

MINUTES OF MEETING

BOARD FOR BARBERS AND COSMETOLOGY INFORMAL FACT-FINDING CONFERENCES JULY 19, 2004 (9:00 A.M.)

The Board for Barbers and Cosmetology convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Joyce L. Wilson-Clemmons, Presiding Officer, presided. No Board members were present.

Douglas W. Schroder and Peter Opper appeared for the Department of Professional and Occupational Regulation.

The conference was recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case
Lic=Licensing Application
RF=Recovery Fund Claim
Trades=Tradesmen Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney
Invest.=Investigator

Participants

1. Joseph Richard Powell
File Number 2003-03002 (Disc)

Joseph Powell – R
Rosa Gomez – W
Noelle Phillips – Invest.

2. Legends Beauty, Inc.
t/a Legends Institute
File Number 2004-04783 (Disc)

James B. Looney, Owner – R
Janet Creamer – Invest.

3. Nail Club
File Number 2004-02925 (Disc)
No decision made

Gina Nguyen, Owner-R
Kim V. Le – R's Interpreter
Phoung Nguyen, R's Atty
Barbara Mendez – C
Dennis Pryba, - C's Atty
Hanh Thi Tuyet Bui – W
Hue Bui - W
Sherell Queen – Invest.
Linda Boswell – Invest.

4. Hanh Thi Tuyet Bui
File Number 2004-04469 (Disc)
No decision made


Hanh Thi Tuyet Bui – R
Kim V. Le – R's Interpreter
Roy Spencer – R's Atty
Barbara Mendez – C
Dennis Pryba, C's Atty
Gina Nguyen – W
Hue Bui – W
Sherell Queen – Invest.
Linda Boswell – Invest.

The meeting adjourned at 4:00 p.m.

BOARD FOR BARBERS AND COSMETOLOGY



Lonnie E. Quesenberry, Chair



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR BARBERS AND COSMETOLOGY**

Re: Joseph R. Powell

File Number: 2003-03002
License Number: 1201092687

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 14, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Joseph R. Powell's, to the address of record 1122 Fenton Quay, Chesapeake, Virginia, 23302. A second notice was mailed, on June 14, 2004, via certified mail, to Joseph Powell's old address of record. The Notices included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mailings were returned by the post office as unclaimed.

On July 12, 2004, the Notice was mailed, via UPS to Mr. Powell's new address of record, 4044 Inverness Road, Virginia Beach, Virginia, 23452. Mr. Powell called the Department on July 13, 2004, stating he received the notice and would be attending the IFF.

On July 19, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Richard Powell, Respondent; Rosa Gomez, Witness; Peter Oppen and Doug Schroder, Staff Members; Noelle Philips, Investigator; and Joyce L. Wilson-Clemmons, Presiding Officer.

RECOMMENDATION

Based upon the evidence in the record, at the IFF, and in consideration of the criteria outlined in § 54.1-204, the following is recommended regarding the Count as outlined in the Report of Findings:

§ 54.1-204 of the Code of Virginia states, in part:

- B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

On February 20, 2003, Powell was convicted by the City of Chesapeake Juvenile and Domestic Relations District Court of misdemeanor assault and battery on a family member (Exh. I-1). Powell said that this incident involved an argument with his 16 year old step-son and himself. Although denying any physical injury, Powell said he was convicted because his 16 year old step-son testified he was grabbed and pushed by Powell. Powell was sentenced to pay a \$200.00 fine, be of good behavior for 2 years, and complete anger management classes.

During the IFF, Powell introduced a record from the City of Chesapeake Circuit Court showing he pleaded guilty in November 2003 to Domestic Assault and Battery, third offense, a felony (Exh. Powell-2). During the IFF, Powell explained that all three of his convictions involved his immediate family members, his two step-sons and his ex-wife. Powell was sentenced to three years in the Penitentiary, suspended, conditioned on 5 years good behavior, indefinite probation, complete anger management, and payment of court costs. Powell testified at the IFF he is currently meeting with his probation officer every 5 months and he has 2 classes left to attend to complete his anger management obligation. Powell said this is the second time he has taken the class.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public. Powell's convictions do not involve any member of the general public. These offenses arose in the context of a family situation which eventually ended in divorce. I do not believe the factors that gave rise to Powell's conduct would confront him in the day to day practice of cosmetology.

