STATE OF NEW HAMPSHIRE
BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS
2 INDUSTRIAL PARK DRIVE
CONCORD, NEW HAMPSHIRE 03301

In the Matter of: Docket No. 2011-02
Tonia Perrin
Personal Cosmetology License Number: 5491
Shop License Number: 1543
(Adjudicatory Proceedings)

DECISION AND ORDER

By the Board: Leanne Lummis, Chair
Gary Trottier Vice Chair and Presiding Officer
Holly Manning, Board Member
Kathleen Humes, Board Member
Absent were: Aaron Losier and Christine Infantine[1]

Appearances: Laurel O'Connor, Hearing Counsel

BACKGROUND

In cases where public health, safety or welfare requires emergency action, RSA 313-A:22; RSA 541-A:30, III, and New Hampshire Board of Barbering, Cosmetology and Esthetics Administrative Rule ("Bar") 402.03 authorize the New Hampshire Board of Barbering, Cosmetology and Esthetics ("Board") to suspend a license to practice pending completion of an adjudicatory proceeding.

On April 8, 2011, the Board received information from the Exeter, New Hampshire police department concerning Tonia Perrin ("Respondent"). Captain Fenerty notified the Board that Officers Mulholland, Page, and Sergeant Munck had observed the Respondent intoxicated while in her shop, Creative Illusions Salon, on more than one occasion.

An "Order of Emergency License Suspension and Notice of Hearing" approved by the Board on April 12, 2011, was issued on April 12, 2011. Effective immediately, the Respondent's cosmetology license was suspended, her salon license was suspended, and was ordered not to practice cosmetology in this state until further notice. The Notice of Hearing scheduled an adjudicatory/disciplinary hearing for April 19, 2011.

As set forth in the Notice of Hearing, the relevant issues to be decided were:

A. Whether, on or about March 30, 2011, Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit or incompetent due to intoxication.

[1] Absent members did not deliberate or vote on the matter.

B. Whether, on or about April 6, 2011, Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit or incompetent due to intoxication.

C. If any of the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 313-A:22.

Although properly notified, the Respondent did not attend the hearing; therefore, the hearing was held in absentia. The Board considered all of the testimony presented and all the exhibits entered.

The Board heard testimony from the following persons:

Kathryn Wantuck, Executive Director
Police Officer Patrick Mulholland

The Hearing Counsel entered the following exhibits into evidence:

1. Exeter Police Department Field Interview Report dated 03/30/11.
2. Exeter Police Department Field Interview Report dated 04/06/11.

HEARING TESTIMONY

Section I:

The Board has the authority to grant cosmetology licenses. See RSA 313-A:11. On October 21, 1993, the Board granted the Respondent a license to practice cosmetology in the State of New Hampshire. The Respondent holds cosmetology license number 5491. The cosmetology license is the Respondent's personal license.

The Board has the authority to grant shop licensure in accordance with RSA 313-A:19. Pursuant to this authority, the Board may grant shop licensure to an individual who is the owner of the shop if this individual has a personal license as a barber, cosmetologist, manicurist, or esthetician. See RSA 313-A:19, II. On January 31, 1996, The Board granted the Respondent shop license number 1543.

Section II:

Kathryn Wantuck, Executive Director for the Board testified that the Respondent holds personal license number 5491 and shop license number 1543. Additionally, Ms. Wantuck testified that the Order of Emergency License Suspension and Notice of Hearing ("ELS and NOH") was hand delivered to the Respondent on April 12, 2011 by Inspector George Cacavas. She further testified that the ELS and NOH was sent by certified mail from the Board's office on that date.

Section III:

Office Patrick Mulholland testified at the hearing. Officer Mulholland is employed by the Exeter New Hampshire Police Department ("Department") and has been with the Department for approximately 15 ½ years. Officer Mulholland testified that he and several other Officers have had

multiple contacts with the Respondent at her place of business, Creative Illusions Salon, for the past year.

