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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

| | | |
|-------------------------------|---|----------------|
| IN THE MATTER OF DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | FINAL DECISION |
| | : | AND ORDER |
| JENNIFER R. FLOTTMEIER, | : | LS0607172BAC |
| RESPONDENT. | : | |

Division of Enforcement Case No. 03BAC081

The State of Wisconsin, Barbering and Cosmetology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Barbering and Cosmetology Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 2nd day of April, 2007.

Jeannie M. Bush
Member of the Board
Barbering and Cosmetology Examining Board

**STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**PROPOSED DECISION
Case No. LS0607172BAC**

**JENNIFER R. FLOTTMEIER,
RESPONDENT.**

Division of Enforcement Case No. 03 BAC 081

PARTIES

The parties in this matter under Wis. Stats. § 227.44 and for purposes of review under Wis. Stats. § 227.53 are:

Jennifer R. Flottmeier
5821 Gables Place
Eau Claire, WI 54701

Jennifer R. Flottmeier
1619 Kilbourn Avenue
Tomah, WI 54660

Jennifer R. Flottmeier
1010 S. 20th Street
LaCrosse, WI 54601

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing and Complaint on July 17, 2006. The hearing was held on October 23, 2006. Atty. Lara M. Herman appeared on behalf of the Division of Enforcement. The respondent, Jennifer R. Flottmeier, did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

Based upon the record herein, the Administrative Law Judge recommends that the Barbering and Cosmetology Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Jennifer R. Flottmeier (dob: 5/25/82) is licensed as a barbering and cosmetology practitioner in the State of Wisconsin having license #082-81408. This license was first granted on November 22, 2002 and is current through June 30, 2007. Ms. Flottmeier also holds a State of Wisconsin barbering and cosmetology manager's license, #081-30691, which was granted on August 30, 2005 and is current through June 30, 2007.

2. Ms. Flottmeier has two addresses on file with the Department of Regulation and Licensing: 1619 Kilbourn Avenue, Tomah, Wisconsin 54660 and 1010 S. 20th Street, LaCrosse, Wisconsin 54601.

3. At all times relevant to this action, Ms. Flottmeier was the owner of Little Hawaii Tanning and Full Service Salon ("Little Hawaii"), a barbering and cosmetology establishment that was licensed in Wisconsin from August 22, 2003 until the establishment license (#80-31402) expired on June 30, 2005.

4. In February 2004, Michelle Krisher, an Investigator with the Department of Regulation and Licensing, conducted an unannounced inspection of Little Hawaii. During the inspection, Ms. Flottmeier told Ms. Krisher that Jennifer Sobkowiak, Rachel Snell, Jessica (Johnson) Smith and Carolyn Reisinger all worked at the salon, and that Ms. Reisinger was the manager of the salon.

5. At the time the establishment license was granted to Little Hawaii, Carolyn Reisinger was listed as the manager of record for the salon. She functioned as the salon manager of Little Hawaii for approximately two months after the establishment opened. During that two-month period when Ms. Reisinger was acting as the salon manager, she worked only on Wednesdays and Fridays.

6. At the time of the inspection, Ms. Sobkowiak, Ms. Snell, Ms. (Johnson) Smith and Ms. Reisinger held current barbering and cosmetology credentials. However, Investigator Krisher observed that no licenses were posted in the salon for Ms. Sobkowiak, Ms. Snell, Ms. (Johnson) Smith or Ms. Reisinger. The inspection also revealed that neither a list of the cost of services nor a sign informing patrons of their right to be informed of the cost of the services was posted in the salon.

7. As a result of the inspection, Ms. Krisher prepared a Compliance Inspection Report and issued a Notice of Compliance, which contained an Order to Correct. The Order to Correct state that the following items had to be corrected by February 26, 2004:

1. Post the list of cost of services.
2. Post certificate for Jennifer Sobkowiak.
3. Post licenses of Rachel Snell, Carolyn Reisinger and Jessica (Johnson) Smith. Provide the Department with credential number.

Ms. Flottmeier failed to comply with the requirements set forth in the Order to Correct.

8. The establishment license for Little Hawaii expired on June 30, 2005. In July 2005, an Investigator with the Department of Regulation and Licensing telephoned Little Hawaii posing as a potential customer to schedule an appointment for a "highlight" service. During the telephone conversation, the Investigator determined that the salon was still operating despite the expired establishment license. The Investigator was told that the salon was open seven days a week from 8:00 a.m. to 7:00 p.m., Monday through Friday; 8:00 a.m. to 5:00 p.m. on Saturday, and from 8:00 a.m. to 3:00 p.m., on Sunday. The cost of a highlight service was quoted as \$60.00.

9. Ms. Flottmeier was granted a manager's license on August 30, 2005. Little Hawaii closed its doors and ceased operating in November 2005.

10. As the owner of Little Hawaii, Ms. Flottmeier was, at all times relevant to this action, responsible for compliance with Wis. Stats., ch. 454 and Wis. Adm. Code BC chs. 2 and 3.

