

Before the  
N. H. Board of Barbering, Cosmetology and Esthetics  
Concord, New Hampshire

In the matter of:

Jonathan Ball  
Personal Cosmetology License Number 9108  
Shop License Number 1893  
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2012-02

**DECISION AND ORDER**

By the Board: Gary Trottier, Vice Chair and Presiding Officer.  
Christine Infantine, Deborah Robinson, Michelle Kapos. Board Members.  
Absent were Kathleen Humes and Aaron Losier.  
Holly Rodrigues, recused.

Appearances: Laurel O'Connor, Hearing Counsel  
Attorney James D. Rosenberg, Counsel for Respondent  
Jonathan Ball, Respondent  
Angela LaFond, Witness  
Lance Messenger, Witness  
Holly Rodrigues, Investigator  
Kelly Olson, Witness

**BACKGROUND**

On August 22, 2011 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("the Board") received a written complaint from Anna Haley ("Ms. Haley") against Getting Golden Hair & Tanning and AJ's Wigs ("Getting Golden"). The complaint stated that Co-Owner Jonathan Ball is a registered sex offender and she had seen him working on under-age girls and boys in the salon alone. The complaint further stated the tanning units are not cleaned between sessions and are cracked, uncertified employees are allowing clients to tan, hair shavers, razors, and combs are not sanitized between each use. Ms. Haley also stated in her complaint that Co-Owner Robert Cook has worked on clients' hair without a license and Mr. Cook uses blackmail over his employees not to pay them. On February 28, 2013 the Board issued a Notice of Hearing commencing a public

disciplinary proceeding to determine whether Jonathan Ball ("the Respondent") had violated RSA 313-A:22 II (b) by his conviction of a felony or any offense involving moral turpitude, 313-A:22 II (a)and/or (c ) and/or Bar 501.02 (b) by providing a fraudulent or deceitful answer on his shop renewal application to the Board, RSA 313-A:22 II (c ) by working at Getting Golden without a chaperone approved by Respondent's parole officer, RSA 313-A:22 II (i) by repeatedly failing to observe the requirements of the Board's rules.

The Notice of Hearing noticed the hearing for April 1, 2013 at 11:30 a.m. Respondent appeared with Counsel, Attorney James D. Rosenberg. After the hearing concluded and the record was closed, the Board notified the Respondent that they would deliberate on the matter. The Respondent opted not to remain for the public deliberations.

## **HEARING TESTIMONY**

### **I. Respondent's Case**

Respondent's Counsel submitted an Exhibit List with items listed A through D.

- A. Affidavit of Melanie Stewart
- B. Correspondence from David B. Reynolds, D.Min., LPP dated 4/21/10
- C. Correspondence from Stacy Edgar dated 9/6/11
- D. Discharge summary from Lance Messenger, LCMHC dated 12/6/12

The first witness to testify on behalf of the Respondent was Angela LaFond ("Ms. LaFond"). Ms. Lafond stated she was a volunteer at Getting Golden and has known the Respondent for 25 years. Ms. Lafond testified there were not a lot of children clientele at Getting Golden. Ms. Lafond further testified that she saw the Respondent's license renewal and check on the reception desk and she was the person who put it in the mail.

Lance Messenger (“Mr. Messenger”) was the second witness to testify on behalf of the Respondent. Mr. Messenger is a Licensed Clinical Mental Health Counselor who has worked with the Respondent. Mr. Messenger states the Respondent has passed polygraph’s and has not had any contact or sexual thoughts with anyone under 18-years of age. Mr. Messenger further states it is his impression that Mr. Ball poses a low risk to children in the community and his prognosis appears very good. See Exhibit D. Mr. Messenger testified that the Respondent assumed responsibility for his actions and has completed assignments and a relapse prevention plan. Mr. Messenger further testified he believed chaperoning should be reserved for high risk offenders and was not needed for the Respondent. Mr. Messenger stated that the Respondent did have one violation of probation regarding internet use and completed approximately 30 days in jail. Mr. Messenger further stated that there is no cure for sexual addiction, it can only be managed.

## **II. Hearing Counsel’s Case**

Hearing Counsel submitted Exhibits numbered one (1) through sixteen (16).

