it back into the exam to help offset the
13 cost to the student as well as, I don't know how much
14 money is set aside for training of the raters, but if
15 you took that money and put it with that, couldn't --
16 couldn't that be budgeted out to reduce the cost of the
17 exam to the student?

18 MS. WITTUM: Possibly. I mean the board would
19 have to say that they want to set aside a certain
20 amount of money to pay for the -- the assistance
21 through PCS, and then just set whatever dollar amount
22 you want to charge the student to come through.

23 Currently there is \$2,500 that is spent to do the
24 rater training. That's part of the contract. And the
25 stipends vary, depending on how many days we do. And

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

180

1 that has even changed over the time I've been here,
2 because we've started using inspectors to come in and
3 examine, so we don't have to always bring two board
4 members in at the same time.

5 MR. KEENE: But you could do a cost study on that
6 and see how much money is actually spent of our budget
7 on board members giving the examination.

8 MS. WITTUM: Uh-huh.

9 MR. KEENE: And figure out an amount, whether it
10 be reducing it by five dollars or ten dollars or two

11 dollars.

12 MS. WITTUM: Uh-huh. Or just simply keeping it
13 the same, so that we're not increasing the amount.

14 MS. GORDON: But that wouldn't be putting any
15 money back, and we were talking about cutting the cost
16 and the expense for the board. If you did it that way,
17 then that would be putting the expense back on the
18 board.

19 Am I following you? Am I --

20 MR. KEENE: It's not changing the amount of money
21 that would be budgeted, that money would just go into
22 another area.

23 Well, it's still in the testing area.

24 MS. WITTUM: Right.

25 MR. KEENE: But instead of it going to a board

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 member, it would go -- it would basically be going to
2 the student to help cut the cost of their exam.

3 MS. GORDON: But it would still be an expense,
4 right, to the board, is what I'm trying to --

5 MR. KEENE: Uh-huh.

6 MS. WITTUM: Yes.

7 MS. GORDON: It won't be going to the board
8 itself, but it would still be an expense to the board
9 because we would be covering the extra cost. Right?
10 The board would be covering the cost.

11 MR. KEENE: But you're not giving the money back
12 to the general assembly to do something else with.

13 MS. WITTUM: Well, no, the money never goes back
14 into the general assembly.

15 MR. KEENE: Most people think it does, is why I
16 said that.

17 MS. WITTUM: But that goes back into our account.

18 MS. GORDON: Our account.

19
20 MS. WARD: Okay. But the money you normally
21 collect from the ones who take the exam, you won't be
22 collecting any of that money, other than what you're
23 paying for the books. So you've got to take what
24 you're spending and subtract that from it to see where

25 you come out, to see if you're going to be ahead or

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

182

1 shy. Because you may not have additional to take off
2 the cost.

3 MS. WITTUM: Uh-huh.

4 MS. WARD: You may be going the other direction,
5 so...

6 MS. WITTUM: Well, before we did anything like
7 what Cliff is suggesting, we would have to thoroughly
8 evaluate the impact to the board by doing that.

9 MS. TURMAN: You know, I think that we've held
10 this -- you know, this -- we've put this off to do
11 anything about this today. I would like to -- my
12 opinion is I think we should go ahead and take care of
13 this problem -- not a problem, this situation today.

14 And --

15 MR. KEENE: Without knowing the cost study of what
16 it is --

17 MS. TURMAN: Yeah. We have to do a -- we have --
18 I mean, Kathy has already -- haven't you already done a
19 cost --

20 MS. WITTUM: (Shaking head from side to side.)

21 MS. TURMAN: Oh, I'm sorry. I misunderstood you.

22 MS. WITTUM: No. Cliff just mentioned that today.

23 MS. TURMAN: Not, I'm talking about up to date
24 before -- I'm sorry. I thought you had done it before,
25 what it cost us to do it.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

183

1 MS. WITTUM: Huh-uh.

2 MS. TURMAN: Okay. Sorry.

3 MS. TRAYLOR: Well, I move that we table this
4 until the next board meeting when it gives Kathy a
5 chance, when she has some time, she's blessed with all
6 this time, to -- you know, to put a pencil to it,
7 figure it, see what the cost is.

8 MS. POWELL: I would like to ask Francine a
9 question about, you had said that you would pull the

10 examiners from the state of Arkansas?

11 MS. TILLEY: Uh-huh.

12 MS. POWELL: And will these be consistent
13 examiners or will you be -- how often do you -- or do
14 you rotate the examiners?

15 MS. TILLEY: It depends on the pool of examiners
16 that we get. If we have a larger pool, we rotate
17 them --

18 MS. POWELL: How often do you rotate --

19 MS. TILLEY: -- so they are not testing every
20 exam. We try to get everybody in to test. I hate to
21 have someone trained as an NIC examiner and then they
22 don't get to test on a regular basis. Use it or lose
23 it. We don't want them to lose their training ability
24 and what they've learned and not test for six months.

25 MS. POWELL: And so --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. TRAYLOR: What do you all pay your examiners?

2 MS. TILLEY: It depends. It depends on the area.

3 We have -- we start anywhere from ten to 15 an
4 hour.

5 MS. POWELL: So these examiners that you're --

6 MS. TRAYLOR: Probably expensive.

7 MS. POWELL: -- pulling, are they selected on an
8 annual basis? Would you -- would you try to create a
9 team of examiners --

10 MS. TILLEY: That's --

11 MS. POWELL: -- annually or would you try to
12 maintain these examiners for a period of years?

13 MS. TILLEY: We have examiners that we've had ever
14 since we've started for years now. But we always --
15 you always have some that retire, they just don't want
16 to do any more, that's just not what they -- so we're
17 constantly bringing on new people.

18 MS. POWELL: So typically, for instance in our
19 state, how many -- how many examiners do you think that
20 you would need to --

21 MS. TILLEY: Depends on the ratio of the
22 candidates, I mean how many candidates are testing here
23 on a regular basis. We have one examiner for six

24 candidates.

25 MR. KEENE: For six, not eight?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

185

1 MS. TILLEY: Huh-uh.

2 MR. KEENE: Is NIC -- okay. That's fine.

3 MS. POWELL: One per six?

4 MS. TILLEY: Uh-huh. And that's cosmetology, nail

5 techs.

6 If it was instructors, it's two examiners to one

7 instructor.

8 MS. TURMAN: I would like to make a comment,

9 Kathy. I'm sorry. I thought you had already done

10 that, a cost study on that. I'm sorry that I suggested

11 that. It would not be feasible.

12 MS. POWELL: Well, I know that the comment that

13 brought us here was the comment made on who administers

14 the examination, based on school owners giving the

15 examination and the board giving the examination. I

16 don't see that this would accomplish anything

17 different.

18 If you're pulling people from the state or if
19 you're pulling from your board, I don't see that that's
20 doing any different if you're going to use the same
21 people.

22 If you were pulling people that had no connection
23 within your state, then I would say that may be
24 accomplish something that they wouldn't have a contact,
25 they wouldn't know who is examining, they wouldn't

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

186

1 possibly compromise the exam. But if you're pulling
2 from the -- from your state, I don't see that it's
3 accomplished what this board originally set out to try
4 to accomplish by considering outsourcing.

5 MS. TURMAN: My -- my thought was it wasn't a
6 cost -- the cost at all in the very beginning. It was
7 whether the outcry was going to be, for our school
8 owners, is to be doing the exam, and that wasn't there.

9 We haven't heard the outcry from the public. And to me
10 that was what it was all about. Not this, we got in
11 this cost, that we want to do everything we can for the
12 students, but this is not where this was coming from in
13 the very beginning.

14 It was we were supposed to have this great outcry
15 because two school owners were sitting on our board and
16 doing the exam. It hasn't been there.

17 MS. POWELL: Well, it did seem to --

18 MR. KEENE: I think she did answer that, answer
19 that question, and that was that none of these
20 instructors, if that's what we chose to have them hire
21 to be trainers --

22 MS. TILLEY: Uh-huh.

23 MR. KEENE: -- they couldn't work in the industry.
24 They had to be more or less retired or just inactive.

25 MS. TILLEY: Uh-huh.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MR. KEENE: So that is different than having two
2 school owners on the board giving the exam. But my
3 biggest concern was this board, I felt there is a
4 conflict of interest when your board members are giving
5 your exam, and then if those students have a problem or
6 that school has a problem that has sent a student here,
7 they are coming before their very judge and jury.