11. Ms. Flottmeier did not file an Answer to the Complaint filed in this matter, and did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Barbering and Cosmetology Examining Board has jurisdiction in this matter pursuant to Wis. Stats., § 454.08 and 454.15.

2. Respondent, by operating Little Hawaii with an expired establishment license from July 1, 2005 to some point in November 2005, violated Wis. Stat. § 454.08 (1) (b) and Wis. Adm. Code § BC 2.045 (1).

3. Respondent, by operating Little Hawaii without a licensed manager from approximately October 2003 to August 30, 2005; by failing to notify the Department that Little Hawaii was operating without a manager, and by failing to insure that Ms. Reisinger worked full-time at Little Hawaii when acting as the salon manager, violated Wis. Adm. Code §§ BC 2.06 (5) and 3.02 (1).

4. Respondent, by failing to insure that either a list of costs of services or a sign informing patrons of their right to be informed of the cost of services before they are provided was posted in the salon, violated Wis. Adm. Code § BC 2.05 (2).

5. Respondent, by failing to insure that all licenses were posted in the salon, violated Wis. Adm. Code § BC 2.07 (2).

6. Respondent, by failing to respond to and comply with the Order to Correct contained in the Notice of Compliance, which was issued at the time of the inspection on February 19, 2004, violated Wis. Adm. Code § BC 3.05 (3).

7. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under Wis. Adm. Code § RL 2.14.

ORDER

NOW, THEREFORE, IT IS ORDERED that the barbering and cosmetology practitioner license (#082-81408) and the barbering and cosmetology manager license (#081-30691) of Jennifer R. Flottmeier be, and hereby are, REVOKED.

IT IS FURTHER ORDERED that pursuant to Wis. Stats. § 440.22, the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a designee of the Barbering and Cosmetology Examining Board.

OPINION

I. Procedural History

This matter was commenced by the filing of a Notice of Hearing and Complaint on July 17, 2006. The hearing was held on October 23, 2006. Atty. Lara M. Herman appeared on behalf of the Division of Enforcement. The respondent, Jennifer R. Flottmeier, did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

II. Applicable Laws

454.08 Establishment licenses. (1) (b) Except as permitted by rule promulgated under par. (a), no person may practice barbering or cosmetology, aesthetics, electrology or manicuring in an establishment unless the establishment is licensed to provide that practice under sub. (2).

454.15 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations or conduct hearings to determine whether a person has violated this chapter or any rule promulgated under this chapter.

(2) Subject to the rules promulgated under s. 440.03 (1) and this chapter, the examining board may revoke, limit, suspend or refuse to issue or renew, in accordance with the severity of the violation, a license or permit issued under this chapter or reprimand the holder of a license or permit issued under this chapter if it finds that the holder or applicant has done any of the following:

(3) The examining board may, in addition to or in lieu of a reprimand or revocation, limitation, suspension or denial of a license or permit, assess against a person who has done any of the things under sub. (2) (a) to (i) a forfeiture of not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

BC 2.05 Advertising. (2) An establishment shall either post a list of cost of services in a conspicuous place or display a sign which states: "All establishment patrons have the right to be informed of the cost of services before the services are provided."

BC 2.06 Responsibilities of owners. The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and chs. BC 2, 3 and 4. The owner shall:

(5) In the case of an owner of a barbering and cosmetology establishment, employ a manager who shall have direct authority over the operations of the establishment. If the manager of an establishment leaves employment or becomes otherwise unavailable, an owner may continue to operate the establishment for no more than 90 days without a manager. The owner shall notify the board that the manager is no longer employed or has become otherwise unavailable within 10 days following the manager's last day of employment.

BC 2.07 Responsibilities of the manager. (2) The manager shall post all required licenses, permits and notices.

BC 3.02 Other establishment requirements. (1) Manager Required. The owner of a barbering and cosmetology establishment shall not operate the establishment unless a licensed manager has been employed for the establishment, subject to the exception for temporary unavailability of a manager in s. BC 2.06 (5). The manager shall be responsible for supervising and managing the operation of the establishment. The owner and the manager shall ensure that the establishment operates in compliance with ch. 454, Stats., and rules of the board as follows:

(a) The owner of more than one establishment shall employ a sufficient number of managers to satisfy the requirement that a manager be present full time in each establishment as defined in s. BC 1.01 (7).

(b) The owner of a barbering and cosmetology establishment may satisfy the requirement in this section by employing a manager who also works at an establishment owned by a different person, provided the manager works full time as defined

in s. BC 1.01 (7) at each establishment where he or she is employed as manager.

(c) A manager is required to be present in an establishment full time, as defined in s. BC 1.01 (7), but if an establishment is open for more than 30 hours per week, the manager is not required to be present in the establishment at all times when the establishment is open for business, and the manager may be absent for reasonable brief periods during a day.

BC 3.05 Inspections. (3) Failure to respond to a notice of violation, or to comply with a plan of correction approved by the board, is unprofessional conduct.

