

**BEFORE THE
STATE BOARD OF BARBERING AND COSMETOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Citation Against:

KARLA L. STEVENS and CRAIG
STEVENS dba KARLA'S FAMILY SALON,

Establishment License No. A 193020

and

KARLA STEVENS,

Cosmetologist License No. KK 169732

Appellants.

Case No. CF 2010 106028

OAH No. 2011090708

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on March 15, 2012. in Bakersfield, California.

William Gardener, Deputy Attorney General, represented complainant. Karla Stevens and Craig Stevens dba Karla's Family Salon appeared personally and represented themselves. Evidence was received and the matter was submitted. The Administrative Law Judge makes the following factual findings, legal conclusions and order.

FACTUAL FINDINGS

1. On September 30, 1986, the Board issued Cosmetologist License No. KK-169732 to Karla Stevens. The license is in full force and effect.
2. On December 11, 1996, the Board issued Establishment License No. A 193020 to Karla and Craig Stevens dba Stevens Family Salon (appellants). The license is in full force and effect.

3. On July 15, 2010, a Board inspector conducted an inspection of the licensed facility. The inspector observed and noted numerous regulatory violations in her report.

4. On August 11, 2010, the Board of Barbering and Cosmetology (Board) issued Citation No. CF 2010 106028 to appellants. The citation was revised on August 26, 2010. The revised citation alleged that appellants violated the following sections of title 16 of the California Code of Regulations:

(1) section 978, subdivision (a)(5), in that appellants failed to insure that the disinfectant solution was sufficient for total immersion of instruments (appellants were assessed a \$100 fine for this violation);

(2) section 979, subdivision (c), in that appellants failed to keep the soiled non-electrical instruments (hair instruments) in a properly labeled receptacle (appellants were assessed a \$100 fine for this violation);

(3) section 979, subdivision (d), in that appellants failed to keep the clean non-electrical instruments (disinfected tweezers) in a properly labeled receptacle (appellant Karla Stevens signed a statement of correction for this violation);

(4) section 981, subdivision (a), in that appellants did not dispose of instruments and supplies (wax sticks) that cannot be disinfected (appellants were assessed a \$100 fine for this violation).

(5) section 985 in that appellants did not use a sanitary neck strip or towel on a patron (appellant Karla Stevens signed a statement of correction for this violation);

(6) section 988, subdivision (a), in that appellants failed to insure that a cosmetic (wax) was properly stored in a clean, closed container (appellant Karla Stevens signed a statement of correction for this violation); and

(7) section 988, subdivision (c), in that appellant failed to remove a cosmetic (used wax stick) from a container of wax, causing the remaining wax to be contaminated (appellants were assessed a \$100 fine for this violation).

5. Appellants filed the appeal on August 12, 2010.

6. On February 20, 2011, the Disciplinary Review Committee of the Board (Committee) held a hearing attended by appellant Karla Stevens. After the hearing, the Committee issued a decision affirming six of the seven allegations in Citation No. CF 2010 106028. The Committee found that there was insufficient evidence to establish a violation of regulation section 978, subdivision (a)(5). The Committee affirmed all other alleged violations in the citation. However, the Committee reduced the assessed fines from \$100 to \$50 for the noted violations of sections 979, subdivision (c), 981, subdivision (a), and 988, subdivision (c). Appellants filed an appeal of the Committee's decision.

7. At the outset of the hearing, complainant moved to strike the alleged violations of regulation section 979, subdivisions (c) and (d). Further, appellant Karla Stevens submitted a written statement indicating that she has made all of the corrections for the alleged violations where the Board indicated that such a written statement would resolve alleged violations of regulation sections 985 and 988, subdivision (a). Since these alleged violations have been resolved, the undersigned will not address them in this proposed decision. Therefore, the only alleged violations that remain at issue are sections 981, subdivision (a), and 988, subdivision (c).

8. A. In their opening statement, appellants requested that the case be dismissed alleging that the Board: (1) abused its discretion by unreasonably conducting the inspection; (2) violated appellants' procedural due process; (3) failed to properly consider the inspector's unlawful disciplinary action; (4) changed referenced evidence supporting one allegation and used this evidence to support another allegation; (5) based findings of fact on insufficient reasoning; (6) misapplied rules; and (7) committed errors of law.

B. Appellants' motion to dismiss the matter is denied. Even if appellant Karla Stevens and the Board inspector had a somewhat confrontational inspection, the issue that is to be addressed in this case is whether appellants violated Board regulations. In this regard, appellants were allowed to present evidence, including the testimony of appellant Karla Stevens, asserting that the inspector was biased and acted inappropriately during the inspection. Further, appellants were given the opportunity in this hearing to address and dispute the allegations in the citation. Finally, appellant had the opportunity in this hearing to dispute the factual findings and reasoning of Committee's decision and to present their interpretation of the relevant regulations and statutes applicable to facts of this case.

9. The evidence in this case established that appellant Karla Stevens failed to dispose of a wax stick immediately after she used it, in violation of regulation section 981, subdivision (a). In addition, appellant Karla Stevens, after using a wax stick on a customer, placed the wax stick back into the container of wax, in violation of regulation section 988, subdivision (c). This finding is based on the testimony of the Board inspector and the photos in exhibit 3, page AGO 50.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 7406, et seq., the Board has authority to issue citations and assess administrative fines for the violation of any provision of the Barber and Cosmetology Act and the rules and regulations adopted by the Board.

2. Cause exists to affirm in part Citation No. CF 2010 106028 under Business and Professions Code section 7404 subdivision (c) and (d), for violating California Code of Regulations, title 16, sections 981, subdivision (a) and (d), 988, subdivision (c), as set forth in Factual Finding 9.

3. Cause exist to order appellant to pay a total administrative fine of \$100, which includes a \$50 assessment for violating regulation section 981, subdivision (a), and a \$50 assessment for violating regulation section 988, subdivision (c).

4. Cause exists to dismiss the parts of Citation No. CL 2010 106028 that alleges violations of California Code of Regulations, title 16, sections 978, subdivision (a)(5), 979, subdivisions (c) and (d), 985, and 988, subdivision (a).

ORDER

1. Citation No. CF 2010 106028 is affirmed in part. Appellants are hereby ordered to pay an administrative fine of \$100 to the Board of Barbering and Cosmetology for violating California Code of Regulations, title 16, sections 981, subdivisions (a), and 988, subdivision (c). Payment of the administrative fine is to be made within 30 days of the effective date of this decision.

2. The portion of Citation No. CF 2010 106028, which alleges violations of California Code of Regulations, title 16, sections 978, subdivision (a)(5), 979, subdivisions (c) and (d), 985, and 988, subdivision (a), is dismissed.

DATED: April 10, 2012

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings