

THE IOWA BOARD OF BARBERING AND COSMETOLOGY

IN THE MATTER OF:

DIAL NO. 25DBBC0001

CASE NO. CO 21-0071

SHELBY ANN KELLUM,
License No. 015083

Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

INTRODUCTION

The Iowa Board of Barbering and Cosmetology Arts and Sciences (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Ms. Shelby Ann Kellum (Respondent) on August 22, 2024, pursuant to Iowa Code §§ 17A.12(2), 17A.18(3), 272C.3(1)(e), and Iowa Administrative Code rule 645-11.4. The Statement of Charges alleged two counts. *See* Iowa Admin. Code r. 645-11.5(17A).

First, Respondent allegedly practiced outside the scope of the profession in providing eyelash services in violation of Iowa Administrative Code r. 645—25.2(4). Second, Respondent allegedly practiced outside the scope of the profession in providing medical esthetics services without being under the supervision of a medical director in violation of Iowa Administrative Code r. 645—25.2(4) and r. 653—13.8. Proper service was obtained over Respondent by certified mail, restricted delivery on August 30, 2024. (Return of Service).

The formal hearing on the merits was held in-person on November 18, 2024, at the Department of Inspections, Appeals, and Licensing office, 6200 Park Avenue, Ste. 100, Des Moines, Iowa 50321. Respondent did not appear and was not represented. *Cf.* Iowa Admin. Code r. 645-11.19(3)(17A,272C) (“Any party may be represented by an attorney at the party's own expense.”).

The hearing was open to the public pursuant to Iowa Code § 272C.6(1) (“Notwithstanding chapters 17A and 21 a disciplinary hearing shall be open to the public at the discretion of the licensee.”). *See also* Iowa Admin. Code r. 645-

11.19(10)(17A,272C) (“The hearing will be open to the public unless the licensee requests that the hearing be closed.”). Iowa Assistant Attorneys General Jessica Chandler and David Merchan represented the public interest of the State of Iowa. The following Board members presided at the hearing: Cynthia Hummel, Board Chair; Jeremy Kemp, Board Member; Ashley Haack, Board Member; and Andrew Oswald, Board Member. Administrative Law Judge Forrest Guddall assisted the Board in conducting the hearing. The proceedings were recorded.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code § 21.5(1)(f), to deliberate its decision. Finally, by unanimous vote, the Board instructed the administrative law judge to draft the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the following Exhibits, as follows:

1. Exhibit 1 – Complaint.
2. Exhibit 2 – Investigative Report.
3. Exhibit 3 – Investigative Report Attachments.

Additionally, Respondent did not object to admission of the record pursuant to Iowa Code §§ 17A.12(6) and 17A.14. Ms. Kimberly Groves, a former investigator for the Board, testified at the hearing.

FINDINGS OF FACT

Respondent Kellum has been licensed by the Board since May 2, 2013. (Record, p. 27).¹ In 2021, Respondent had a Barber’s license (No. 015083). Respondent did not have a Cosmetologist’s license at that time.²

¹ Although there are exhibits of varying lengths, the exhibits are also consecutively paginated in the bottom center of each page. In order to cite to the record accurately, reference will be to the specific record page number, rather than to the specific exhibit number.

² Respondent’s license is now for both barbering and cosmetology pursuant to IA LEGIS 99 (2023), 2023 Ia. Legis. Serv. Ch. 99 (H.F. 652) Sec. 50(8)(WEST) (“A person licensed as a barber as of July 1, 2023, shall be considered to be a person licensed to practice barbering and cosmetology and shall be issued a license to

On or about March 12, 2021, the Board received a complaint against Respondent. (Record, p. 1). The complaint asserted Respondent was advertising to perform a medical procedure, specifically performing lip-filler services with a needleless pen. The complaint alleged that Respondent was practicing medicine without a license because the lip-filler service involved high-pressure injections of the filler into a client which could cause arterial and vascular occlusions. A concern was raised about where the filler substance was obtained and what it contained – a medical license was allegedly required to obtain hyaluronic acid (the substance purported to be the filler, or at least a component of the filler). The complaint also claimed that any medication used to dissolve the filler was only available to those with a medical license and could only be performed by medical providers. Finally, the dosage of filler advertised was inaccurate and could allegedly lead to necrosis or tissue death due to circulatory compression.

On March 31, 2021, an investigation into the complaint was opened by the Iowa Department of Inspections and Appeals (now Iowa Department of Inspections, Appeals, and Licensing). (Record p. 3). Investigator Groves was assigned the investigation.