8 MS. TURMAN: I don't think they examine any of
9 their students, do they?

10 MR. KEENE: They are not supposed to, but the
11 choice doesn't always happen.

12 Luckily, you know, they know ahead of time and
13 they can call Kathy and say, look, I've got a student
14 coming and I can't give the exam.

15 Didn't that just happen this past month?

16 MR. DOWNEY: Yes. It did.

17 MR. KEENE: I know, because I got a phone call to
18 come up and give the examination because they couldn't.

19 MS. TURMAN: But how often does that happen?

20 MR. KEENE: It happens frequently now. It didn't
21 used to be a problem when we all eight would go in and
22 examine at the same time because it was very easy then

23 to move somebody else in the position.

24 My point of all of that was in scheduling

25 someone -- an examiner to come in, there is -- that

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

188

1 puts that many more items to consider when you're

2 trying to schedule students for the exam. Is this

3 going to be somebody that we're going to know.

4 There have been times I've gone in there and I've

5 known the student. I don't work in a school, but I

6 happen to know that person, and I couldn't give -- you

7 know, I couldn't examine that person. In the situation

8 we have now, I don't have a choice but to examine that

9 person.

10 MS. TURMAN: Well, do you -- what do you think if

11 that might happen if they are bringing all these people

12 in, too, that that couldn't happen where they are doing

13 the same thing?

14 MR. KEENE: Well, I don't think you can ever stop

15 anything and everything from happening. There is going
16 to be situations that are going to come up.

17 MS. TURMAN: That's what I mean.

18 MR. KEENE: And they will.

19 MS. TURMAN: So you can't eliminate them.

20 MR. KEENE: You're not going to eliminate 100
21 percent of all your problems out of anything. If you
22 figure that a way to do it, tell us.

23 MS. TURMAN: Right. Well, I haven't figured that
24 out.

25 MR. KEENE: I haven't either. So you're going to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

189

1 have problems.

2 I mean, somebody can get sick and have to leave
3 the exam process, too. We've had that happen and had
4 to hold the exam until somebody else could be brought
5 in.

6 MS. WARD: You have how many retired instructors
7 who substitute, so they are still going to be in these

8 schools, so you're not going to be able to take out all
9 those. You aren't going to have anybody left, because
10 most of them do substitute.

11 MR. KEENE: Well, I don't know that. I don't know
12 what the pool is.

13 MS. WARD: Okay. Most of your retired -- your
14 instructors do substitute, and they do that just to
15 have something to do, fill in once in a while, but they
16 don't want to work full time, so they consider they are
17 retired. So you're going to still have the same
18 problem.

19 MR. KEENE: Well, here we're also assuming that
20 our pool is only going to be licensed instructors.

21 This exam doesn't require it to be a licensed
22 instructor. The board can make that decision. But it
23 can be just any hairdresser up and down the street that
24 they decide to train, and as Kirby within NIC said, you
25 don't have to be a licensed hairdresser to give this

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 exam, once you go through the rater training.

2 MS. TURMAN: Well, I've been through the rater
3 training twice and I think I passed it both times, and
4 I certainly don't do any examining because I'm not
5 qualified.

6 MR. KEENE: Well, that's not my choice that you
7 don't give the exam. That's what our law says.

8 MS. POWELL: Well, do we have any further
9 questions for Francine?

10 I think maybe the board can visit this and --

11 MR. JOCHUMS: Well, I think somebody said
12 something about we have to change the law first anyway,
13 so I think it's a little early to vote yes or no.

14 MR. KEENE: Well, I think that's debatable, too,
15 as to what -- the law actually says administer the
16 exam. It doesn't say the board members have to give
17 it, physically go in and give it. The board has to
18 administer the examination. So there, I think it would
19 come to attorneys to figure that out, but -- on what
20 the actual intent of that was or is.

21 MS. WARD: I think once we hear, when you figure

22 out where we stand as far as the budget and everything
23 goes, I think that should have an --

24 MS. TRAYLOR: I think that would help --

25 MS. WARD: -- it would help us to make the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

191

1 decision.

2 MS. TRAYLOR: We still have a motion on the floor.

3 MR. JOCHUMS: What was your motion?

4 MS. TRAYLOR: That we table this to give Kathy
5 time to put a pencil to it and come up with some
6 figures for us.

7 MS. WITTUM: And you made that motion?

8 MS. TRAYLOR: (Nodding head up and down.)

9 MS. WEST: I'll second.

10 MS. POWELL: I have a motion and a second to table
11 this item.

12 All those in favor, raise your right hand.

13 (Seven hands raised.)

14 All those opposed?

15 MS. TURMAN: I abstain.

16 MS. POWELL: One abstention.

17 Motion carries.

18 MS. WITTUM: Francine, thank you very much for
19 coming here. We appreciate it. And I'll be in touch
20 with you.

21 MS. TILLEY: Thank you very much.

22 MS. TURMAN: Thank you.

23 MS. TRAYLOR: Did we not see you in May?

24 MS. TILLEY: Yes, you did.

25 MS. TRAYLOR: That's what I thought.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

192

1 Thank you very much.

2 Bye-bye.

3 MS. WEST: So, Kathy, if we want to put this
4 before the legislature, it -- we're not ready for that?

5 MS. TRAYLOR: Don't even go there.

6 MS. WITTUM: Not yet.

7 MS. WEST: But doesn't that put it back another
8 year?

9 MS. WITTUM: No. We'll get it ready before the
10 next session, if that's what you all want to do.

11 MS. WEST: Okay.

12 MS. POWELL: Well, we've got a board meeting
13 January 15th.

14 MS. WITTUM: 15th, yeah. So just come ready to
15 make a decision on the 15th.

16 MS. TURMAN: Yeah. We need to make a decision.

17 MR. KEENE: Well, when you make -- when you do
18 your cost study, can you mail that out to us ahead of
19 time so we can review that?

20 MS. WITTUM: Yes.

21 MR. KEENE: I mean, I know I would like to have
22 had this before this to review it.

23 MS. WITTUM: Kent, do you want to join us up this
24 way?

25 MR. WALKER: Okay. Where do you want me to sit?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 I'll be Ms. Jones.

2 MS. POWELL: You can be Mr. Jones.

3 MR. WALKER: Okay. I know Mr. Jones. I don't
4 know if he would like that.

5 LEGISLATIVE UPDATE: LICENSEE WORKING OUTSIDE ESTABLISHMENT

6 MS. WITTUM: The next item on the -- the next item
7 on the legislative update is the licensee working
8 outside of the establishment.

9 I found two states that allow licensees to perform
10 services outside of a licensed school or salon, under
11 certain conditions. It's outlined there for you to
12 see. Michigan and Wyoming are the two.

13 Michigan says in their law that a licensed
14 cosmetologist may serve a patron in premises not
15 licensed as a cosmetology establishment, provided that
16 the services rendered involve a special event in which
17 the cosmetology service is required to be performed for
18 an on-site participant of the event. The licensee is
19 not required to notify the board when they will be
20 performing services under this language.

21 In Wyoming it's a little bit more complicated.
22 The law allows a licensee to perform services in the
23 following unlicensed locations: The personal residence
24 of the patron, the office, place of business, or place
25 of regular employment of the patron, the hospital,

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

194

1 health care facility, senior citizen center, nursing or
2 convalescent home in which the patron is presently
3 living or staying, and the hotel, motel, or boarding
4 facility in which the patron is presently living or
5 staying. There is additional language that stipulates
6 other persons not living in those locations cannot be
7 serviced and services can only be provided in the,
8 quote, individual room, rooms, or office of the patron.
9 If a room in such a facility is used for servicing more
10 than one patron, that room shall be licensed as a
11 salon, end quote. There is also language that includes
12 the prohibition of the licensee using his or her home

13 or business from being used unless properly licensed.

14 Out of those two, I certainly like Michigan

15 better. It seems to be more simplified. And I believe

16 it has -- it allows for what was intended from this

17 venture all along, and that is to make it possible for

18 a licensed licensee to go outside of the licensed

19 establishment or school for special events.