Section IV:

Officer Mulholland further testified that on May 20 at 3:44 pm, the Respondent's roommate contacted the Department after locating the Respondent in the basement of Creative Illusions Salon. The roommate went to the salon because the Respondent told him that by the time he got there the Respondent would be dead. When the roommate arrived at the salon, he found the Respondent standing on a bucket with a wire wrapped around her neck. Officers responded to Creative Illusions Salon and placed the Respondent in Involuntary Emergency Admission ("IEA") and took her to the hospital.

Section V:

Officer Mulholland further testified that on June 11, 2010 at 1:39 pm, the Respondent's roommate notified the Department that the Respondent was making suicidal threats and indicated that she was intoxicated. Officers responded and found the Respondent on the floor of Creative Illusions Salon. The Respondent had slurred speech and was highly intoxicated. The Respondent was taken to the ER for an IEA.

Section VI:

Officer Mulholland further testified that on October 30, 2010 at 9:12 am, the Department received notification that the Respondent was intoxicated. The caller indicated that it was a mixture of medication and alcohol. Officers responded and it was clear to them the Respondent had slurred speech was impaired. The Respondent was taken into IEA and taken to the hospital.

Section VII:

Officer Mulholland further testified that on December 28, 2010 at 1:24 pm, a customer had called Creative Illusions Salon and spoke to the Respondent. The customer asked the Respondent if she was okay and the Respondent indicated that she was not okay. The customer notified the Department that the Respondent sounded intoxicated, emotional, and was crying. Officer Mulholland personally responded to the business, Creative Illusions Salon, and found the door unlocked. Officer Mulholland entered Creative Illusions Salon and located the Respondent in the back room of the salon. The Respondent had fallen and was bleeding from a cut on her head. Officer Mulholland stated it was clear to him the Respondent was intoxicated. The Respondent was transported to the hospital.

Section VIII:

Officer Mulholland further testified that on January 13, 2011, 911 received a call that a 40-year old female was overdosing at Creative Illusions Salon. Officers arrived to find the doors to Creative Illusions Salon locked and observed the Respondent crawling on the floor, refusing to open the door. At that time, the Fire Department responded and was able to gain entry to the business. The Respondent was disorderly and uncooperative. The Respondent was taken into custody, placed in IEA and taken to the hospital.

Section IX:

Officer Mulholland further testified to an incident that took place the next day on January 14, 2011 at 7:57 pm. The Respondent's mother hadcontacted the Department concerned the Respondent was overdosing on a mixture of medication and alcohol. Officers responded to her place of business, Creative Illusions Salon, and noted the Respondent was highly intoxicated and agitated. Officers again placed the Respondent in IEA and took her to the hospital.

Section X:

Officer Mulholland testified to an incident that took place on February 24, 2011 at 10:22 am. The Department received a third-party call that the Respondent was making suicidal threats, the caller indicated that the Respondent was "having a bad day" and that she wanted to hang herself with a wire. Officers responded to her place of business, Creative Illusions Salon. The officers noted alcohol on her breath and slurred speech. The Respondent did state she was "having a bad day" and she did admit to some degree about the wire comment. The Respondent was taken into custody as an involuntary emergency admission ("IEA"). The Respondent was taken to Exeter Hospital where she was evaluated.

Section XI:

Officer Mulholland additionally testified that all incidents that the Department had to respond to took place at the Respondent's licensed place of business, Creative Illusions Salon, where she practices her licensed profession. Officer Mulholland stated that although there were no customers at the salon when the Department responded, the majority of the incidents took place during weekdays and normal business hours.

Section XII:

Hearing Counsel introduced exhibit number one through Officer Mulholland. See Exhibit 1. Officer Mulholland testified that on March 30, 2011 at 10:06 am Officer Mulholland spoke with a 15-year client of the Respondent's in the police station. The client stated that he had just left Creative Illusions Salon and the Respondent was "drunk". The client further stated the Respondent was having trouble holding scissors and dropping things, had difficulty walking and slurred speech. The client further stated he made up an excuse in the middle of his haircut to leave because he was concerned for his safety due to the fact the Respondent was using scissors and a razor to cut his hair. The client was also concerned for the Respondent's own safety and the safety of other possible customers. Officer Mulholland and Sergeant Munck responded to Creative Illusions Salon and found the Respondent lying on the floor in front of a door. The Respondent had difficulty speaking and could not stand on her own. Officer Mulholland stated it was clear to them that the Respondent was highly intoxicated. Officer Mulholland tried to converse with the Respondent, but she could not comprehend what he was saying. The Respondent was taken into protective custody and taken to jail. Officer Mulholland explained that individuals are taken into protective custody when the officers believe the individual is incapacitated to the degree that they may be harmful to themselves or others.