3. *The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;*

Based upon the above information, it does not appear that allowing Powell to retain his license will encourage further criminal activity of the same type. Powell's convictions only involve his immediate family members and not the general public.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

Although the ability to control one's anger is important in the practice of cosmetology, Powell's problems appear to only occur in the context of the family unit. Family dynamics lend themselves to highly charged emotional situations that generally do not occur in the practice of the cosmetology profession.

5. The extent and nature of the person's past criminal activity;

Powell was convicted of two domestic assault and battery misdemeanors and one felony domestic assault and battery, third offense.

6. The age of the person at the time of the commission of the crime;

Powell testified during the IFF that he was 32 years old at the time of his first conviction and 34 years old at the time of the last offense.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

The last offense occurred in or about November 2003.

8. The conduct and work activity of the person prior to and following the criminal activity; and


Powell stated during the IFF he had been involved with cosmetology for 11 years. He first obtained his license in the state of South Carolina in 1984. Powell introduced a copy of his resume (Exh. Powell-1) during the IFF. The resume indicates he has been employed in the Cosmetology field since only 2001. Powell testified he is currently an assistant salon manager but also has his own company that produces shows.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Powell is about to complete the curriculum in anger management. He is divorced and no longer has contact with his ex-wife or step-children. He has started his own business which is fulfilling.

Count 1: Board Regulation (Effective July 2002)

I do not find that Powell's convictions for assault and battery of a family member directly relate to the profession of cosmetology. Therefore, I recommend that Count 1 of this file be closed with a finding of no violation of 18 VAC 41-20-280.A. 9.

By: 
Joyce L. Wilson-Clemmons
Presiding Officer

BOARD FOR BARBERS AND COSMETOLOGY

Date: October 27, 2004

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

REPORT OF FINDINGS

BOARD: Barbers and Cosmetology
DATE: June 3, 2004

FILE NUMBER: 2003-03002
RESPONDENT: Joseph R. Powell
LICENSE NUMBER: 1201092687
EXPIRATION: June 30, 2004

SUBMITTED BY: Noelle B. Phillips
APPROVED BY: Kevin E. Hoeft

COMMENTS:

Joseph R. Powell ("Powell") was at all times material to this matter a licensed Cosmetologist in Virginia (License No. 1201092687).

Based on the investigation of this matter, there is probable cause to believe the respondent has committed the following violation of the Board's regulations:

BACKGROUND:

On April 16, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from an anonymous source regarding Joseph Richard Powell ("Powell"). (Exh. C-1)

1. Board Regulation (Effective July 2, 2002)

18 VAC 41-20-280. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

- A. The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder, and to suspend or revoke or refuse to renew or reinstate any license, certificate, or permit, or deny any

application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

9. In Accordance with § 54.1-204 of the Code of Virginia, the licensee, certificate holder, permit holder or applicant has been convicted in any jurisdiction of a misdemeanor or felony which directly relates to the profession of barbering, cosmetology, or nail care. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of barbering, cosmetology, or nail care. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within ten days after all appeal rights have expired.

FACTS:

On February 20, 2003, Powell was convicted in the Chesapeake Juvenile & Domestic Relations District Court of assault and battery, Section 18.2-57.2, a Class I Misdemeanor with no appeal pending. (Exh. I-8)

Investigator Noelle B. Phillips, the Board's agent, attempted to get a written response to the conviction. (Exh. I-1) (Exh. I-3) (Exh. I-4) (Exh. I-11) As of June 3, 2004, no response has been received from Powell by the Board's agent.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR BARBERS AND COSMETOLOGY**

Re: Legends Beauty, Inc. t/a Legends Institute

File Number: 2004-04783
License Number: 1205001169

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On June 14, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Legends Beauty, Inc. c/o James B. Looney, owner, to the address of record. The Notice included the Informal Fact-Finding Conference

Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was received and signed for by Renae VanBuskirk.