20 Does anybody have any questions?

21 MR. KEENE: Maybe not necessarily a question, but

22 a comment. That the special event, I know Pat wanted

23 it more specific as to what the special events could

24 be. But if we adopted the law of Michigan, but we put

25 the -- what we consider the special events to be into

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

195

1 the rules, then you could actually adopt the law, and

2 if you needed to change the rules as to what special

3 events you would allow and what you wouldn't, that

4 would be a lot easier to do.

5 MS. WITTUM: Yes.

6 I think Kent may want to --

7 MR. WALKER: That's correct.

8 I mean you would just add a clause, special event
9 as defined by the board. I mean that would very simply
10 solve that matter. Yes.

11 MR. KEENE: Okay.

12 MS. TURMAN: Okay. So we could put that in there
13 and you could call anything a special event actually
14 without clarifying --

15 MR. KEENE: Without clarifying what the special
16 event would be later.

17 MR. WALKER: But I don't know if Kathy wants this
18 burden, but, I mean, you could say as determined by the
19 director. If you all didn't want to meet every time a
20 special event was coming up, there may not be certain
21 criteria, how ever you want to word it.

22 MS. GORDON: Couldn't you just make it like
23 special event, just a list of those special events, and
24 then that would take the burden off Kathy to say --

25 MR. WALKER: Yes, certainly.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

196

1 MS. WITTUM: It would be better for practicing
2 licensees to be able to just look at a list and know
3 that these are the things that they can participate in.

4 MR. KEENE: So you're saying you like Wyoming's
5 law better, then?

6 MS. WITTUM: No. I like Michigan's better, but I
7 like your idea to specify exactly which events are
8 considered to be special.

9 MR. KEENE: Because this doesn't say anything
10 about church, because I'm thinking people go in and do
11 weddings. In this case of Wyoming, you're saying you
12 would have to do it in a hotel room --

13 MS. WITTUM: Exactly.

14 MR. KEENE: -- or in a person's home?

15 MS. WITTUM: Right.

16 MS. TURMAN: But you could clarify and say
17 weddings or funerals or whatever, you know.

18 MS. WITTUM: I think Wyoming's law is too
19 complicated. Michigan is much more simple.

20 MR. KEENE: For a law.

21 MS. WITTUM: And I think it would be better to go
22 with something simple than make it more complicated.

23 MS. TURMAN: Kathy, couldn't we put in, for
24 instance, like weddings, list weddings, funerals?

25 MR. KEENE: But you put it in your rules and not

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

197

1 the law.

2 MS. TURMAN: Yes. Right.

3 MS. POWELL: Does the board have any further
4 discussion on that?

5 Are we ready to make a motion?

6 MR. KEENE: Well, I'll make a motion that we
7 approve Michigan's law, the way it reads --

8 MS. TURMAN: With a list.

9 MR. KEENE: -- and have the board come up with
10 or -- have the board come up with a list of allowable
11 special events to be made part of the rules.

12 MS. GORDON: I second that.

13 MS. TURMAN: I second.

14 MS. POWELL: And that is to -- you had approved
15 Michigan's law as it reads here, but didn't you want to
16 include what Kent said, that he could simplify that
17 language even more by simply saying --

18 MR. WALKER: As defined by the board.

19 MR. KEENE: Yes.

20 MS. POWELL: As defined by the board, instead
21 of --

22 MR. KEENE: Yes.

23 MS. POWELL: That's what you're saying you want to
24 do?

25 MR. KEENE: Yes.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

198

1 MS. POWELL: Okay.

2 MR. KEENE: Isn't that what I said?

3 MS. POWELL: No, you said you wanted this, but I
4 wanted to include what he said, as defined by the

5 board, that it would be defined.

6 MR. KEENE: Okay. We're going to the rules.

7 MR. WALKER: You did say that part.

8 MS. POWELL: You did say that part.

9 MS. WITTUM: We're all on the same page.

10 MS. POWELL: But it includes as defined by the

11 board in the law.

12 MR. KEENE: Whatever. I thought I said that. Who

13 got that?

14 MR. WALKER: That's right.

15 MR. KEENE: I know I said that.

16 MS. POWELL: Okay. I have a motion.

17 MS. GORDON: I second.

18 MS. POWELL: And a second.

19 Any further discussion?

20 All those in favor, raise your right hand.

21 (Eight hands raised.)

22 It's unanimous. Motion carries.

23 Thank you very much.

24 MS. TURMAN: Thank you, Kathy, for doing that.

25 MS. WITTUM: No problem.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

199

1 MS. TURMAN: Pardon me?

2 MS. WITTUM: The felony conviction, I'll turn over
3 to Kent.

4 LEGISLATIVE UPDATE: FELONY CONVICTION

5 MR. WALKER: My name is Kent Walker. I'm an
6 attorney for the cosmetology board.

7 And I have been charged with trying to keep felony
8 conviction language in there but clarifying it and
9 specifying it a little more. And what I have done is
10 gone through several states and try to combine the best
11 facets of those. I mean one of the use of law is you
12 don't necessarily have to write every new law, just
13 take the best from each of them. And what I came up
14 with, and this is certainly open to discussion, is that
15 maintain felony convictions and misdemeanor
16 convictions, but it would come from either two sources,
17 either a certified copy of the court record or by
18 license application, and it would be narrowed in the

19 sense of, one, it would have to involve a crime of
20 dishonesty; or, two, a crime that in some way relates
21 to the practice or teaching of the cosmetology
22 industry. Part of the concern, I think, was expressed
23 both by myself and others was that I don't think it
24 should be open to every crime that may come through
25 here, that it should have to be disclosed. And I give

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

200

1 the example DWI 4 is a felony conviction, I don't know
2 how germane or pertinent that is to the practice of
3 cosmetology. I'm trying to limit it in scope but at
4 the same time allow you all an opportunity to discuss
5 it among yourselves, if you have an applicant or a
6 licensee who may not be meeting the criteria of what
7 you consider good practice in the cosmetology industry.

8 And there is also language that would allow you to
9 determine that as a board, if you all want to waive it,
10 saying this person has served their time or has made

11 amends, and therefore they won't be punished in any
12 capacity as a board, or we will not punish them in any
13 capacity, coming from the board.

14 MS. TURMAN: Say that again.

15 MR. WALKER: I will do my best.

16 What I'm trying to do -- Kathy expressed some
17 concern about having the language in there, but I think
18 members of the board and the public wanted to maintain
19 felony convictions as criteria for the board to be able
20 to bring back and look at whenever needed.

21 And what I have done is take felony convictions
22 that involve either a crime of dishonesty -- felony or
23 misdemeanor convictions that involve either a crime of
24 dishonesty or a crime that is in some way related to
25 the practice or teaching of the cosmetology industry.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

201

1 MR. KEENE: Exactly what you and I talked about
2 earlier.

3 You're for it.

4 MR. WALKER: I mean, in my -- I think I was trying
5 to do two things here. One is retain it, because I
6 know that several of you said that you wanted it to
7 stay in some capacity.

8 And then Kathy's concern, which I think is a valid
9 concern, is that, one, it's hard to check who has a
10 felony conviction and then what felony convictions
11 really apply to this board and which ones are ones that
12 you should be concerned about and which ones are -- I
13 mean, at the end of the day are really none of the
14 board's business, is the way I look at it.

15 But all that being said, I think there are certain
16 crimes that you should consider.

17 I know, for example, in the legal industry, if I,
18 you know, embezzle a client's funds, then I'm in, you
19 know, severe risk of losing my law license. But if I
20 go out and get a DWI 1, it's very unlikely they will
21 pull my license. More than likely I'll get a letter of
22 reprimand or something to that effect. So all that
23 being said, there are different crimes to a varying
24 degree which affect the industry in what I consider

25 more pressing matters.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

202

1 MS. TRAYLOR: What crime would you say that it
2 would -- would need punishment by the board?

3 MR. WALKER: Well, that would be for a board
4 determination. But I think if you had someone who
5 was -- you know, I can't even think of a good example.