Section XIII:

Hearing Counsel introduced exhibit number 2 through Officer Mulholland. See Exhibit 2. Officer Mulholland testified that on April 6, 2011, 911 received a hang up call from the Creative Illusions Salon telephone number. Officer Page responded to Creative Illusions Salon and found the

door locked. Officer Page saw the Respondent stumble from the back room of the salon to let him in. Officer Page attempted to assist the Respondent in contacting one of the Respondent's friends or family members to come to the salon that he could release the Respondent to. Officer Page noted the Respondent fell backwards into a wall while she was trying to use the phone to contact someone. The Respondent tried to provide the name and telephone number of someone named "Jim", but could not provide the spelling of his last name and could not dial his telephone number. Officer Page dialed the telephone number the Respondent provided, but was unable to speak with anyone. Officer Page also noted the Respondent was unsteady on her feet, her speech was slurred, and the smell of alcohol on the Respondent's breath and person. Officer Page noted that at one point she fell off the chair and he had to catch her to maintain her balance. Officer Page's report indicates that the Respondent denied drinking any alcoholic beverages. Officer Page took the Respondent into custody and she was placed in jail.

Section XIV:

Officer Mulholland further testified that on April 8, 2011 at 12:13 pm, the Department received a 911 hang-up call from Creative Illusions Salon. Officer Page responded to the salon and found the Respondent had alcohol on her breath. The Respondent was not incapacitated so the Officer cleared the business. Fifteen minutes later the Department received another 911 call from Creative Illusions Salon. Officer Page again responded and found the Respondent on the couch in the salon. The Respondent indicated she did not dial 911. Officer Page again cleared the business. At 3:42 pm, 911 received a third call from a belligerent intoxicated individual from the Creative Illusions Salon's phone number. Officers responded and took the Respondent into protective custody.

Section XV – In response to Board Members' Questions

Office Mulholland testified that, in his professional opinion, and based on the contact he had with the Respondent, he does believe the Respondent is a danger to her clients and to the general public. Officer Mulholland further testified that whenever you have someone intoxicated to that degree, using sharp implements such as razors and scissors, there is potential for someone to be stabbed or hurt accidentally.

Officer Mulholland testified that, in his opinion and based on all the contact he has had with the Respondent over a period of time, the Respondent's condition was getting worse and certainly not getting better. Officer Mulholland further testified that he wasn't aware of whether or not the Respondent was receiving any treatment.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The Board found Ms. Wantuck to be professional, forthright and credible. The Board also found Officer Mulholland to be professional, forthright and credible. The Board found the entire narrative, in all of the sections, in the above-captioned 'Hearing Testimony' to be true.

RULINGS OF LAW

On or about March 30, 2011, Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit due or incompetent due to intoxication in violation of RSA 313-A:22, II (c).

On or about March 30, 2011 Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit due or incompetent due to intoxication in violation of RSA 313-A:22, II (d).

On or about March 30, 2011 Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit due or incompetent due to intoxication in violation of RSA 313-A:22, II (e).

On or about April 6, 2011, Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit due or incompetent due to intoxication in violation of RSA 313-A:22, II (c).

On or about April 6, 2011, Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit due or incompetent due to intoxication in violation of RSA 313-A:22, II (d).

On or about April 6, 2011, Respondent committed professional misconduct by working as a cosmetologist in her salon while she was unfit due or incompetent due to intoxication in violation of RSA 313-A:22, II (e).

The Board has authority to undertake disciplinary action against a licensee, after a hearing and a finding that the licensee has committed misconduct as described above or has engaged in acts that pose a threat to public health or safety. RSA 313-A:22; Bar 402.03.

On April 22, 2011, the Board issued an interim order pursuant to RSA 541-A:30, III. This is now a final order.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED, that the Respondent's personal cosmetology license is INDEFINITELY SUSPENDED.