1. Shop Application for Avalon the Salon, Jonathan Ball and Robert Cook owners dated 3/13/06. Tanning Registration for Getting Golden dated 3/13/06. Shop Name Change and Relocation Application for Getting Golden dated 3/13/06. Getting Golden Tanning Renewal Application dated 5/15/08. Returned Tanning Cover Letter dated 6/10/09. Tanning Renewal Application dated 7/14/10.
2. Jonathan Ball Cosmetology License Renewal dated 1/31/13
3. Questionnaire from Jonathan Ball dated 1/31/11
4. Return from Superior Court Case Number 217-2010-CR-00200 Jonathan Ball
5. Terms and Conditions of Adult Probation for Jonathan Ball dated 2/10/11
6. Fine Letter from Lynda Elliott to Jonathan Ball dated 9/29/00
7. Shop Inspection form dated 9/12/01
8. Letter from Lynda Elliott to Jonathan Ball dated 9/28/01. Shop Inspection Form dated 9/12/01. Newspaper Advertisement of Avalon The Salon. Certified Mail Return Receipts.
9. Shop Inspection Form dated 9/17/02
10. Shop Inspection Form dated 1/23/03
11. Shop Inspection Form dated 9/24/03
12. Shop Inspection Form dated 4/8/04
13. Shop Inspection Form dated 9/8/06

14. Shop Inspection Form dated 6/29/07
15. Shop Inspection Form dated 2/29/08
16. Shop Inspection Form dated 8/23/11

The Board has the authority to grant cosmetology licenses. See RSA 313-A:12. On July 15, 1998, the Board granted the Respondent a license to practice cosmetology in the State of New Hampshire. The Respondent holds cosmetology license #9108. 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. Respondent holds shop license #1893 for Getting Golden.

The Board employs inspectors. See RSA 313-A:21. At least twice a year, the inspectors are "to enter and make reasonable examination and inspection of any salon ... during business hours for the purpose of ascertaining whether or not the administrative rules of the board and the provisions of this chapter are being observed." See RSA 313-A:21, I and III. If the inspector finds violations, the inspector may impose administrative fines. See RSA 313-A:8, XVII; 313-A:22, III; Bar 404.09; Bar 404.10. For each inspection, the inspector must file a written report of his/her findings. See RSA 313-A:21, I.

Holly Rodrigues ("Ms. Rodrigues"), Board Chair, recused from the case to conduct an investigation of the allegations set forth in the complaint, testified regarding her investigation. Ms. Rodrigues interviewed the Respondent, Robert Cook, Melanie Stewart, Kelly Olson, Officer Jason Defina of the Hooksett Police Department, and Anna Haley. Ms. Rodrigues testified that the Board office received a fax on January 31, 2011 with question number 1 ("Have you even been convicted of any felony or misdemeanor, other than a traffic violation, which has not been

annulled by a court?") circled "No". Ms. Rodrigues testified her investigation revealed the Respondent was convicted of indecent exposure and lewdness, RSA 645:1, on January 20, 2011. Respondent was also convicted of possession of child sexual abuse images (victim under 18) RSA 629-A:3 on August 2, 2011 and for a violation of probation on September 20, 2011. Ms. Rodrigues testified that the Respondent was required by his Probation/Parole Office to have an approved chaperone while at work. Only three individuals, Melanie Stewart, Steven Oulighan, and Ronata Harmon, were approved by PPO. Ms. Rodrigues' investigation further revealed Melanie Stewart has had to leave Getting Golden for various appointments during her chaperone time. When this happens, Robert Cook chaperones the Respondent, or the Respondent leaves the salon if someone under the age of 18 enters the salon.

Kelly Olson ("Ms. Olson"), Respondent's Probation/Parole Officer testified she was assigned Jonathan Ball's case in January of 2011. Ms. Olson testified she informed the Respondent verbally that he could not be alone in the presence of a minor under 18 without a chaperone approved by her. The only chaperones she approved were Melanie Stewart, Steven Oulighan, and Ronata Harmon. Ms. Olson further testified she was very clear in her verbal instructions to the Respondent and if someone was chaperoning that she did not approve, it would constitute a probation violation. Ms. Olson also testified she violated the Respondent's probation in August 2011 for internet use. Respondent completed 30 days in jail.

#### **Rebuttal to Hearing Counsel's Case**

Respondent's Counsel ("Counsel") through the witness questions, indicated that the shop renewal was faxed to the Board office by someone other than the Respondent. Counsel also indicated the questionnaire was not dated and could have been filled out prior to the actual conviction date. Counsel further indicated that Ms. Olsen did not have any signed documentation

to verify she had given any instruction regarding who could and could not chaperone the Respondent during work hours. Ms. Olson had also indicated that she had not violated his probation in 2012 even though she had found him working without an approved chaperone.

Respondent testified that his conviction was due to an encounter with another adult male and a girl he was told was over the age of 18 and also the adult males' girlfriend. Respondent testified that he does not have any children as clientele, nor does he have any sexual desires towards children. Respondent further testified that the child sexual abuse images were one or two photos within thousands of images downloaded as part of a male adult pornography download, which he did not personally download.

