ORIGINAL

BEFORE THE BOARD OF BARBER EXAMINERS

STATE OF IDAHO

In the Matter of the Licenses of:	)	
	)	Case No. BAR-2005-2
F. DAVID MILNER,	)	
License No. B-3213, Owner,	)	**STIPULATION AND**
PAPA'S BARBER SHOP,	)	**CONSENT ORDER**
License No. BS-221501,	)	
	)	
Respondent.	)	
	)	

BAR\Milner\P5194lsa

WHEREAS, information having been received by the Idaho State Board of Barber Examiners (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against F. David Milner, Owner, Papa's Barber Shop (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of barbering and the operation of barber shops in the State of Idaho in accordance with title 54, chapter 5, Idaho Code.

2. Respondent F. David Milner is a licensee of the Idaho State Board of Barber Examiners and holds License No. B-3213 to practice barbering and License No. BS-221501 to operate a barber shop in the State of Idaho. Respondent's licenses are subject to the provisions of title 54, chapter 5, Idaho Code.

3. On or about January 24, 2005, an investigator from the Bureau of Occupational Licenses entered Papa's Barber Shop in Hayden, Idaho, and discovered an unlicensed person, Rebecca Crowe, practicing barbering. Respondent was present in the

barber shop at the time.

4. The above-stated allegations, if proven, would constitute a violation of the laws governing the practice of barbering, specifically Idaho Code §§ 54-516(7) and 54-519(2). Violations of these laws would further constitute grounds for disciplinary action against Respondent's licenses to practice barbering and to operate a barber shop in the State of Idaho.

5. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his licenses as set forth in Section C below.

B.

I, F. David Milner, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my licenses to practice barbering and to operate a barber shop in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of barbering and the operation of barber shops in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my licenses without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall pay to the Board an administrative fine in the amount of Four Hundred and No/100 Dollars ($400.00) within thirty (30) days of the entry of the Board's Order.

2. Respondent shall pay investigative costs and attorney fees in the amount of Three Hundred and No/100 Dollars ($300.00) within thirty (30) days of the entry of the Board's Order.

3. Respondent's Licenses No. B-3213 and BS-221501 shall be placed on probation for a period of one (1) year. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of barbering and the operation of barber shops in the State of Idaho.

b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

c. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

e. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or its agents.

4. At the conclusion of the one-year probationary period, Respondent may request from the Board reinstatement of Licenses No. B-3213 and BS-221501 without

restriction. Any request for reinstatement must be accompanied by written proof of compliance with the terms of this Stipulation. The Board retains discretion to grant reinstatement of Respondent's licenses or to deny reinstatement and continue the period of probation.

5. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

6. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a

violation of Idaho Code § 54-516. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

> I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed,

the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 20th day of July, 2005.

F. David Milner
Respondent

I concur in this stipulation and order.

DATED this ~~20th~~ 26th day of ~~July~~ July, 2005.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By
Kenneth F. Stringfield
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-521, the foregoing is adopted as the decision of the Board of Barber Examiners in this matter and shall be effective on the 30th day of August, 2005. **IT IS SO ORDERED.**

IDAHO STATE BOARD
OF BARBER EXAMINERS

By
acting, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2005, I caused to be served a true and correct copy of the foregoing by the following method to:

F. David Milner Papa's Barber Shop 868 Hayden Avenue Hayden, ID 83835	☒ U.S. Mail ☐ Hand Delivery ☒ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☐ Statehouse Mail
Kenneth F. Stringfield Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	☐ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☒ Statehouse Mail

Rayola Jacobsen

Rayola Jacobsen, Chief
Bureau of Occupational Licenses