On April 26, 2021, Groves interviewed Respondent to inquire about the lip-filler service and the eyelash service issue arose. At the time, Respondent was in the business of applying eyelashes to clients while renting a chair or space a salon. Respondent called her enterprise “Shelby’s Lashes.” Although the salon owner was a licensed cosmetologist, Respondent was not. Respondent stated she was certified to apply eyelashes and had been doing so for approximately two years. Respondent stated she was informed by another barber that she could apply eyelashes as long as she was certified. Moreover, Respondent claimed that others applied eyelashes with only a certification, but not a cosmetology license. Respondent planned to continue her eyelash work at another salon in the future

practice barbering and cosmetology upon the expiration of the person's barbering license.”). Previously, the licensure distinction for barbering and cosmetology had existed for decades. *See e.g., Green v. Shama*, 217 N.W.2d 547, 557 (Iowa 1974) (“Defendant's argument overlooks the fact both barbers and cosmetologists are separately licensed and regulated.”).

because the current salon where she rented space was closing. Respondent also indicated she would be conducting minimal barbering in the future.

Regarding the original complaint, Respondent acknowledged she had provided lip-filler services for two customers. Respondent also acknowledged that she used a needleless pen for the procedure using hyaluronic acid. She purchased the filler product online. Although she was certified in the lip-filler procedure, Respondent agreed to not provide this service again until she heard from the Board. (Record p. 4). Respondent provided Groves copies of her certifications for “Basics of Individual Eye Lash Extensions” and “Hyaluron Pen Training.” (Record pp. 13-14).

On April 30, 2021, Groves interviewed the salon owner. The salon owner stated the following: she was closing her salon soon; she rented space to Respondent; she trained Respondent to apply eyelashes; Respondent provided eyelash services as “Shelby’s Lashes;” she thought Respondent was a barber; and she did not know whether a barber could apply eyelashes. (Record p. 4).

The foregoing investigative facts were established at the disciplinary hearing. In fact, Respondent did not appear in order to contest the investigatory findings, to supplement the record, or to offer mitigating circumstances. At the conclusion of the hearing, the State requested a civil penalty as a deterrent to Respondent.

The Board moved to go into closed session for deliberations pursuant to Iowa Code § 21.5(1)(f), the motion was seconded, and the motion was carried unanimously by the Board after a name roll call vote. The Board deliberated in closed session. Following deliberations, the Board returned to open session by another unanimous vote. Finally, the Board unanimously approved a motion for the administrative law judge to draft a decision, consistent with the Board’s deliberations in closed session, for the Board.

CONCLUSIONS OF LAW

I. Jurisdiction and Authority for the Board.

Generally, the Board has broad power to address disciplinary matters involving licensees pursuant to Iowa Code § 272C.3, including, but not limited to the following:

1. Notwithstanding any other provision of this chapter, each licensing board shall have the powers to:
 - a. Administer and enforce the laws and administrative rules provided for in this chapter and any other statute to which the licensing board is subject. . . .
 - c. Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the board, alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline.
 - d. Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted. . . .
 - e. Initiate and prosecute disciplinary proceedings.
 - f. Impose licensee discipline. . . .

Iowa Code § 272C.3(1)(a), (c)-(f). Likewise, the Board's imposition of licensee discipline is similarly broad pursuant to Iowa Code § 272C.3(2) (permitting revocation, suspension, or probation of a license; requiring additional licensee education; and imposition of civil penalties upon a licensee, *inter alia*).

The Board's authority is also commensurate to the purpose of this administrative proceeding. Iowa Code § 17A.1(3) ("The purposes of this chapter are: . . . to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; . . . [and] to increase the fairness of agencies in their conduct of contested case proceedings[.]").

The board may conduct an investigation as needed to determine whether probable cause exists to initiate the proceedings described in this subsection. Before issuing an order or citation under this section, the board shall provide written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted as provided in chapter 17A. The board may, in

connection with a proceeding under this section, issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

Iowa Code § 157.13(4)(b). *See also* Iowa Admin. Code r. 645-25.2(272C) (“The board may impose any of the disciplinary sanctions provided in rule 645-25.3(152A,272C) when the board determines that any of the following acts or offenses have been committed[.]”). Accordingly, the Board has subject matter jurisdiction and legal authority to adjudicate this disciplinary matter.

Here, the Board issued a Notice of Hearing and Statement of Charges, pursuant to Iowa Admin. Code r. 645-11.5(17A), to initiate this administrative proceeding. Service of the Notice and Statement of Charges on Respondent was made by restricted certified mail on August 30, 2024. Accordingly, the Board has obtained personal jurisdiction over Respondent for purposes of this administrative proceeding. Finally, it appears the State served Respondent with a copy of its witness list, exhibit list, and copies of the exhibits by email on or about November 12, 2024.