III. Motion for Default

The Notice of Hearing and Complaint were filed with the Administrative Law Judge on July 17, 2006. Ms. Flottmeier's Answer to the Complaint was due on August 16, 2006. To date, Ms. Flottmeier has not filed an Answer to the Complaint. She also failed to appear at the hearing held in this matter.

Wis. Adm. Code § RL 2.09 (3) and (4), read as follows:

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

In addition, Wis. Adm. Code § RL 2.14, states, in part, that if the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.

IV. Summary of Evidence Presented

Ms. Flottmeier has been licensed as a barbering and cosmetology practitioner since November 2002. She also holds a barbering and cosmetology manager's license, which was granted on August 30, 2005. Both licenses are current through June 30, 2007.

At all times relevant to this action, Ms. Flottmeier was the owner of Little Hawaii Tanning and Full Service Salon ("Little Hawaii"), a barbering and cosmetology establishment that was licensed in Wisconsin from August 22, 2003 until the establishment license expired on June 30, 2005. When the establishment license was granted to Little Hawaii, Carolyn Reisinger was listed as the manager of record for the salon. She was the manager of Little Hawaii for approximately two months. During the two-month period when Ms. Reisinger was acting as the salon manager, she worked only on Wednesdays and Fridays.

In February 2004, Michelle Krisher, an Investigator with the Department of Regulation and Licensing, conducted an unannounced inspection of Little Hawaii. During the inspection, Ms. Flottmeier told Ms. Krisher that Jennifer Sobkowiak, Rachel Snell, Jessica (Johnson) Smith and Carolyn Reisinger all worked at the salon, and that Ms. Reisinger was the manager of the salon. At the time of the inspection, Ms. Sobkowiak, Ms. Snell, Ms. (Johnson) Smith and Ms. Reisinger held current barbering and cosmetology credentials. However, Investigator Krisher observed that no licenses were posted in the salon for Ms. Sobkowiak, Ms. Snell, Ms. (Johnson) Smith or Ms. Reisinger. The inspection also revealed that neither a list of the cost of services nor a sign informing patrons of their right to be informed of the cost of the services was posted in the salon.

Exhibit 6.

As a result of the inspection, Ms. Krisher prepared a Compliance Inspection Report and issued a Notice of Compliance, which contained an Order to Correct. The Order to Correct state that the following items had to be corrected by February 26, 2004 [Exhibit 7]:

1. Post the list of cost of services.

2. Post certificate for Jennifer Sobkowiak.
3. Post licenses of Rachel Snell, Carolyn Reisinger and Jessica (Johnson) Smith. Provide the Department with credential number.

Ms. Flottmeier failed to comply with the requirements set forth in the Order to Correct.

The establishment license for Little Hawaii expired on June 30, 2005, and has not been renewed. In July 2005, an Investigator with the Department of Regulation and Licensing telephoned Little Hawaii posing as a potential customer to schedule an appointment for a "highlight" service. During the telephone conversation, the Investigator determined that the salon was still operating despite the expired establishment license. The Investigator also received information indicating that the salon was open seven days a week from 8:00 a.m. to 7:00 p.m., Monday through Friday; 8:00 a.m. to 5:00 p.m. on Saturday, and from 8:00 a.m. to 3:00 p.m., on Sunday. The cost of a highlight service was quoted as \$60.00.

Ms. Flottmeier was granted a manager's license on August 30, 2005. Little Hawaii closed its doors and ceased operating in November 2005.

As the owner of Little Hawaii, Ms. Flottmeier was, at all times relevant to this action, responsible for compliance with Wis. Stats., ch. 454 and Wis. Adm. Code BC chs. 2 and 3.

V. Appropriate Discipline

As noted previously, because Ms. Flottmeier failed to file an Answer to the Complaint and failed to appear at the hearing, she is in default under Wis. Adm. Code § RL 2.14. Therefore, the allegations contained in the Complaint are deemed admitted. The allegations contained in the Complaint, and the evidence received into the record at the hearing, establish that Ms. Flottmeier violated numerous laws relating to the practice of barbering and cosmetology.

Having found that Ms. Flottmeier violated statutes and rules relating to the practice of barbering and cosmetology, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Barbering and Cosmetology Examining Board is authorized under s. 454.15 (2), Stats., to discipline a licensee for violations of ch. 454, Stats., or any rule promulgated under the statutes. In addition, the Board is authorized under s. 454.15 (3), Stats., to assess a forfeiture of not more than \$1,000 for each violation found under s. 454.15 (2) (a)-(i), Stats.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Ms. Flottmeier's licenses to practice barbering and cosmetology be revoked based upon the evidence of record.

The Administrative Law Judge also recommends that Ms. Flottmeier's licenses to practice barbering and cosmetology be revoked. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct. Ms. Flottmeier has shown that she is incapable of practicing barbering and cosmetology in a manner that safeguards the interest of the public. Any measure short of revocation of her licenses would not provide adequate protection to the public, and would not deter other licensees from engaging in similar misconduct.

VI. Costs of the Proceeding

Wis. Stats. § 440.22(2), provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Barbering and Cosmetology Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 2nd day of February, 2007.

Respectfully submitted,

Ruby Jefferson-Moore