6 Kathy, do you have a good example of a crime that
7 would --

8 MS. WITTUM: Just off the top of my head, well, I
9 liked the embezzling. I mean, if you're dishonest with
10 money, then you may not be --

11 MR. WALKER: Right.

12 MS. WITTUM: -- you may not be honest with your
13 clients.

14 MS. TRAYLOR: Well, we ought to go get Derwin,
15 then, and hang him up.

16 MS. WITTUM: Now, I know one of the comments that
17 was raised during a legislative committee meeting was

18 the sex offender issue. I believe Heather Whitlock
19 made that comment, that she would not want her child
20 being serviced by someone who was a child predator. So
21 I think there are -- there are some felonies and even
22 some misdemeanors out there that the board may --

23 MR. KEENE: I can take --

24 MS. TURMAN: But you know what, what do you think,
25 though, are we going to -- unless it's something like

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

203

1 that, are we going to -- if they have done their time
2 and they have gotten their act together, are we still
3 going to hold that over their head the rest of their
4 life, unless they are a child predator or something of
5 that sort? I mean, can you -- can you continue
6 punishing people for a mistake they have made long ago
7 and they have corrected that mistake and they are back
8 in society trying to make things right?

9 MR. WALKER: I think there are two safeguards that

10 you can include that will address that. One of which
11 is you could say, only crimes committed while the
12 person is a licensee, so you wouldn't have to worry
13 about past crimes. And then secondly, allow language
14 that the board could look at and review and make the
15 determination, they don't want to act upon that, you
16 know, if they served six months in jail or paid
17 restitution, so therefore, as far as the board
18 determines, there is no longer an issue to be made of
19 this.

20 MS. TRAYLOR: Well, you know the hot one now is
21 child support.

22 MR. WALKER: Well, you connect that to the
23 industry, I would say --

24 MS. WITTUM: By law we are required to suspend a
25 license when the Office of Child Support Enforcement

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 contacts us about a particular licensee. So I think
2 that that's already taken care of.

3 This, I think, would be a separate issue.

4 MR. WALKER: Correct.

5 MS. POWELL: Kent, I would like to ask you, what
6 would be the proper procedure in establishing the
7 identity of this felony or misdemeanor? Is this to be
8 presented to the office or to -- I mean how -- is the
9 office in -- somehow going to be responsible to --

10 MR. WALKER: Right.

11 MS. POWELL: -- do research or gather information
12 to find out, out of all of our licensees, who is a
13 criminal and -- or are we going to --

14 MR. WALKER: I think I understand your question.

15 I want to address one thing.

16 I will say that, based on your comment, most
17 states that I found, almost without fail, have some
18 element or degree of this type of language relating to
19 felony or convictions relating to the industry.

20 In answering your question, I would do it one of
21 two ways. Actually probably both. Is one, that it
22 should be disclosed on the application for a licensee
23 when they are coming back up for renewal or their

24 initial applications. And then, secondly, if -- I
25 mean, if you all got good knowledge, and then, you

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

205

1 know, Kathy was able to find out through getting a
2 certified copy of the court record, then proceed that
3 way.

4 MS. POWELL: So you would pull a license as much
5 as -- in that -- to follow this, you would pull a
6 license if you became aware of it, even if they
7 falsified the -- falsified the information on the
8 application?

9 MR. WALKER: Correct.

10 MS. POWELL: Or if it happened after the
11 application process?

12 MR. WALKER: Correct.

13 And I would add language that -- I didn't find
14 any -- Kathy, you may correct me, but I didn't find any
15 language that stated there is a penalty for fraud in
16 procuring a license. If there isn't, I would certainly

17 insert that. I think that's standard within the
18 industry that I found in various statutes.

19 MS. WITTUM: I think Missouri -- is it Missouri
20 that had some language similar to that.

21 MR. WALKER: Yeah. I've got several states that
22 do.

23 MR. JOCHUMS: The other thing is, right now, the
24 felony is not a bar to a license, it's only a ground
25 for taking away a license.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

206

1 MR. WALKER: Correct.

2 MR. JOCHUMS: It's not listed in the five things
3 that you have to be to be licensed. So, if you want to
4 do that, that's something to add. It also is a bunch
5 of more bureaucratic work to deal with, because if you
6 tell people they have to disclose, and then once they
7 disclose you've got to ask them questions about it, and
8 send us pleadings and -- it's just more work. And

9 maybe it should be done, but I'll tell you up front,
10 it's more work. And in every case -- because I just
11 did one last week with the accountancy board -- in
12 every case, if you build in a waiver statute, they will
13 ask for a hearing and will come and testify and have
14 letters from their senator about why they should be a
15 hairdresser. And you will -- those will be additional
16 work for you if you put this kind of thing in. It's
17 something to consider.

18 MS. TURMAN: Why don't you just look at your local
19 newspaper, how many people are convicted in a small
20 town.

21 MR. JOCHUMS: Lots of people.

22 MS. TURMAN: And, you know, lots of people. And
23 if you leave it up to a board, or a staff to check
24 every one of those people out, if they decide to become
25 a cosmetologist, it would be unreal for it.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MR. JOCHUMS: Right.

2 MS. TURMAN: Just from a small town, there is a
3 whole page in our newspaper.

4 We're all not crooks, but a lot of us are.

5 MR. JOCHUMS: I mean those are some
6 considerations.

7 MR. KEENE: Is this something that we really need
8 to have in our law, though, or would our malpractice
9 section have more to do --

10 MR. JOCHUMS: Even worse than that, doesn't the
11 Department of Corrections have a cosmetology school?

12 MR. KEENE: Yes. And we've gone there and
13 licensed them.

14 MR. JOCHUMS: We can't go back there and do a
15 background check.

16 MR. WALKER: We addressed that.

17 MS. POWELL: But I think Kent addressed that, when
18 he said that this would be for people that are
19 licensed, not to get a license.

20 MS. TRAYLOR: And those in prison can't get their
21 license until they get out.

22 MR. JOCHUMS: That's true.

23 MR. WALKER: But it would relate to -- and you can
24 put language in there, I've seen it, that only begins
25 once you have your license, then you would have to

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

208

1 disclose at that point forward. So it would certainly
2 be a proactive approach as opposed to a retroactive.

3 MS. TRAYLOR: Well, they would just work without a
4 license. That's no problem.

5 MS. POWELL: But I think didn't you say that the
6 information you've received thus far is most agencies
7 are in support of having the felony conviction as part
8 of their law?

9 MR. WALKER: Yes.

10 I stopped after about 20 states that I found. I
11 figured that was enough that I needed to pull.

12 And I can start naming them off that have them. A
13 lot of adjacent states: Mississippi, Tennessee,
14 Oklahoma.

15 MS. POWELL: Well, I don't think that's necessary,

16 especially since our board has already had that in law.
17 It just, I think it's stuff that we really I don't
18 think need to consider even removing it, I think we
19 need to consider getting it cleaned up where we can
20 understand the law and the intent of the law and how to
21 put it in place.

22 MR. WALKER: But I would agree. I mean if
23 Ms. Wittum needs -- and I think this board might need
24 some clarification of what felonies apply, then I would
25 certainly do that, if this is an avenue that you all

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

209

1 want to go down.

2 MS. TRAYLOR: I would hate to see it taken out of
3 the law.

4 MR. KEENE: Well, the only thing I can think of
5 quickly when I was talking with LaJoy earlier was
6 drugs. If they got convicted of selling drugs, and
7 then to me would have to be, they were selling them out

8 of the shop, and I could see where that would be a
9 problem.

10 MS. TRAYLOR: How about using them in the salon?

11 MR. KEENE: I would assume if they are in there
12 they are probably using them. But, you know --

13 MS. POWELL: I think it's a built in protection
14 for the consumers.

15 MS. TRAYLOR: I think the same thing with alcohol.

16 MR. KEENE: Well, I know -- I know of situations
17 where salon owners have been arrested out of their shop
18 for selling drugs. And let me tell you, they still got
19 a shop and a personal license, but --

20 MS. TRAYLOR: Well, the same thing with alcohol.
21 Picked up, nothing to it.

22 MS. TURMAN: This is a lot of --

23 MS. GORDON: I don't know what you said. I don't
24 know what you just said, but what you just said before
25 this started, the last statement you made was --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MR. WALKER: I don't know.

