

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES<sup>1/</sup>  
BUREAU OF HEALTH SYSTEM REGULATION  
DIVISION OF MEDICAL QUALITY ASSURANCE

EXAMINING BOARD FOR BARBERS, HAIRDRESSERS, AND COSMETICIANS

Joeseph Luca, M.B.  
License No. 002531  
85 Windsor Avenue  
Meriden, CT 06450

Petition No. 940311-25-003

MEMORANDUM OF DECISION

DECISION

The Examining Board For Barbers, Hairdressers, and Cosmeticians finds in favor of the Petitioner and orders (1) Mr. Joseph Luca, M.B., to pay a two thousand dollar (\$2000.00) civil penalty and (2) Master Barber License No. 002531 is revoked.

PROCEDURAL BACKGROUND:

The Department of Public Health and Addiction Services (hereinafter "Department" or "Petitioner") presented the Connecticut Examining Board for Barbers, Hairdressers, and Cosmeticians ("Board") with a Statement of Charges brought against Joseph Luca, Master Barber ("Respondent"), dated May 19, 1994. (Department Exhibit 1). The First Count of the Statement of Charges alleged that the Respondent failed to

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<sup>1/</sup> This agency was previously known as the Department of Health Services. Effective July 1, 1993, the Department of Health Services merged with the Connecticut Alcohol and Drug Abuse Commission to form the new Department of Public Health and Addiction Services. Public Act. 93-381.

comply with the terms of probation ordered by the Board in Petition No. 930504-25-001. The Second Count asserts that the Respondent is habitually addicted to narcotics and/or other habit forming drugs in violation of Connecticut General Statutes §20-238.

The Department served a Notice of Hearing and Statement of Charges on the Respondent and on counsel for the Respondent by certified mail, return receipt requested. (Department Exhibit 1). The Respondent stipulated that he received a full and adequate opportunity to show compliance with all statutes and regulations applicable to his profession prior to the administrative hearing. (Transcript 9/12/94 pp. 10-11; Department Exhibit 2). The Respondent did not file an Answer.

An administrative hearing was scheduled for and held on September 12, 1994. (Department Exhibit 1). The Respondent appeared at the hearing with his attorney, Paula J. Waite. Staff Attorney Preston Ruddell represented the Department. Board Member Amy Cobuzzi recused herself from the hearing upon the Respondent's request. (Transcript 9/12/94 pp. 3-4). Board Member Cobuzzi did not participate in the Board's decision.

During the hearing, the Department orally amended the Statement of Charges to (1) correct a typographical error in the identification of the Attachments to Department Exhibit 1, and (2) correct the dates specified in Paragraph 7 of the Second Count from 1990 to 1987. (Transcript 9/12/94 pp. 18-19, 41).

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 and the Regulations of Connecticut State Agencies §19-2a-1, et seq. All Board members involved in this decision attest that they have either heard the case or read the record in its entirety.<sup>2/</sup> This decision is based entirely on the record, the statutes, and the specialized professional knowledge of the Board.

FINDING OF FACT:

1. The Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut master barber license number 002531. (Department Exhibit 1).
  
2. The Board entered a Memorandum of Decision in Petition No. 871113-20-023 on or about February 25, 1991, revoking Respondent's hairdresser and cosmetician license based upon its specific findings that he used his salon to store cocaine, receive telephone calls regarding the sale of cocaine, and/or to sell cocaine. (Department Exhibit 1, Attachment B).

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<sup>2/</sup> After closing statements by both parties, the Respondent requested that the copies of the exhibits that were provided to members of the Board be returned to Atty. Ruddell or to Atty. Waite after the Board's decision has been made. (Transcript 9/12/94). The Petitioner's position was that Board Members needed access to exhibits during the deliberation and took no position as to the disposition of the materials other than in the context of the pending proceeding. (Transcript 9/12/94 pp. 49). The Board deferred its ruling at that time and the hearing was concluded. The Board denied the Respondent's request.

3. The Board entered a Memorandum of Decision in Petition No. 910109-25-001 on or about September 30, 1991, revoking Respondent's master barber license based upon its specific finding and the Respondent's stipulation that he is addicted to or dependent on cocaine. (Department Exhibit 1, Attachment C).
4. In a Memorandum of Decision on Reinstatement Request, Petition No. 930504-25-001, dated September 20, 1993, the Board reinstated the Respondent's master barber license to probationary status for a period of five (5) years. (Department Exhibit 1, Attachment D).
5. As provided in Department Exhibit 1, Attachment D, the terms of the probation imposed by the Board include the following:
  - A) That the Respondent submit to monthly random urine and/or blood screens for alcohol and drugs;
  - B) That all alcohol and drug screens be legally defensible with identification of the specimen donor and chain of custody maintained;
  - C) That monthly reports of such screens be sent to the Board;
  - D) That his licensed therapist at the West Haven Veterans Administration Medical Center (hereinafter the "VA") submit monthly reports to the Board documenting Respondent's drug-free status, emotional health, and ability to administer safe master barber care;
  - E) That the Respondent provide a copy of the Memorandum of Decision on Reinstatement Request to all employers, and

that each employer notify the Board in writing as to receipt of the same;

- F) That his supervisor submit quarterly reports documenting Respondent's ability to safely and competently practice as a master barber.

- 6. The Respondent failed to comply with the terms of his probation as ordered by the Board in Petition No. 930504-25-001 in that:
  - A) He failed to submit all required legally defensible monthly urine and/or blood screens for alcohol and drugs;
  - B) He failed to take all reasonable steps to arrange for such screens;
  - C) He failed to take all necessary steps to ensure that monthly reports of such screens were submitted to the Board and/or the Department;
  - D) He failed to engage in therapy for alcohol and/or drug abuse and/or dependency;
  - E) He failed to take all reasonable steps to ensure that monthly therapy reports were submitted to the Board and/or the Department; and
  - F) He failed to take reasonable steps to ensure that his employer submit quarterly supervisor reports to the Board and/or the Department.

- 7. The Board ordered that the Respondent submit alcohol and drug screen reports beginning on or before November 15, 1993. (Department Exhibit 1, Attachment E).

8. The Respondent's first drug screen report was submitted to the Department for the period March of 1994. (Department Exhibit 1, Attachment I8).
9. A drug screen report regarding a drug screen in April 1994 was admitted into evidence; however, the name of the patient on the report is Joel O'Neill. (Department Exhibit 1, Attachment I10). No evidence was offered as to relevance of this report. The submitted report was not on the Respondent.
10. A drug screen report on the Respondent was received by the Department covering the month of May 1994. (Department Exhibit 1, Attachment I12).
11. Only three drug screen reports were offered by the Respondent or received by the Department; only two appear to be on the Respondent.
12. Lynne Hurley was a special investigator with the Department whose duties include monitoring probation requirements.
13. On January 5, 1994, the Respondent called the Department and spoke with Ms. Hurley concerning the VA's unwillingness to perform drug screens on him.

14. On or about January 5, 1994, Ms. Hurley informed the Respondent that if he was having a problem with the VA, then he should document that fact in writing and send it to the Department directly or through his attorney and request a modification of the Board's order. (Department Exhibit 1, Attachment H1). No such request for modification was received by the Department.
15. The Respondent failed to document that he was regularly receiving therapy for alcohol and/or drug abuse and/or dependency as ordered by the Board.
16. The Respondent documented that he was receiving "PTSD" group therapy which the January 7, 1994 letter indicates was for individuals with post traumatic stress disorder which causes "sleep disturbances of daily reminders of war traumas." (Department Exhibit 1, Attachment I1: January 7, 1994 letter; see also Department Exhibit 1, Attachment I2: March 18, 1994 letter; Department Exhibit 1, Attachment I12: June 3, 1994 letter; Respondent Exhibit E: July 28, 1994 letter; and Respondent Exhibit C: September 9, 1994 letter.
17. The Respondent was employed by Classic Hair Design in Meriden, Connecticut. (Department Exhibit 1, Attachment F1-F2).
18. The Respondent's employer informed the Department that he had received a copy of the Memorandum of Decision on Reinstatement Request and that he was the Respondent's only employer at that time. (Department Exhibit 1, Attachment F1-F2).

19. The Respondent's employer sent to the Department two supervisor reports concerning the Respondent. (Department Exhibit 1 - Attachment I7: March 10, 1994 letter; and Department Exhibit 1 - Attachment I11: May 16, 1994 letter.
20. The Respondent's employer did not submit quarterly reports.
21. The Department alleged that the Respondent is habitually addicted to narcotics and/or other habit-forming drugs, and has used to excess and/or abused the same as recently as 1990, in violation of Connecticut General Statutes §20-238.
22. The Respondent was addicted to cocaine in 1987. (Department Exhibit 1, Attachment N).
23. The Respondent failed to offer credible evidence that he is no longer addicted to cocaine or successfully completed a rehabilitation program or therapy since the Board finding of habitual addiction under Petition 910109-25-001.
24. The Respondent claimed that he was confused about the instructions and could not force third parties to cooperate in submitting reports or test results.
25. The Respondent did not make reasonable efforts to ensure that certain third persons assisted him in complying with the terms and conditions of probation by submitting specific reports or test results.