II. Count I and II – Practicing Outside the Scope of License.

The Statement of Charges alleged that Respondent practiced outside the scope of the profession by providing eyelash services without proper licensure, in violation of Iowa Administrative Code r. 645—25.2(4):

The board may impose any of the disciplinary sanctions provided in rule 645-25.3(152A,272C) when the board determines that any of the following acts or offenses have been committed: . . .
Practice outside the scope of the profession.

Additionally, the Statement of Charges alleged that Respondent practiced outside the scope of the profession in providing medical esthetics services without being under the supervision of a medical director in violation of Iowa Administrative Code r. 645—25.2(4) and r. 653—13.8.

“The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or

certified nonphysician persons . . . if the service has been delegated by a medical director who is responsible for supervision of the services performed at a medical spa in Iowa.” Iowa Admin. Code r. 653-13.8(2)(148,272C).

“Medical director” means a physician who assumes the role of, or holds oneself out as, medical director at a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons . . . at a medical spa. The medical director is ultimately responsible for all medical aesthetic services performed by qualified licensed or certified nonphysician persons . . . at a medical spa.

“Medical spa” means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. . . .

“Qualified licensed or certified nonphysician person” means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another health- or skin care-related licensing board in Iowa and is qualified to perform delegated medical aesthetic services under the supervision of a qualified supervising physician at a medical spa.

“Supervision” means the oversight of qualified licensed or certified nonphysician persons . . . who perform medical aesthetic services delegated by a medical director.

Iowa Admin. Code r. 653-13.8(1)(148,272C).

Here, the salon where Respondent performed eyelash and lip-filler services is a “medical spa.” Even if the actual salon was not considered a medical spa, Respondent held herself out as such an entity given her social

media posts offering those services. (Record p. 34). The services are “medical aesthetic services.” *Id.* (“‘Medical aesthetic service’ means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails . . . by any means, methods, devices, or instruments[.] . . . Medical aesthetic service includes, but is not limited to, the following services: . . . injectables; tissue alteration services[.]”). Although Respondent had certifications for the services or procedures at issue, there is no evidence that Respondent was properly licensed as a cosmetologist at the time. Likewise, there is no evidence that Respondent was “supervised” by a “medical director.” The Respondent merely rented space from a salon owner and there is also no evidence, at least on this record, that the salon owner was a “medical director.”

Respondent only had a barbering license at the time of the investigation – she did not have a cosmetology license. The barbering license was much more limited in 2021:

1. “Barbering” means the practices listed in this subsection performed with or without compensation. “Barbering” includes but is not limited to the following practices performed upon the upper part of the human body of any person for cosmetic purposes and not for the treatment of disease or physical or mental ailments:
 - a. Shaving or trimming the beard or cutting the hair.
 - b. Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand, or by electrical or mechanical appliances.
 - c. Singeing, shampooing, hair body processing, arranging, dressing, curling, blow waving, hair relaxing, bleaching or coloring the hair, or applying hair tonics.
 - d. Applying cosmetic preparations, antiseptics, powders, oils, clays, waxes, or lotions to scalp, face, or neck.
 - e. Styling, cutting or shampooing hairpieces or wigs when done in conjunction with haircutting or hairstyling.

Iowa Code § 158.1(1) (2021). The eyelash and lip-filler services were outside the scope of Respondent’s licensure in 2021 and constitute violations.

“Any license issued by the department under the provisions of this chapter may be suspended, revoked, or renewal denied by the board for violation of any provision of this chapter or rules promulgated by the board under the provisions of chapter 17A.” Iowa Code § 157.9. “A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence that may or would be inadmissible in a jury trial.” Iowa Admin. Code r. 645-11.20(7)(17A). “The burden of proof is a preponderance of the evidence.” *Sahu v. Iowa Bd. of Med. Examiners*, 537 N.W.2d 674, 677 (Iowa 1995) (citation omitted). The State’s interest bears the burden of proof in this matter.

Mindful of the foregoing principles of law, the Board finds the following violations by a preponderance of the evidence. Respondent performed eyelash services with only a barbering license, and not while licensed as a cosmetologist. Further, Respondent performed lip-filler cosmetic procedures using hyaluronic acid without supervision by medical director. These violations constituted a danger to the public and disciplinary action is warranted under the relevant statute and administrative rule the relevant statutes and administrative rules, specifically Iowa Administrative Code r. 645—25.2(4) and r. 653—13.8. Accordingly, Respondent is subject to discipline for the foregoing reasons.

III. Sanctions.

The next issue in this case is determining an appropriate sanction.