2 Who did it derive from? That might help me.

3 MS. GORDON: What you mean you don't know?

4 MR. JOCHUMS: Probably when he said felonies that
5 were related to the cosmetology profession, or somehow
6 showed their ability to --

7 MR. WALKER: Proactive?

8 MS. GORDON: Yes. And he said he could do some
9 further research or something to come up with -- did
10 you say something like that?

11 MR. WALKER: No. I said I had done research and
12 after about 20 states, I gave up in terms of looking at
13 the statutes, because it was -- I saw, obviously,
14 several, several states.

15 MS. GORDON: But did you say something about what
16 you would suggest for this board to do?

17 MR. WALKER: Well, in terms of making it a -- a
18 proactive approach, that only felonies -- I mean I have
19 misdemeanors, of course, you all can change that, but
20 that relate to one of dishonesty or crime that's
21 related to the practice or teaching of the cosmetology

22 industry.

23 So, again, I use the DWI example, I don't think

24 you all should worry about that, but --

25 MS. GORDON: So I make a motion to what he said.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

211

1 MS. PICKERING: Whatever he said.

2 MS. POWELL: I have a motion.

3 Do I have a second?

4 MS. TURMAN: What is this about?

5 What did you make a motion on?

6 MS. WARD: What he said.

7 MS. GORDON: He said it well, you know, how it

8 should be pertaining basically to the cosmetology

9 field, you know.

10 MR. KEENE: Any of those that you saw, did they

11 look good to you?

12 MR. WALKER: Yeah. I mean, I combined several to

13 actually try to get what you all wanted.

14 MR. KEENE: Is that what you came up with there?

15 MR. WALKER: This is what I came up with.

16 MS. POWELL: Do you want to pass those out here?

17 MR. WALKER: I can, certainly.

18 Let me just give these to you.

19 MR. KEENE: You wrote this?

20 MR. WALKER: I did.

21 MR. KEENE: Well, I'm okay. Yeah.

22 MR. WALKER: And then I also added the fraud and

23 the attempting to procure a license.

24 I mean I would put that in there, I saw several

25 states that had it. And if you're going to ask for

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

212

1 people to come out and give you admissions and they lie

2 in them, then I think you would have a means by which

3 to revoke their license later on if you found out they

4 did.

5 MR. KEENE: We have had that happen, people

6 presenting us with --

7 MR. JOCHUMS: False IDs.

8 MR. KEENE: -- and high school diplomas and that
9 kind of thing to get their license.

10 MS. TRAYLOR: They do that to take the exam.

11 MR. KEENE: We had to go back and revoke a lot of
12 licenses. We did this anyway, even though it wasn't in
13 the law.

14 MR. WALKER: Okay.

15 MR. KEENE: We revoked a lot of licenses to take
16 the exam. 150 of them, I think.

17 I will second LaJoy's motion.

18 MS. POWELL: I have a motion and a second to
19 accept the proposal here handed out before you by Kent
20 Walker. Is there any discussion?

21 MR. WALKER: I don't know if you want to read it
22 in the record or not.

23 MR. KEENE: We can.

24 MS. POWELL: We can.

25 MR. WALKER: Or attach it later on, either way.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 Probably read it.

2 MS. POWELL: Okay. Conviction under the laws of
3 the United States or any state or territory thereof
4 that is felony or misdemeanor, as shown by a certified
5 copy of the court record, or by license application, an
6 essential element which is either, one, dishonesty, or,
7 two, a crime in any way related to the practice and/or
8 teaching of the cosmetology industry, unless the
9 applicant or licensee is able to demonstrate to the
10 board's satisfaction that such person has been
11 sufficiently rehabilitated to warrant the public trust.

12 And Item 14, fraud in procuring a license.

13 MR. WALKER: I thought I would do them separately.

14 MS. POWELL: Okay. Retract the 14 fraud in
15 procuring a license.

16 MS. TURMAN: Yes.

17 MS. TRAYLOR: And what?

18 MS. POWELL: We're going to retract that and do it
19 in a separate motion.

20 Isn't that what you're saying?

21 MR. WALKER: Yes.

22 MS. POWELL: I'm stopping here at public trust,
23 period.

24 MR. KEENE: Okay. Then I'll move that we insert
25 fraud in procuring a license, No. 14.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

214

1 MS. GORDON: I would second it.

2 MR. WALKER: I would discuss that one first and
3 then vote on that one as a second item.

4 MS. POWELL: I've got to go back to the original
5 motion.

6 MR. KEENE: Okay.

7 MS. POWELL: Okay. And all those in favor?

8 (Eight hands raised.)

9 It's unanimous.

10 Thank you.

11 And then we'll -- do I have a motion for the 14,

12 fraud in procuring a license?

13 MR. KEENE: Yes.

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

15 MS. TRAYLOR: What, on --

16 MS. POWELL: Is there any discussion?

17 That's on that, right here, that 14.

18 MS. GORDON: Yeah. I second that.

19 I second that.

20 MR. WALKER: And I just added 14, just so you
21 know, from 17-26-105, grounds for disciplinary action.

22 That's why ten was substituted, what ten says currently
23 and 14 is going to be in addition to what is there.

24 MS. POWELL: All those in favor, raise your right
25 hand.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

215

1 Ms. Turman?

2 MS. TURMAN: I beg your pardon.

3 MS. POWELL: All those in favor, raise your right
4 hand.

5 MS. TURMAN: We're talking about dishonesty.

6 MS. POWELL: All those opposed?

7 I need everybody's hand at one time, please.

8 MS. TURMAN: Okay. I'm sorry. It's my fault.

9 MS. POWELL: All those in favor, raise your right
10 hand.

11 (Eight hands raised.)

12 It's unanimous.

13 Thank you.

14 Motion carries.

15 MS. TURMAN: I'm sorry.

16 MS. TRAYLOR: Is it time for a break?

17 MS. POWELL: Mr. Walker, I want to thank you.

18 That was good work.

19 MS. WITTUM: I would like to point out one thing,

20 under the student issues that we had talked about

21 earlier, the voluntarism, in speaking with Dawn

22 Creekmore recently, she wondered if we would want to

23 add some language in there about emergency situations,

24 when students are allowed to go out and do volunteer

25 work. This is something that the board approved at the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 last meeting. It does not currently have any language
2 in there that would specifically address emergency
3 situations that arise that students are allowed to
4 go --

5 MS. TRAYLOR: Okay. Now, what would be -- what
6 type of emergency?

7 MS. WITTUM: Her example was Hurricane Katrina.
8 Something that happened that, you know, no one is
9 expecting but -- but there would be --

10 MS. TRAYLOR: Well, now, I can see that but, you
11 know, now they want to come up and call everything an
12 emergency.

13 MR. DOWNEY: You know, if you put it as a national
14 disaster, that would cover that.

15 MS. WITTUM: Do you want to add that language in
16 there?

17 MR. DOWNEY: Yes.

18 MR. JOCHUMS: Where would that go?

19 MS. WITTUM: It would just go in with that

20 language here, 17-26-102(9) and 17-26 --

21 MR. WALKER: Under emergency authority or

22 something like that?

23 MR. JOCHUMS: Yeah. Had to attach to a governor's

24 proclamation or something like that.

25 MS. POWELL: Do I have a motion on that?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

217

1 MS. TRAYLOR: I so move.

2 MS. TURMAN: I second.

3 MS. POWELL: I have a motion to add the language

4 and a second.

5 All those in favor, raise your right hand.

6 (Eight hands raised.)

7 That's unanimous. Motion carries.

8 We will add the language to the voluntarism to

9 student issues.

10 MS. WITTUM: Before we get out of here, Nancy

11 Drake is here. She was here at the last board meeting,

12 if you will remember. She had -- I did get the name

13 right, right?

14 MS. TURMAN: With the apron?

15 MS. WITTUM: Yes. Yes.

16 Nancy?

17 MS. DRAKE: Yeah.

18 MS. WITTUM: Okay. She is the one who came and

19 had prepared an apron to carry implements, and the

20 board suggested that she come back when we were talking

21 about legislative issues. So she is here today to --

22 to make a pitch to the board.