26. The order of probation is not confusing, ambiguous or infirm as to the obligations of the probationer, here the Respondent.

27. There was no restrictions in the Board's earlier order on where the legally defensible monthly urine and/or blood screens for alcohol and drugs could be done.

CONCLUSIONS OF LAW:

- A. The Board has continuing jurisdiction over a probationer whose continued practice as a master barber licensee is conditioned upon compliance with certain terms and conditions.
- B. When the Board finds that a licensee is habitually addicted to cocaine, the Board has authority to impose drug testing and remedial therapy as terms and conditions of probation necessary to protect the public health.
- C. When the Board finds that a licensee is habitually addicted to cocaine, the Board has authority to require that notice of the Board's decision and probation conditions be given to employers to protect the public health.
- D. Violation of an order of probation is grounds for termination of probation, and the reinstatement of an order of license revocation.

- E. The Respondent violated the terms and conditions of probation when he failed to submit to drug testing and remedial therapy.
- F. The Respondent violated the terms and conditions of probation when he failed to take reasonable actions to cause the reports of drug testing or remedial therapy to be submitted by third persons to the Department.

DISCUSSION:

The gravamen of the Petitioner's complaint is that the Respondent failed to comply with the terms and conditions of an order of probation previously entered by the Board. The parties stipulated as to the earlier action and the terms and conditions of probation. (Department Exhibit 2 and references therein to Department Exhibit 1). There is no controversy as to the earlier proceeding nor the Board's decision related to it.

The Board found that the Department presented substantial evidence to prove subparagraphs A, B, C, D, and E of Paragraph 5 of the First Count. The Board finds that the Respondent failed to submit to monthly urine and/or blood screens for alcohol and drugs, failed to take all reasonable steps to arrange for such screens, and failed to ensure that monthly reports of such screens were submitted to the Board and/or the Department, and failed to take all reasonable steps to ensure that monthly therapy reports were submitted to the Board and/or the Department.

The Respondent claimed that he was confused about what his obligations were under the probation order. The Board did not find the Respondent's argument nor testimony persuasive. Nor did the Board find credible the testimony that the Veterans Administration refused to cooperate with the Respondent to meet the probation requirements. As to the alcohol and drug test, the Respondent could have made alternate arrangements to comply with the terms and conditions of probation once he discovered or believed that the Veterans Administration refused to cooperate (assuming in fact that they did). No restriction was placed on the Respondent that he could only use the Veterans Administration to meet the probation requirements, save the counseling reports.

The Board found that the Department did not provide sufficient evidence to support a finding under Subparagraphs F and G of the Paragraph 5 of the First Count, but they did find sufficient evidence as to Subparagraph H of Paragraph 5 of the First Count. The Respondent did notify one employer as required by the probation order. However, he failed to take all reasonable steps to ensure that quarterly supervisor reports were submitted to the Board and/or the Department.

Because the Respondent failed to comply with the Board's order, the Respondent violated Connecticut General Statutes §20-238 . Based upon the foregoing, the Board found that the Department offered substantial evidence to prove Paragraphs 6, 7 and 8 of the Second Count.

The Department sustained its burden of proof with respect to all Paragraphs of the Second Count. As to the earlier hearing, the Board found credible the evidence that the Respondent was or had been habitually addicted to cocaine. The Respondent failed to offer credible evidence to demonstrate that he was no longer so addicted. The Respondent is found, therefore, to have violated Connecticut General Statutes §20-238.

ORDER

Pursuant to the authority vested in it by Connecticut General Statutes §19a-17 and §20-238, the Examining Board for Barbers, Hairdressers, and Cosmeticians hereby orders that:

1. Master barber license number 002531, held by Joseph Luca, is revoked and that the licensee must surrender said license not later than thirty (30) days after this order is effective; and
2. The Respondent pay over to the Department a civil penalty of two thousand dollars (\$2,000.00) by certified check, payable to "Treasurer, State of Connecticut" and sent to Bonnie Pinkerton, Nurse Consultant, Department of Public Health, 150 Washington Street, Hartford, Connecticut 06106, within thirty (30) days of the effective date of this Order; and

3. The charges in Subparagraphs F and G of Paragraph 5 of the First Count be dismissed; and
4. This Order is effective upon the signature of the Board Chairperson.

Connecticut Examining Board for Barbers,  
Hairdressers, and Cosmeticians

  
by: Reno Pelletier, Chairperson

Date: 9-11-95