IT IS FURTHER ORDERED, that should the Respondent wish to petition for reinstatement of her cosmetology license, no earlier than ONE YEAR from the effective date of this Decision and Order, the Respondent must first comply with the following pre-conditions:

A. The Respondent shall provide the Board with three character references related to the Respondent's honesty, integrity, timeliness, and productive work habits. These written references shall clearly provide the names and contact information of the references. These references shall be dated no more than 60 days prior to the Respondent's petition for reinstatement.
B. The Respondent shall provide the Board with a written evaluation of her fitness to practice as a cosmetologist. This evaluation must be conducted by a licensed physician

or licensed mental health counselor who states that s/he had read this Decision and Order by date; it must be dated no more than 60 days prior to the Respondent's petition for reinstatement.

C. The Respondent must provide written proof of ongoing counseling with a licensed psychologist, clinical social worker, or clinical mental health counselor licensed by the New Hampshire Board of Mental Health Practice or a licensed psychiatrist licensed by the New Hampshire Board of Medicine
D. The Respondent must provide written evidence that she has had random drug and alcohol testing which indicated abstinence for one full year, with a minimum of six tests throughout the year. This documentation must be dated no more than 60 days prior to the Respondent's petition for reinstatement.
E. The Respondent will be required to appear personally before the Board, prior to the Board's consideration of her petition for reinstatement.

IT IS FURTHER ORDERED, that if/when the Respondent is reinstated to practice, she shall maintain ongoing counseling with a licensed psychologist, clinical social worker, or clinical mental health counselor licensed by the New Hampshire Board of Mental Health Practice or a licensed psychiatrist licensed by the New Hampshire Board of Medicine for a period of 5 years from the date the suspension is lifted. Such counseling must address the Respondent's addiction and suicidal tendencies. The Respondent must provide written reports ("fit-for-duty" reports) from her licensed provider at 3-month intervals. To be clear, on a quarterly basis, for a period of 5 years, the Respondent will cause the Board to receive written notification from her licensed counselor, among other things, that she is not a danger to herself or others through the practice of cosmetology.

IT IS FURTHER ORDERED, that the Respondent provide evidence of random drug and alcohol testing for a period of 5 years or until such time the Board orders that these tests are no longer necessary. The Respondent shall provide the Board with a written report of such results annually, with a minimum of six tests each the year.

IT IS FURTHER ORDERED, the Respondent is assessed an administrative fine in the amount of two thousand dollars ($2000.00), as follows:

A. Three hundred dollars ($300) shall be due within 90 days from the effective date of this Order.
B. Seventeen hundred dollars ($1,700.00) shall be due within 120 days from the effective date of this Order UNLESS the Respondents enrolls in a reputable treatment program within 30 days of this order. Failure to enroll in a treatment program within 30 days shall subject the Respondent to full payment of $2000.00 penalty. Upon proof of completion of such program, the Board will discharge this second payment.
C. All payments shall be made by a certified bank check or postal money order payable to the "Treasurer, State of New Hampshire" and delivered to the Board's office at 2 Industrial Park Drive, Concord, NH 03301. Failure to pay the penalty by the deadline will cause the penalty to be reported to credit reporting services for inclusion on the Respondent's credit record. If the Board determines that collection action including court proceedings are necessary to enforce this obligation, the Board will petition the Court to assess the Respondent with all costs including reasonable legal fees and accrued interest at the prevailing government rate.

IT IS FURTHER ORDERED, that the Respondent's shop license is suspended until the Board issues a further written order lifting the Respondent's suspension of her personal license.

IT IS FURTHER ORDERED that the burden of proof for establishing compliance with the Board's Order shall be on the Respondent. The Respondent shall bear all costs of any counseling, treatment and reporting required by this Order, but she shall be permitted to share such costs with third parties.

IT IS FURTHER ORDERED, that the Respondent's failure to comply with any terms or conditions imposed by this Order shall constitute unprofessional misconduct pursuant to RSA 313-A:22, II (c), and a separate and sufficient basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED that this Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date 5-9-11

Katie Wantuck

Katie Wantuck, Administrator
Authorized Representative of the Board