On July 19, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James B. Looney, owner of Legends Beauty, Inc. t/a Legends Institute, Respondent; Peter Oppen and Doug Schroder, Staff Members; Janet Creamer, Investigator; and Joyce L. Wilson-Clemmons, Presiding Officer.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

Count 1: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to display West-Scott's and West's licenses is a violation of Board Regulation 18 VAC 41-20-260.A. Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's actions of allowing West-Scott and West to instruct students without having obtained a cosmetology instructor license is a violation of Board Regulation 18 VAC 41-20-260.B. Therefore, I recommend a

finding of a violation. In consideration of the sanction on count 12, I impose no further sanction.

Count 3: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to properly clean and disinfect the wax pot is a violation of Board Regulation 18 VAC 41-20-270.B.5. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 4: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to keep the shampoo sinks clean is a violation of 18 VAC 41-20-270.C.1.. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 5: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to store combs free from contamination is a violation of Board Regulation 18 VAC 41-20-270.D.1. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 6: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to use towel or neck strip around the neck of the patron is in violation of Board Regulation 18 VAC 41-20-270.E.2. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 7: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to store combs properly is in violation of Board Regulation 18 VAC 41-20-270.E.4. Therefore, I recommend a finding of a violation. In consideration of the sanction on count 5, I impose no further sanction.

Count 8: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to store clean towels in a sanitary, enclosed cabinet or covered receptacle, is in violation of Board Regulation 18 VAC 41-20-270.E.13. .Therefore, I recommend that a monetary penalty of \$50.00 be imposed.

Count 9: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to keep the Material Safety Data Sheets Binder in the immediate work area is in violation of Board Regulation

18 VAC 41-20-270.F.1. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 10: Board Regulation (Effective July 2003)


Legends Beauty, Inc. t/a Legends Institute's failure to have a blood spill clean-up kit in the work area is in violation of Board Regulation 18 VAC 41-20-270.F.2. Therefore, I recommend that a monetary penalty of \$350.00 be imposed.

Count 11: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's failure to maintain a self-inspection form on file is in violation of Board Regulation 18 VAC 41-20-270.J. Therefore, I recommend that a monetary penalty of \$50.00 be imposed.

Count 12: Board Regulation (Effective July 2003)

Legends Beauty, Inc. t/a Legends Institute's actions of allowing West-Scott and West to instruct students without having obtained a cosmetology instructor license are in violation of Board Regulation VAC 41-20-200.3. Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.

By: 
Joyce L. Wilson-Clemmons
Presiding Officer

BOARD FOR BARBERS AND COSMETOLOGY

Date: October 27, 2004

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT FINDING CONFERENCE MEMORANDUM

TO: Adjudication Section
BOARD: Barbers and Cosmetology
DATE: June 7, 2004
RE: 2004-04783 Legends Beauty Inc. t/a Legends Institute

LICENSE, CERTIFICATION, OR REGISTRATION NUMBER:
1205001169 (School)

EXPIRATION DATE OF LICENSE:
December 31, 2004

INVESTIGATOR: Janet P. Creamer
ASSISTANT DIRECTOR: Wayne Mozingo

COMMENTS:

The following cases from students were closed, and their names have been added as witnesses to this Enforcement File. (per instructions from Jim Guffey)

Jenny Bryant – 2004-03378
Shannon Gardner – 2004-03375
Brittany Porter – 2004-03379
Aisha Mays – 2004-03377
Penny Creasy – 2004-03975
Ilia Reynolds – 2004-03376

2004-04783 - Legends Beauty Inc. t/a Legends Institute

BACKGROUND:

On February 19, 2004, and March 26, 2004, the Department of Professional and Occupational Regulation received written complaints from Jenny Bryant ("Bryant"); Brittney Porter ("Porter"); Aisha Mays ("Mays"); Shannon Gardner ("Gardner"); Penny Creasy ("Creasy"); and Ilia Reynolds ("Reynolds") alleging unlicensed instructor activity, and unclean work environment at Legends Beauty Inc. t/a Legends Institute ("Legends"). (Exh.'s C-1 through C-6).