23 Do you want to come?

24 MS. DRAKE: Hi. I'm Nancy Drake. And I have to

25 tell you, guys, I'm really, I love coming here and

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

218

1 sitting and listening to all the different issues,

2 because I'm really getting educated a lot.

3 I am here -- I've been going through some

4 magazines and so forth. There are sale items that show

5 where you can get aprons that you can put scissors down
6 into that they do sell to us hairdressers. And if it's
7 like a law, which I did look at my law sheet when I did
8 get back and everything, and it is in the law that you
9 should not carry your implements on you.

10 But the reason I had brought this up is because my
11 shears are close to \$4,000, possibly a little over.
12 People are very curious about my shears and they like
13 to go over there and pick them up, open them, which
14 they are not supposed to do, because the shears are
15 designed for your tension. So everybody has different
16 tensions and it affects my shears. So sometimes I have
17 to pretty much stay with them.

18 And I have six shears that I work with at
19 different times. So when they are on a table or
20 anything, they can get dropped, accidents can happen.
21 So I did design a cape that covers the shears for
22 protection but also keeps them from sitting in any hair
23 contaminants, but I can still keep them sterilized and
24 clean. And if the law could be, you know, worked in
25 that direction where that's put into it, that the

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

219

1 implements that you do wear can be sanitized and
2 cleaned, it would just help me out in my business.

3 And I know when we go to hair shows, sometimes you
4 are limited to space, you have no place to put things,
5 they also wear them. And I just was looking for, you
6 know, a little consideration on, you know, the
7 situation that I am with these expensive shears.
8 Because more and more people are starting to get into
9 the units and they are going to run across the same
10 situation I'm dealing with.

11 MS. POWELL: Thank you, Nancy.

12 MS. DRAKE: Okay. Thank you.

13 MS. WITTUM: Currently, for you all's information,
14 it's actually in the rules prohibiting implements from
15 being carried on a licensee's person. It's under
16 4.2(c) 21(b). And it says, no person training or
17 working in a school or salon shall be permitted to
18 carry any instrument or supplies in or on a garment or

19 uniform while practicing cosmetology or any branch
20 thereof.

21 MS. POWELL: I would like to ask, I know that
22 there are some board members here that have been on
23 longer than I, so maybe you remember when this rule was
24 implemented and what the intent of it was.

25 As I see that saying in the garment, I know that

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

220

1 the intent was probably to protect health and safety
2 issues of someone carrying a pair of shears or a comb
3 in their pocket and whipping it out and start, you
4 know, using it without disinfecting it. However I'm
5 wondering, does -- do you believe the intent of this
6 also was to prevent someone from putting disinfected
7 implements into a container and then the container into
8 the pocket on a person?

9 MS. TRAYLOR: I never heard of that before.

10 MS. POWELL: If you had your shears in a dry -- if
11 you had your shears disinfected and you put those in a

12 closable container and you chose to put that in your
13 pocket as opposed to laying it on your dresserette, or
14 whatever you all call them, is -- do you believe that
15 that's what this intent was?

16 MS. TRAYLOR: Mine go in a case. Mine go in a
17 case.

18 MS. POWELL: Right. What I'm saying, you would
19 put those in a case. Well then, are you saying the
20 intent of this was to prevent you from putting that
21 case in your pocket, because --

22 MS. TRAYLOR: I don't think it would have anything
23 to do with the case in the pocket.

24 MS. POWELL: I think it says the garment.

25 MS. TRAYLOR: The garment.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. POWELL: They're talking about putting the
2 implement in the garment. So if you, in your case, I'm
3 saying that if you took your shears and your concern is

4 to leave them laying on your dresser, if you were to
5 take your shears and put -- and I'm assuming they are
6 about a five inch shear or somewhere in --

7 MS. DRAKE: No. They are all different lengths.
8 I had brought them the last time I came here.

9 MS. POWELL: Right. I remember the pouch that you
10 made. I thought you were talking about a shear. I
11 didn't know you were talking about six or eight pair at
12 one time.

13 MS. DRAKE: No, they are different -- yeah, they
14 are different shears. And I did take that in
15 consideration, because my implements, everything,
16 sanitize.

17 MS. TRAYLOR: Did they come in a box or --

18 MS. DRAKE: They do come in, but when you're busy,
19 you're cutting, and you're doing one customer right
20 after another, sometimes you don't even have much of a
21 break in between. You've got people waiting on you.
22 And it can get kind of hairy sometimes.

23 MS. TRAYLOR: But you always take time to sanitize
24 them?

25 MS. DRAKE: I do take -- I have a wipe that I do

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

222

1 use. It's oil based that's sanitary, and I've got a
2 spray that I use for my clippers and so forth. Yes, I
3 do keep them clean.

4 I've got a lot of combs, I've got a lot of
5 brushes. And once I use something on somebody, it goes
6 back for sanitation. So I don't stick a comb or
7 anything on myself. The only thing I keep with me are
8 my shears, because I'm busy, I'm constantly reaching in
9 front of my customer because I have to use a different
10 shear. I use sometimes three or four shears on one,
11 one head. And it all depends on what I need to do. If
12 I have to knock out a cowlick or if I have to put a
13 curl in or release a curl, they all have a different
14 use.

15 MS. POWELL: Well -- yes, Ms. Ward?

16 MS. WARD: Okay. If you're using the shears on a
17 client, you're using you said three or four at the same

18 time, you're putting them in your cape and then you are
19 taking them out and using them again. Now, when you --

20 MS. DRAKE: Well, the cape is with the --

21 MS. WARD: But when you sanitize the shears,
22 you're putting them back in the cape. Have you
23 sanitized that cape?

24 MS. DRAKE: No. Now, the cape, it was suede,
25 okay. The suede is to help clean the hair as I'm going

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

223

1 in. I took a lot in consideration. That's why I
2 didn't seal any pockets because you're going to have
3 hair that drops. Even when you put them back in your
4 case, if they are not wiped, you're going to have hair.
5 Hair is everywhere. You can't get rid of hair. It's
6 very difficult.

7 But consideration is just kind of wiping them
8 where you can after each service is done or sometimes
9 if you're just so backed up, there isn't anyone that
10 does do it, but you just try your best at trying to

11 keep everything up, especially with your shears.

12 Combs you can put it separate. After somebody
13 uses it, you put them away, they go back and they get
14 sanitized. That's a lot easier because you can keep a
15 lot of combs and go through the day.

16 MS. WARD: But did you say that you don't sanitize
17 your shears after each person if you're real busy?

18 MS. DRAKE: I have a -- no. Sometimes you can't.
19 The shears -- how do I explain this?

20 You can wipe them. I mean, just to sweep up our
21 hair sometimes, you've got so many people waiting, and
22 it's how -- where you book yourself, sometimes you
23 don't even know when you're going to be that busy, you
24 may have a problem with a color that runs you over,
25 you're behind, then the pressure is there. You got

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

224

1 people that want to get in, they want their hair done,
2 they want to get out.

3 MS. TRAYLOR: Well, I think it would -- most of us
4 who have stood behind the chair, we kind of know how
5 that goes.

6 MS. DRAKE: Yes.

7 MS. TRAYLOR: But some of us are still behind the
8 chair. But, now, you just give up on all of it?

9 MS. DRAKE: You can have a tendency. And I like
10 to work towards not giving up, towards bettering
11 situations.

12 MS. TRAYLOR: But sometimes you have to give
13 yourself some time in there.

14 MS. DRAKE: You do. You do. And right now I only
15 work three days a week, but I'm also getting out and
16 I'm trying to promote more education for haircutters.
17 I'm very interested in the schools. There is a lot of
18 areas that I like to try to get into, to help our
19 reputation, that we don't get a bad reputation, we get
20 qualified hairdressers, people with education.

21 MS. TURMAN: Would you educate me a little bit on
22 the suede? The day you brought in the belt, to me the
23 suede looked -- looked dirty. I mean, you know, you
24 can't wash it like you can --

25 MS. DRAKE: Right.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

225

1 MS. TURMAN: Of course, I know you have to be very
2 careful because the scissors would probably go through
3 cloth.

4 I'm not sure, I'm not a hairdresser. But the
5 suede looked dirty to me.

6 MS. DRAKE: Well, what happens is the suede will
7 stain. When you're shampooing somebody, you're going
8 to have a little water splash up. When you're spraying
9 anything, color can, you know, drip. You can pick up
10 just things like that that will discolor it and make it
11 look dirty.

12 MS. TURMAN: I'm talking about the inside also.

13 MS. DRAKE: The inside, all it is is just a flap
14 that goes over the instruments. There is nothing
15 underneath there.

16 MS. POWELL: Well, I think she's already stated

17 that she would use the shears and put those in a fabric
18 suede container with the exposure on the point of the
19 shear, and the flap would come over to secure that they
20 stay in there --

21 MS. TURMAN: I wasn't aware that she did that.

22 MS. POWELL: -- and hold it.

23 And I think that that's the issue that the board
24 is looking at, or that I'm looking at. I don't know
25 what the board is looking at. I'm looking at a

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

226

1 material. I'm looking at a health and safety issue.

2 MS. DRAKE: Uh-huh. Uh-huh.

3 MS. POWELL: And you're using a shear on more --
4 on multiple people, and you're depositing hair
5 clippings from one person to another in a suede pouch,
6 which at this time doesn't follow a health and safety
7 issue that the board has outlined in their rules.

8 MS. DRAKE: Okay.

9 FRANK DRAKE: Could I address the issue, questions

10 of the board here about the pouch itself?

11 MS. POWELL: Sure.

12 COURT REPORTER: Identify yourself.

13 FRANK DRAKE: Okay. The pouch itself is

14 constructed out of imported suveal [spelled

15 phonetically] leather. Okay. It is chrome covered in

16 flaxseed. All right? Flaxseed, if you remember the

17 old ladies and getting a cut in your hand, put flax

18 soap on it, put flax soap on it. There is nothing in

19 the leather which is going to be contaminated. There

20 is no trichloromethanes, there's no urethane in it.

21 This jacket has got more formaldehyde in it than

22 anything in this room, okay. So now you've got a

23 little breakdown as far as the chemical composition of

24 this suede.

25 Nancy chose to use the leather or the suede from

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 the standpoint it was probably the most neutral

2 capacity or item that she could, use as opposed to just
3 vinyl. Vinyl is just -- you get in a new car, you open
4 that thing up, boy, this car smells good. That car is
5 going to kill you in three years, if you left the
6 windows up because of all the formaldehyde, because you
7 breathe formaldehyde coming through the ductwork. So
8 there are things out there.

9 Now I'm going to address your concern -- your
10 question, too. Health and safety. There are worse
11 things out there than I would say a pouch. And that's
12 what -- I hope I answered your question.

13 MS. TURMAN: Thank you.

14 MS. WITTUM: Sir, could you identify yourself for
15 the court reporter, please.

16 FRANK DRAKE: Oh. I beg your pardon.

17 My name is Frank Drake. I'm the husband. Nothing
18 else.

19 MS. POWELL: It's not -- and to respond to your
20 statement, is my concern was not -- not a concern of
21 the product and what the pouch was made out of, be it
22 formaldehyde or imported leather or whatever. It was
23 the contamination of it during the process of being

24 used.

25 FRANK DRAKE: Uh-huh.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

228

1 MS. POWELL: Not -- not the -- not the product
2 itself.

3 FRANK DRAKE: Well, sure. And I just want to
4 answer you, I just want to answer the woman's question.
5 But my wife is concerned because she comes home and she
6 has got these expensive shears. And these old ladies
7 are cutting out coupons from Ladies Home Journal.
8 Those shears are not to used for that, and that's
9 happened at times. She's had some problems.

10 MS. DRAKE: I had somebody take my shears and then
11 bring flowers for me to put in their hair and cut them,
12 with the little wire thing in there, and, you know,
13 it's heart breaking. Because you get a nick in them
14 and then they've got to go back for sharpening, which
15 is an expense. I didn't make any money.

16 So the only reason I'm here is because it's a
17 discussion, it's an open thing, just, you know, maybe
18 another way of wording it and looking at the situation,
19 how it can be done to still be sanitized where it could
20 be, when more people get into this and they are in the
21 situation that they need a little protection for their
22 shears, as well. And when it's a hair situation or
23 anything, there is hair, when you lay your implements
24 on a counter -- I work with another gal with the Helix
25 chairs, and they are just piled up next to her and they

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

229

1 are flopping and, you know. That I think is more
2 dangerous than what I'm doing. And it's just a
3 consideration. It's another way of looking at things
4 and how to make things better.

5 I guess that's all I have to say.

6 MS. TURMAN: Thank you.

7 MS. POWELL: Thank you.

8 MS. DRAKE: All right. Thank you.

9 MS. WITTUM: Chris? Okay.

10 MS. STRAWN: Want me to come up here?

11 My name is Chris Strawn. I'm with Arthur's Beauty

12 Colleges.

13 And, first of all, is there -- this is a question.

14 Is there some place where I can get all of the board

15 members' e-mail addresses? Is that on the website? I

16 know yours is and the office staff.

17 MS. WITTUM: No. The -- I've never asked the

18 board for permission to release the e-mail addresses.

19 MS. TRAYLOR: I don't have e-mail. I don't have a

20 computer.

21 MS. STRAWN: Well, I would just like a way to be

22 able to get in touch with board members.

23 MS. WITTUM: With the -- now, we can give a list

24 of their addresses at their -- of course, their work

25 phone numbers.

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 MS. STRAWN: Okay.

2 MS. WITTUM: And --

3 (Mr. Keene handed Ms. Strawn a business card.)

4 MS. STRAWN: Thank you, sir.

5 MS. WITTUM: We will be happy to provide that. I
6 can e-mail that to you today.

7 MS. STRAWN: Okay. And also I'm sure you know why
8 I'm here. I'm concerned about the fact that eight of
9 my students were not put in the exam schedule for this
10 month.

11 And as I sent -- as the e-mail that I sent you, I
12 questioned why, if there is in fact a limit or it's
13 first come in first serve, why is that not written
14 somewhere where I -- this has never been an issue until
15 this month, and it's a huge issue. And, I mean, it
16 has -- it's been a -- it's been a very large problem
17 this month for me, and others, other schools, I think.
18 I'm not sure.

19 MS. WITTUM: Well, after -- after we realized
20 there were more candidates than what we had space for
21 this month, I spoke with Mr. Jochums to make sure that
22 there were no laws or rules that required us to

23 schedule an extra day, because most of -- especially
24 the board knows, I have scheduled an extra day and
25 called and solicited examiners to come in on that extra

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

231

1 day in the past.

2 This month I did not feel we could do that because
3 of what stress the office is under. When I -- when I
4 was leaning towards that decision, I contacted
5 Mr. Jochums. I also spoke with President Powell. And
6 according to what President Powell has told me, before
7 I came, the board stuck to the four days per week.

8 MS. TRAYLOR: That's true, we did.

9 MS. WITTUM: Or per month of examine --

10 MS. TRAYLOR: If you ran over you just waited.

11 But then we were giving them every other month, but you
12 just had to wait until the next exam.

13 MS. WITTUM: But my main concern was to make sure
14 that there were no laws that said we had to schedule an

15 extra day when our space was filled to capacity. And,
16 according to Mr. Jochums, and he can speak for himself
17 here, there is no requirement for the board to do that.

18 MS. STRAWN: Uh-huh. I -- I completely agree with
19 that, Kathy, and I understand that.

20 But, you know, what I've heard for the past 14
21 months, since you've been here, and speaking with this
22 board, and really it's all about the students. You
23 know, we're trying to take care of the students, we're
24 trying to take care of the students.

25 That I know that this is a holiday month, I'm not

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

232

1 confused about that, but it is for the students as
2 well. And you guys working in this industry know that
3 this is the busiest time for us. And because they have
4 been sent -- they are having to wait like four more
5 weeks, the busy time, they are -- I mean, it's their
6 holiday month, too.

7 And these -- these -- my students, like Jane and

8 Barbara can attest to this, too, these are my
9 professional kids. These are the ones that have come
10 to my school, and I feel like I need to protect them.

11 And I'm just very disappointed that we couldn't have
12 put another day in to take care of eight -- eight
13 people, that's a lot of people.

