

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF BARBER EXAMINERS

In the Matter of Vincent Harris,  
  
License No. P-1687

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for prehearing conference before Administrative Law Judge Steve M. Mihalchick at 1:30 p.m., on Friday, July 11, 1997, at the offices of the Board of Barber Examiners, Suite 335, 1885 University Avenue, St. Paul, Minnesota 55104. Louis Hoffman, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Complaint Committee of the Board of Barber Examiners ("the Board"). Vincent Harris, ("Respondent"), 1157 Lincoln, St. Paul, Minnesota 55106, did not appear and no one appeared on his behalf. The record closed on July 29, 1997, upon receipt of the a jurisdictional document.

This Report is a recommendation, not a final decision. The Board of Barber Examiners will make the final decision after a review of the record and may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Maureen Tibbetts, Executive Secretary, Board of Barber Examiners, Suite 335, 1885 University Avenue West, St. Paul, Minnesota 55104, telephone: 612/642-0489, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUES**

The issue in this contested case proceeding is whether disciplinary action should be taken against the occupational registration of the Respondent pursuant to Minn. Stat. § 151.161 (1996) for practicing barbering without a current certificate of registration.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. The Board served a Notice of and Order for Prehearing Conference on Respondent on June 2, 1997, by mailing that document to 1157 Lincoln, Minneapolis,

Minnesota 55106, which is an incorrect address for Respondent. Despite the incorrect address, the Notice was signed for and received by Respondent.

2. The Notice alleges that “Respondent practiced barbering without a current certificate of registration as a registered barber.” Notice of and Order for Prehearing Conference and Hearing, at 2. The Notice of and Order for Prehearing Conference and Hearing served on the Respondent contained the following informational notice in the paragraph ordering the prehearing conference:

Respondent is hereby urged to attend. Failure to do so may prejudice his rights in this matter and may result in the allegations contained herein being taken as true and may be the basis for disciplinary action against Respondent’s license.

*Id.* at 1.

3. Respondent did not attend the prehearing conference and no one appeared on his behalf. Neither the Board nor the Judge have had any communication from Respondent regarding this matter.

4. Because Respondent failed to appear at the prehearing conference in this matter, he is in default. Pursuant to Minn. Rule 1400.6000, the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

5. Taking action against Respondent’s registration is in the public interest.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Board and the Administrative Law Judge have jurisdiction herein and authority to take the action proposed pursuant to Minn. Stat. §§ 14.50 and 154.161 (1996).

2. The Board gave proper notice of this hearing and has fulfilled all relevant substantive and procedural requirements of law and rule. The failure to mail the Notice to Respondent’s correct address was cured by Respondent’s actual receipt of the Notice.

3. The Board has the authority to take disciplinary action against registered barbers, including Respondent, under Minn. Stat. §§ 154.161, subd. 4 (1996).

4. Respondent is in violation of Minn. Stat. § 154.01(a) for practicing barbering without a current registration, Minn. Stat. § 154.15 for failing to renew his certificate of registration annually, Minn. Stat. § 154.161. subd. 4(1) for violating statutes the Board is authorized to enforce, and Minn. Stat. § 154.161. subd. 4(18) for failing to promptly renew a certificate of registration when remaining in practice.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED that the Board take disciplinary action against the barber registration of Vincent Harris.

Dated: August 5, 1997.

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STEVE M. MIHALCHICK  
Administrative Law Judge

## **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

## **MEMORANDUM**

Respondent is in default and therefore the facts alleged in the Notice of and Order for Prehearing Conference and Hearing can be deemed established. The only evidence in the Notice supporting a finding regarding the certificate is that Respondent's certificate had expired. One of the allegations is that Respondent engaged in the "willful failure to display a certificate of registration as required by section 154.14." The cited statute requires holders of a certificate to display it near their chairs where work is performed. Minn. Stat. § 154.14. Respondent does not hold a certificate of registration and therefore cannot willfully fail to display that certificate.

The Notice also contains the charge that Respondent "Violated any provisions of Minnesota Statutes section 154.01, in violation of Minnesota Statutes section 154.19(1)." Notice of and Order for Prehearing Conference and Hearing, at 2. The violation alleged there is a misdemeanor and beyond the jurisdiction of the Administrative Law Judge and the Board to determine. In all other respects, the Board has alleged violations of statutes that support taking adverse action against Respondent's barber registration.

S.M.M.