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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST
JULIAN L. McKNIGHT,
RESPONDENT.
LS9412162BAC

FINAL DECISION AND ORDER

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

Julian L. McKnight
6839 North 60th Street, #204
Milwaukee, Wisconsin 53210

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

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

A hearing was held in the above-captioned matter on January 19, 1995. Attorney Steven M. Gloe appeared on behalf of the Division of Enforcement, Department of Regulation and Licensing. The respondent, Julian McKnight did not file an Answer to the Complaint and did not appear at the hearing. The Administrative Law Judge filed a Proposed Decision on April 19th, 1995. No objections to the Proposed Decision were filed by either Complainant or Respondent. The Barbering and Cosmetology Examining Board, having considered the matter on the entire file, enters the following Final Decision and Order, consisting of Findings of Fact, Conclusions of Law, and Explanation of Variance from the Proposed Decision recommended by the Administrative Law Judge.

FINDINGS OF FACT

1. Julian L. McKnight (dob 8/29/65), 6839 North 60th Street, Milwaukee, WI 53210 is duly licensed in the state of Wisconsin to practice as a barber or cosmetologist (license #71120).

2. On exact dates unknown, but during the time period beginning at least by May 18, 1994, and continuing on through at least December 13, 1994, respondent performed barbering and cosmetology services for compensation at Fade Masters, 3076 N. 34th Street, Milwaukee,

Wisconsin. During this period of time, Fade Masters did not possess a current establishment license for the practice of barbering and cosmetology.

3. On December 13, 1994, a copy of the Notice of Hearing and Complaint filed in this matter was served on the respondent by personal service at his place of employment, Fade Masters, located at 3076 N. 34th Street, Milwaukee, Wisconsin. Respondent did not file an Answer to the Complaint.

CONCLUSIONS OF LAW

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

2. The respondent, Julian L. McKnight is in default under s. RL 2.14 Wis. Adm. Code.

3. By practicing barbering or cosmetology in the manner described in Finding of Fact 2 herein, respondent violated ss. 454.08 (1) (b), and 454.15 (2) (i), Stats., and s. BC 2.04 Wis. Adm. Code.

ORDER

NOW THEREFORE, IT IS ORDERED that the respondent, Julian L. McKnight, pay a forfeiture in the amount of Two Hundred Dollars ($200.00) within 30 days of this Order.

IT IS FURTHER ORDERED that respondent is Reprimanded.

IT IS FURTHER ORDERED that respondent pay the costs of this proceeding, pursuant to s. 440.22, Stats.

This order is effective as of the date it is signed by the Barbering and Cosmetology Examining Board's designee.

EXPLANATION OF VARIANCE

The Barbering and Cosmetology Examining Board adopts the Findings of Facts and Conclusions of Law recommended by the Administrative Law Judge, but imposes a forfeiture of $200.00 rather than the $100.00 recommended by the ALJ. The forfeiture is not to be discounted by the cost to Mr. McKnight of obtaining an establishment license, as recommended by the ALJ, and the Board further orders that Mr. McKnight bear the costs of the proceeding, as provided in s. 440.22, Stats.

The purpose of professional discipline is to protect the public, rehabilitate licensees who fail to conduct their profession in accordance with the required standards, and deter other licensees from professional misconduct. The Board believes that the discipline recommended by

the ALJ fails to meet any of the purposes of professional discipline through unjustified leniency, and therefore varies the Order to more closely serve the purposes of the regulation of the barbering and cosmetology profession and the purposes of professional discipline.

The Board states that while a forfeiture is not punishment, neither is it appropriate to set the amount of a forfeiture so low that it would not cause reasonable persons to recognize that the forfeiture is supposed to be a method of correction, deterrence, and rehabilitation. Setting the sum of the forfeiture so low that no reasonable person would consider it more than a nuisance fails to meet the goal of deterrence or rehabilitation. Likewise, permitting the forfeiture to be reduced by the cost associated with applying for a license which is legally required for operation of a barbering and cosmetology establishment, when the violation at issue is practicing in an unlicensed establishment, serves only to suggest that the State will subsidize the costs of rectifying a violation so that the violator need not face the consequences alone. Finally, it is essential that the Board issue an explicit reprimand to make clear its disapproval of the conduct here.

Dated this 31st day of July, 1995.

Barbering and Cosmetology Examining Board

John Fahey
Chairman
Barbering and Cosmetology Examining Board

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

AUGUST 3, 1995.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

AFFIDAVIT OF COSTS
LS9412162BAC

JULIAN L. McKNIGHT
RESPONDENT.