14 And I've been begging for -- since Tuesday, the
15 Tuesday after the deadline, and I don't understand.

16 And that would be the only reason I would think that we
17 need to outsource, because I understand these people
18 are busy. I understand you guys are busy. I
19 understand that. But if that's the issue, then that
20 would be the reason I think we need to outsource.

21 MS. WITTUM: But that's not the only issue.

22 MS. TRAYLOR: No, that isn't the only issue.

23 MS. WITTUM: Because the office staff -- the
24 office staff has a lot more to do than just administer
25 the exams. And, yes, we do look out or try to look out

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 for the best interest of the students, but we also have
2 to insure that we can provide a quality job to every
3 area of the office that we deal with. And not only is
4 it the holiday month, but we have renewal season that
5 started this month, we have a new computer system that
6 I'm too lady-like to explain what we're going through
7 with it on open record, in addition to getting ready
8 for board meetings, doing other meetings and doing our
9 day-to-day work.

10 This month, out of the 14 months that I've been
11 here, is the only month I have not bent over backwards
12 to make accommodations for the students. And I, while
13 I understand and appreciate the hardship to not only
14 your school, but the others who were effected and those
15 students who were effected, I'm not going to apologize
16 to anyone for choosing that or making that decision
17 this month. It was the best decision for this month.
18 That doesn't mean it's the way it's going to be every
19 single month from here on out, it's just that it
20 happened this month.

21 MS. STRAWN: Okay.

22 MS. TRAYLOR: Jane?

23 MS. POWELL: Ms. Traylor?

24 MS. TRAYLOR: Well, it's also a busy, busy time
25 for us people behind a chair. And we've given so much

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

234

1 of our time without pay to this board, and I feel like
2 that this is our busy season, it's Kathy's busy season,
3 and I think she'll tell you any time that she's tried
4 to call on us to do extra, we do it. But right now, it
5 would be difficult for, I suppose, any of us.

6 All right.

7 MS. STRAWN: The other thing that is bothering me,
8 the first answer that I got was, our paperwork was not
9 sent in on the correct day. We did come in on the
10 2nd. It was stamped the 3rd. And the only -- the
11 only thing I knew to do was to ask, and I asked, and it
12 was told to me that they had incorrectly stamped my
13 paperwork. And then I got word back that it would

14 never -- that would never happen in the state board

15 office, so I'm thinking what do I do?

16 So I actually called mall security and I asked

17 them to copy the two sign-in dates. And my girl was

18 here on the 2nd, we didn't have anybody come in on

19 the 3rd, so it was stamped incorrectly.

20 And so after it was -- we determined that was the

21 case, then I was told we were full, and then I was told

22 that the paperwork wasn't correct, and then I was told

23 those people were -- and all of this I did per e-mail,

24 so I can have a copy of what's been said and done.

25 And I'm just real disappointed that you didn't --

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

235

1 you didn't feel it was necessary or the best for these

2 students. Because you guys have jobs. You know,

3 you're working behind a chair. These students need to

4 get to work. And it's a holiday month for them as

5 well. They need to buy a turkey. You know, I don't

6 mean to be so melodramatic, but it's the truth. You

7 know, these students have been in school for like over
8 a year, most of them, and they need to get to work.

9 And I just wanted all of you guys to be aware that
10 this has happened. Maybe you were, maybe you weren't.

11 MS. POWELL: Is there any -- is there any further
12 comment?

13 MS. WITTUM: Carla, did you have something?

14 CARLA JONES: Yeah. It's on a definition.

15 MS. POWELL: Okay.

16 CARLA JONES: My name is Carla Jones.

17 My -- I have two things. The first thing is
18 continuing ed. I received a letter in June, I believe,
19 June 7th, that our continuing ed hours, if they were
20 not gotten before the end of the year, that -- we
21 needed to get our hours for this year to renew our
22 license for next year.

23 MS. WITTUM: Uh-huh.

24 CARLA JONES: We have -- I think there is three
25 classes that are scheduled in January. Usually, if you

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

1 don't get them renewed by the end of December, you have
2 until the last date in January to renew your license.

3 MS. WITTUM: That's correct. And that will be --
4 that will apply with the continuing ed as well.

5 CARLA JONES: Those classes will apply toward
6 that?

7 MS. WITTUM: Yes.

8 CARLA JONES: Okay. And then --

9 MS. WITTUM: I know there is a lot of people
10 depending on those classes in January.

11 CARLA JONES: Right. I just wanted to make sure,
12 because the letter stated that they wouldn't count.

13 MS. WITTUM: The grade applies to it, to con ed,
14 as well as it goes to the classes.

15 CARLA JONES: Okay. Good.

16 MS. WITTUM: I'm sorry if it wasn't clear in that
17 letter, but that's the way it is.

18 MS. POWELL: How will that information be gathered
19 as far as whether it's to apply for last year or this
20 year or will they carry over if someone has already got

21 their hours for last year, that will automatically roll
22 over for this year? Is that how --

23 MS. TRAYLOR: If you go in January, it probably
24 will.

25 MS. POWELL: That's what I mean, in January

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

237

1 specific.

2 MS. WITTUM: Yeah.

3 MS. POWELL: Okay. Thank you.

4 CARLA JONES: Okay. The second thing that I
5 wanted to address was, a few minutes ago we were
6 talking about the felony convictions. And I wanted to
7 address Ms. Veda, because I was offended by the comment
8 that you made that, you know, we, in dealing with
9 felonies, maybe we ought to go get Derwin and string
10 him up. I think that profession -- I took that very --
11 it was very offensive and very unprofessional.

12 MS. TRAYLOR: He stole our money.

13 CARLA JONES: And but Derwin was not charged nor
14 was he convicted of a felony, as far as I know. I
15 didn't read it in the paper and I didn't see it on the
16 news. And I just think that it was --

17 MS. TRAYLOR: Well, if you were offended, I'm
18 sorry.

19 CARLA JONES: I think it was very unprofessional
20 on your part. That shouldn't even have come into play,
21 and I just want to make that -- say that just for the
22 record.

23 MS. TRAYLOR: And I want it on the record that I
24 apologize for it, that I was sorry.

25 MR. JOCHUMS: No further business?

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

238

1 MS. WITTUM: Our next meeting is January 15th.

2 MS. POWELL: There being no further business,
3 meeting is adjourned.

4 (WHEREUPON, at 2:47 p.m., the above-entitled
5 proceedings were concluded.)

6

---O---

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

239

1 CERTIFICATE

2

3 STATE OF ARKANSAS)

4 COUNTY OF PULASKI)

5

6 I, SUSAN B. WHITSON, Certified Court Reporter and

7 notary public in and for Pulaski County, State of Arkansas, do

8 hereby certify that the witnesses were duly sworn by me prior to

9 the taking of testimony as to the truth of the matters attested

10 to and contained therein; that the meeting of the Arkansas State

11 Board of Cosmetology, held November 20, 2006, was taken by me in

12 Stenotype and reduced to computer-generated typewritten form by

13 me or under my direction and supervision; and that the same is a

14 true and correct reflection of the proceeding that occurred, to

15 the best of my knowledge and ability.

16 I FURTHER CERTIFY that I am neither counsel for,

17 related to, nor employed by any of the parties to the action in

18 which this proceeding was taken; and, further that I am not a

19 relative or employee of any attorney or counsel employed by the

20 parties hereto, nor financially interested, or otherwise, in the
21 outcome of this action; and that I have no contract with the
22 parties, attorneys, or persons with an interest in the action
23 that affects or has a substantial tendency to affect
24 impartiality, that requires me to relinquish control of an
25 original transcript or copies of the transcript before it is

SUSAN B. WHITSON, CCR, INC. (501) 455-1170

240

1 certified and delivered to the custodial attorney, or that
2 requires me to provide any service not made available to all
3 parties to the action.

4 SIGNED AND SWORN this _____ day of

5 _____.

6

7

8 _____
SUSAN B. WHITSON, CCR, #158

9

NOTARY PUBLIC IN AND FOR

10

PULASKI COUNTY, ARKANSAS

11

12 My Commission Expires: June 4, 2012.

13 ---O---

14

15

16

17

18

19

20

21

22

23

24

25

SUSAN B. WHITSON, CCR, INC. (501) 455-1170