

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Complaint of

**DEPARTMENT OF STATE  
DIVISION OF LICENSING SERVICES,**

Complainant,

**DECISION**

-against-

**JOHN P. COCKCROFT**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 18, 1996 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The respondent, of RD3 Box 377, Oneonta, New York 13820, was represented by Richard Allan Rothermel, Esq., 48 Dietz Street, Suite E, Oneonta, New York 13820.

The complainant was represented by Supervising License Investigator Michael Coyne.

**COMPLAINT**

The complaint alleges that the respondent has been convicted of endangering the welfare of a minor, and has thereby demonstrated untrustworthiness as a cosmetologist.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on August 10, 1995 (State's Ex. 1).

2) The respondent is, and has been since at least July 1, 1987, a duly licensed cosmetologist (State's Ex. 2).

3) On July 6, 1995 the respondent was convicted on his plea of guilty to a charge of endangering the welfare of a child, Penal Law §260.10, a class A misdemeanor. The plea was in satisfaction of both an information charging him with that crime, and a felony complaint charging him with sodomy in the third degree, Penal Law §130.40[2], a

class E felony (State's Ex. 3). He was granted a Certificate of Relief From Disabilities by the sentencing judge on January 17, 1996 (Resp. Ex. A).

4) The events which resulted in the respondent's arrest and conviction were as follows:

For approximately ten years the respondent had lived with his friend Donna and her son.<sup>1</sup> On or about the morning of November 12, 1994 the respondent walked past the son's bedroom and saw a fourteen year old boy named Ryan, a friend of Donna's son, who had slept over the night before, apparently asleep in the son's bedroom. He observed that Ryan had an erection, entered the room, and placed Ryan's penis in his mouth. This occurred several times during the early morning. Ryan was actually awake at the time, but pretended to be asleep, and only later told his mother what had happened.

The respondent has never before or since engaged in such sexually abusive conduct, and has no other criminal record.

5) After his arrest, but prior to his conviction, the respondent voluntarily sought professional help. He completed an extensive program of treatment on December 18, 1985, and now follows a prescribed plan to help him avoid falling into the state of mind in which he was at the time of the crime, and he continues to meet with his therapist periodically for checkups.

#### OPINION

In considering whether the license should be revoked or suspended, it is not necessary to consider the provisions of Correction law Article 23-A, which "by its terms applies only to the 'application' for a license by a person previously convicted of a crime...; it has no bearing on disciplinary proceedings against persons already licensed." Mosner v Ambach, 66 AD2d 912, 410 NYS2d 937, 938 (1978); Matter of Glucksman, 57 AD2d 205, 394 NYS2d 191 (1977); Pisano v McKenna, 120 Misc.2d 536, 466 NYS2d 231 (Supreme Ct. Oneida County, 1983). Nor does the issuance of the Certificate of Relief From Disabilities deprive the Department of State of its discretion in considering what effect, if any, to give the conviction. People v Honeckman, 125 Misc2d 1000, 480 NYS2d 829 (Supreme Ct. NY County, 1984).

It has been held that crimes such as that which the respondent committed may serve as the basis to deny or revoke a license to practice the related field of barbering. For example, where a barber had a history of sexually abusing young boys in his barber shop and presented insufficient evidence of successful treatment, the application for renewal of his license was denied. Matter of the

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<sup>1</sup> Since the events in question the respondent and Donna have married, and they and her son continue to live together.

Application of Oster, 92 DOS 95. In another case, a barber was convicted of the statutory rape of a girl who came to his barber shop (the decision is unclear as to whether the rape occurred in the shop), and then attempted to shift some of the blame to the victim, and his license was revoked. Division of Licensing Services v Antinore, 64 DOS 90. In yet another case, an applicant for registration as a barber apprentice was convicted of the statutory rape of a patient in a mental hospital and did not disclose the conviction on his application, and it was found that his crime was not an isolated incident, with the result that his application was denied. Matter of the Application of Winn, 74 DOS 88. This case is, however, substantially different.

The evidence establishes that the events which led to the respondent's conviction were an aberration. The respondent has no history of sexual misconduct, and no other criminal record. He readily and openly admits to having committed the crime, and has accepted the full blame for his actions. In addition, the events occurred in the respondent's home, not in a shop.

The respondent voluntarily sought professional help almost immediately after the crime. He very soon entered into treatment with Dr. Richard Millard Hamill. Dr. Hamill, who holds a Ph.D. in psychology from the State University of New York at Albany, is clearly an expert in the treatment of sexual offenders. He is employed as a psychological consultant to the sexual abuse prevention service at St. Anne's Institute. He directs a private practice group of ten therapists, Forensic Mental Health Associates, which focuses on the treatment of adult sex offenders, and in that capacity has evaluated approximately 2700 sex offenders. Since 1993 he has also been a consultant to the American Bar Association in a program called "Children and the Law," in which he provides training on, among other things, the issue of sexual abuse. He also provides training to judges regarding sexual abuse on behalf of the Office of Court Administration, is a trainer in the law guardian program of the Third Judicial Department, is a vice president of the American Professional Society on the Abuse of Children, and has served on several sex abuse task forces in the Capital District.

According to Dr. Hamill, the respondent was "an exemplary client" (transcript, p. 21). He testified that the respondent was honest and straightforward, highly motivated, and sought out extra assignments in the treatment program. The respondent was "minimally defensive" (transcript, p. 22) when confronted by uncomfortable issues and actively sought to resolve them. He was diligent, motivated, and worked with unusual perseverance. He appreciated the harm which he caused and continually expressed his remorse. He was graduated from the treatment program only after the staff determined that he had met the criteria established by the Association for the Treatment of Sexual Abusers. While according the standards of the American Psychological Association Dr. Hamill may not say that a person is at no risk of re-offending, he testified that he and his associates consider that there

is an exceptionally low risk of the respondent re-offending, and that in his opinion there is no reason to think that the respondent would pose a risk to the clientele where he works.

Supportive of Dr. Hamill's conclusion is the fact that the respondent, with the help and encouragement of his wife, now follows a continuing "safety plan" designed to both avoid the unusual stress which appears to have led to the crime and to alert him to signs that he is in danger of re-offending. He understands that should such signs appear he can and should be in contact with Dr. Hamill.

Several other witnesses, women who work with and know the respondent, testified to observing how diligently the respondent applied himself to the treatment program, and commented very favorably on the changes in his demeanor as his treatment progressed.

In his testimony, which appeared credible and sincere, the respondent expressed his deep regret for what happened and his intention to see to it that such a thing does not happen again. He has offered to pay for treatment for Ryan, but Ryan's mother has not accepted the offer.

Under these particular circumstances, where the respondent poses no apparent risk to persons patronizing the shop in which he works, it would be unfair, and would serve no purpose, to revoke the respondent's license and deny him the opportunity to support himself and his family.

#### **CONCLUSIONS OF LAW**

The complainant has failed to establish by substantial evidence that the respondent has demonstrated untrustworthiness as a cosmetologist, and the complaint should be dismissed. State Administrative Procedure Act §306[1].

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the charge that John P. Cockcroft demonstrated untrustworthiness as a cosmetologist is dismissed.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier  
Administrative Law Judge

Concur and So Ordered on:

ALEXANDER F. TREADWELL  
Secretary of State  
By:

Michael E. Stafford, Esq.  
Chief Counsel