Respondent also testified that someone else sent in his renewal without his knowledge. Respondent stated he never filled out the questionnaire because he wished to speak to his counsel first. Respondent testified that he would not lie to the Board as he has been in cosmetology for his entire life and his license is his life and passion. Respondent has not had any violations or issues, with the Board or the police department, while the Board's investigation was ongoing for over a year.

Respondent testified about his relationship with the complainant Anna Haley. Ms. Haley had been an employee of Getting Golden, apprenticing for cosmetology under the Respondent's instruction. Ms. Haley was terminated from the shop on August 19, 2011. Respondent testified he believed Ms. Haley stole from the shop and filed a police report against her. Respondent also testified he believed Ms. Haley altered her apprentice hour sheets to make it appear she had completed more hours than she actually did.

### **Findings of Fact**

The Board took into consideration all exhibits and testimony. The Board found witnesses

Angie LaFond and Lance Messenger to be forthright and credible. The Board also found Holly Rodrigues to be forthright, credible and reliable. The Board did however find there to be discrepancies between Respondent's testimony and the testimony of Holly Rodrigues and Kelly Olson. Respondent proposed nine (9) Findings of Fact. Numbers one through three granted, four through six denied due to conflicting testimony, seven through nine granted. The Board also took into consideration four Rulings of Law submitted by the Respondent, one, two and four granted, 3 denied due to conflicting testimony.

The Board does not find the Respondent an immediate risk to children or the public. However, due to the conviction of a sexual offense and the close physical contact necessary in cosmetology services, the Board finds certain restrictions need to be in place to protect the public. The Board also finds there were several sanitation violations and expired licenses and/or tanning registrations at facilities owned by the Respondent over a span of many years. The Board finds Respondent responsible for the \$210.00 fine imposed on August 23, 2011.

### **Rulings of Law**

The Board makes the following rulings of law:

1. The Board may undertake disciplinary proceedings against its licensees. See RSA 313-A:22. If the Board finds sufficient misconduct pursuant to subsection II, it may impose disciplinary action pursuant to subsection III. See RSA 313-A:22.
2. Respondent was convicted of indecent exposure and lewdness, RSA 645:1, on January 20, 2011.
3. Respondent was also convicted of possession of child sexual abuse images (victim under 18) RSA 629-A:3 on August 2, 2011.
4. Respondent pleaded chargeable to a violation of probation on September 20, 2011.
5. Respondent was assessed a fine of \$210.00 on or about August 23, 2011 for sanitation violations.

## DISCUSSION AND CONCLUSION

The Board has authority to undertake disciplinary action against a licensee, after a hearing and a finding that the licensee has been convicted of a felony or any offense involving moral turpitude or misconduct that poses a threat to public health or safety. RSA 313-A:22; Bar 402.01. The Board finds the above Rulings of Law to be true.

## DISCIPLINARY ACTION

**THEREFORE, IT IS ORDERED**, that the Respondent license shall be restricted for a period of five (5) years. During this period, the Respondent is prohibited from taking any appointments with children under the age of 18 for any purpose relative to cosmetology. Respondent may petition the Board to end the restricted period after one full renewal cycle of his personal cosmetology license without incident or violation.

**IT IS FURTHER ORDERED**, that during the period the license is restricted, the Respondent shall not have any unsupervised contact with children under the age of 18 for any professional purpose relative to cosmetology. The Respondent shall have a trained chaperone that has been certified by a sex offender counselor anytime a minor is present at his place of employment.

**IT IS FURTHER ORDERED**, that the Respondent shall provide a fitness to practice evaluation from a sex offender counselor on a yearly basis during the period the license is restricted.

**IT IS FURTHER ORDERED**, that the Respondent shall pay the \$210.00 fine assessed on August 23, 2011 to the Board within 90 days of the effective date of the order in a single payment by certified bank check or postal money order payable to the "Treasurer State of NH". Failure to pay these fines shall additional legal/collection proceedings including court proceedings necessary to enforce this obligation. The Board may a court of appropriate jurisdiction 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 failure to comply with any term of the conditions imposed by this Order shall constitute a basis for further disciplinary action against the licensee.

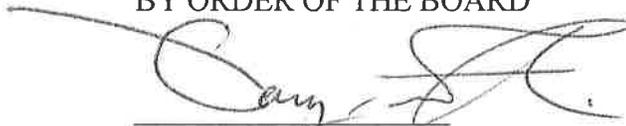
**IT IS FURTHER ORDERED**, that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

**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.

Date

9/9/2013

BY ORDER OF THE BOARD



Gary Trottier  
Board Vice Chairperson