The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

Iowa Admin. Code r. 645-25.3(158,272C).

The following factors were considered by the Board in this matter:

The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

Iowa Admin. Code r. 645-25.4(272C).

It is noted that Respondent has not, at least on this record, ever had a prior complaint lodged against her. Further, Respondent acknowledged she performed the eyelash and lip-filler services – she did not deny, obfuscate, or hide her conduct during the investigation. Finally, Respondent agreed to cease the lip-filler procedures pending direction from the Board. Thus, the Board finds an outright suspension or revocation of Respondent’s license too severe a sanction in this situation.³

³ It is also noted that some of the sanctions are simply inapplicable, e.g. physical, mental, or drug screening.

On the other hand, a mere citation and warning or probation sanction is insufficient, especially given that the lip-filler procedure was given it the practice of medicine without proper licensure or proper medical supervision. Potential tissue necrosis resulting from a lip-filler procedure and the protection of the public demands more. (Record p. 46). Respondent also did not contact the Board for clarification on the contours of her licensure before administering these services or procedures – rather, it appears she just assumed her barbering license and certifications were sufficient.

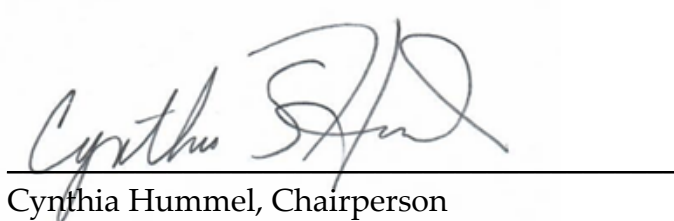
The State's interest requested a civil penalty be imposed. The Board has determined that a civil penalty is warranted. Further, a prohibition on the lip-filler procedures against Respondent is necessary. Ultimately, the Board believes protection of the public can be maintained by imposition of a \$1,000.00 civil penalty for each of the two violations for a total of \$2,000.00 payable within 90 days of the date of this decision. Additionally, the Board requires Respondent to complete two hours of continuing education in the areas of Iowa law and infection control. "Licensee discipline shall not be imposed except upon the affirmative vote of a majority of the licensing board." Iowa Code § 272C.6(5). The Board is unanimous in these sanctions.

Finally, the Board notes that Respondent's reprieve from more serious disciplinary measures here, e.g. license revocation, should deter any future violation. Iowa Admin. Code r. 645-25.3(158,272C). Respondent should recognize this disciplinary matter may serve to increase or exacerbate any sanction(s) if there is any future disciplinary action taken by the Board against Respondent.

DECISION AND ORDER

IT IS THEREFORE ORDERED, for violations of Iowa Administrative Code r. 645—25.2(4) and r. 653—13.8, the Board issues Respondent civil penalties for the two violations in the total amount of \$2,000.00, payable within 90 days of the date of this order. Further, the Board prohibits Respondent from providing lip-filler services by use of a needleless hyaluronic acid pen, or similar means, indefinitely without proper licensure and medical supervision. Finally, the Board orders Respondent to complete two hours of continuing education in the areas of Iowa law and infection control within 90 days of the date of this order.

Dated this 17th day of February, 2025.

A handwritten signature in dark ink, appearing to read "Cynthia Hummel", is written over a horizontal line. The signature is stylized with a large, looped initial "C" and a large, looped initial "H".

Cynthia Hummel, Chairperson
Iowa Board of Barbering and Cosmetology

cc: Shelby Ann Kellum, Respondent
Jessica Chandler, David Merchan, Iowa Assistant Attorneys General

Application for Rehearing

Any party to a contested case proceeding may file an application for rehearing from a final order. Iowa Admin. Code r. 645-11.25(1)(17A). An application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision. Iowa Admin. Code r. 645-11.25(7)(17A). The application for rehearing will state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether the applicant requests an opportunity to submit additional evidence. Iowa Admin. Code r. 645-11.25(2)(17A). The application will be filed with the board within 20 days after issuance of the final decision with a copy mailed to all parties. Iowa Admin. Code r. 645-11.25(4)-(5)(17A). See <https://dial.iowa.gov/licenses/barbering-cosmetology/licensure> for contact information.

A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceedings, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding. A written request to present additional evidence must be filed with the application for rehearing or by a nonappealing party within 14 days of service of the notice of appeal.

Iowa Admin. Code r. 645-11.25(3)(17A).

Appeal on the Merits

“Any appeal to district court from a decision in a contested case will be taken within 30 days from the date of issuance of the decision by the board pursuant to Iowa Code section 17A.19.” Iowa Admin. Code r. 645-11.29(17A).