On March 5, 2004, the Board's agent, Janet P. Creamer ("Investigator Creamer"), conducted an unannounced inspection of Legends at 3225 Old Forest Road #5 Lynchburg, Virginia. During the inspection James B. Looney ("Looney"), owner, was present. (Exh. I-1 Inspection Report and Interview with Looney)

1. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-260(A)

Each shop owner, salon owner or school owner shall ensure that all current licenses, certificates or permits issued by the board shall be displayed in the reception area of the shop, salon or school in plain view of the public. Duplicate licenses, certificates or permits shall be posted in a like manner in every shop, salon or school location where the regulant provides services.

FACTS:

On March 5, 2004, there were no licenses displayed in the reception area for Jesse Lee West-Scott ("West-Scott") or Jennifer P. West ("West"), even though both held cosmetologist licenses, were employed by Legends, and present during the inspection. (Exh. I-1)

2. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-260(B)

Each shop owner, salon owner or school owner shall ensure that no employee, licensee, student or apprentice performs any service beyond the scope of practice for the applicable license.

FACTS:

On March 5, 2004, West-Scott and West, licensed cosmetologists, were instructing/supervising students in the practice of cosmetology without having valid instructor licenses.

3. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(B)(5)

All wax pots will be cleaned and disinfected with an EPA registered hospital (grade) and tuberculocidal disinfectant solution with no sticks left standing in the wax at any time.

FACTS:

On March 5, 2004, the wax pot located in the facial room contained a dirt film/substance. (Exh. I-5 Photo #5)

4. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(C)(1)

All furniture, walls, floors, and windows shall be clean and in good repair.
Wash basins and shampoo sinks shall be clean.

FACTS:

On March 5, 2004, two of the shampoo sinks contained hair clogs in the drains. (Exh. I-5 Photos #2 and #4)

5. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(D)(1)

Service chairs, wash basins, shampoo sinks and workstations shall be clean. Floors shall be kept free of hair, nail product, and other waste materials. Combs, brushes, towels, razors, clippers, scissors, nippers, and other instruments shall be cleaned and sanitized after every use and stored free from contamination.

FACTS:

On March 5, 2004, combs not in use at the time were not stored free from contamination. (Exh. I-5 Photo #8)

6. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(E)(2)

Whenever a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin.

FACTS:

On March 5, 2004, Investigator Creamer observed two students performing a roller/set without a clean towel or neck strip placed around the neck of the patron who was wearing a haircloth. (Exh. I-2 – Sketch of Salon Area)

7. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(E)(4)

Hair brushes and combs shall be washed in soap and hot water and sanitized after each use. Cleaned instruments, such as combs, hair brushes, shears, towels, etc., shall be kept free from contamination.

FACTS:

On March 5, 2004, combs were not stored three from contamination. (Exh. I-5 Photo #8)

8. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(E)(13)

Pre-sanitized tools and implements, linens and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;

FACTS:

On March 5, 2004, a portion of the clean towels were not stored in a sanitary enclosed cabinet or covered receptacle. (Exh. I-5 Photo #1)

9. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(F)(1)

Shops, salons, schools and facilities shall have in the immediate working area a binder with all Material Safety Data Sheets (MSDS) provided by manufacturers for any chemical products used.

FACTS:

On March 5, 2004, the Material Safety Data Sheets Binder was not stored in the immediate working area. (Exh. I-2 Sketch of Salon Area)

10. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(F)(2)

Shop, salons, schools and facilities shall have a blood spill clean-up kit in the work area.

FACTS:

On March 5, 2004, the salon did not have a blood spill clean-up kit in the work area.

11. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-270(J)

All shops, salons, schools and facilities shall maintain a self-inspection form on file to be updated on an annual basis, and kept for 5 years, so that it may be requested and reviewed by the board at its discretion.

FACTS:

On March 5, 2004, the owner told Investigator Creamer that he did not have a self-inspection form. (Interview with Looney)

12. Violation of Code of Virginia or Board Regulation (Effective July 1, 2003)

18 VAC 41-20-200(3)

Employ a staff of licensed and certified barber, cosmetology, or nail technician instructors.

FACTS:

On March 5, 2004, West-Scott and West were instructing and supervising students without valid instructor's licenses issued by the Board.