STATE OF WISCONSIN
COUNTY OF DANE

Ruby Jefferson-Moore, being first duly sworn on oath deposes and states:

1. That affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. That in the course of affiant's employment she was appointed administrative law judge in the above-captioned matter. That to the best of affiant's knowledge and belief, the costs for services provided by affiant are as follows:

ACTIVITY	DATE	TIME
Preparation and Hearing	01/19/95	30 min.
Review record/law/draft decision	04/13/95	1 hr.

Total costs for Administrative Law Judge $40.72

3. That upon information and belief, the total cost for court reporting services provided by Magne-Script is as follows: N/A

Total costs for Office of Board Legal Services: $40.72

Ruby Jefferson-Moore
Ruby Jefferson-Moore
Administrative Law Judge

Sworn to and subscribed to before me
this 11th day of August, 1995

Donald R. Rittel
Notary Public
My Commission: Permanent

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST JULIAN L. McKNIGHT, RESPONDENT	: : : : :	AFFIDAVIT OF COSTS 94 CHI 034

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Steven M. Gloe, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and

3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
12/12/94	Review file; draft documents; Schedule Hearing date	2 hours 15 min.
01/19/95	Hearing preparation and attend hearing	1 hour
TOTAL HOURS		3 hours 15 min.

Total attorney expense for
3 hour and 15 minutes at $41.00 per hour
(based upon average salary and benefits
for Division of Enforcement attorneys) equals: $ 133.25

INVESTIGATOR EXPENSE

Date	Activity	Time Spent
05/18/94	Investigative stop	1 hour 30 min.
07/13/95	Investigative stop	1 hour

07/25/94	Draft Memo, case summary; Telephone call to Board advisor	1 hour	
11/21/94	Telephone call		05 min.
11/25/94	Prepare case for PIC	1 hour	
TOTAL HOURS		4 hours 35 min.	

Total investigator expense for
4 hours and 35 minutes at $21.00 per hour
(based upon average salary and benefits
for Division of Enforcement investigators) equals: $ 96.25

TOTAL ASSESSABLE COSTS **$ 229.50**

Steven M. Gloe
Attorney
Division of Enforcement

Subscribed and sworn to before me this 18th day of August, 1995.

Notary Public
My Commission is permanent.

STATE OF WISCONSIN
BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST JULIAN L. MCKNIGHT dba FADE MASTERS, RESPONDENT.	: : : : :	NOTICE OF FILING PROPOSED DECISION LS9412162BAC

TO: Julian L. McKnight,
6839 North 60th Street, #204
Milwaukee, WI
Certified Z 091 395 375

Steven M. Gloe, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Barbering and Cosmetology Examining Board by the Administrative Law Judge, Ruby Jefferson-Moore. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Barbering and Cosmetology Examining Board, Room 290, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before April 28, 1995. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Barbering and Cosmetology Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Barbering and Cosmetology Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 19th day of April, 1995.

Ruby Jefferson-Moore
Ruby Jefferson-Moore
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

PROPOSED DECISION
LS9412162BAC

JULIAN L. McKNIGHT,
dba FADE MASTERS,
RESPONDENT.

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

Julian L. McKnight
6839 North 60th Street, #204
Milwaukee, Wisconsin 53210

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

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

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on December 16, 1994. A hearing was held in the above-captioned matter on January 19, 1995. Attorney Steven M. Gloe appeared on behalf of the Division of Enforcement, Department of Regulation and Licensing. The respondent, Julian McKnight did not file an Answer to the Complaint and did not appear at the hearing.

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. Julian L. McKnight (dob 8/29/65), 6839 North 60th Street, Milwaukee, WI 53210 is duly licensed in the state of Wisconsin to practice as a barber or cosmetologist (license #71120).

2. On exact dates unknown, but during the time period beginning at least by May 18, 1994, and continuing on through at least December 13, 1994, respondent performed barbering and cosmetology services for compensation at Fade Masters, 3076 N. 34th Street, Milwaukee, Wisconsin. During this period of time, Fade Masters did not possess a current establishment license for the practice of barbering and cosmetology.

3. On December 13, 1994, a copy of the Notice of Hearing and Complaint filed in this matter was served on the respondent by personal service at his place of employment, Fade Masters, located at 3076 N. 34th Street, Milwaukee, Wisconsin. Respondent did not file an Answer to the Complaint.

CONCLUSIONS OF LAW

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

2. The respondent, Julian L. McKnight is in default under s. RL 2.14 Wis. Adm. Code.

3. By practicing barbering or cosmetology in the manner described in Finding of Fact 2 herein, respondent violated ss. 454.08 (1) (b), and 454.15 (2) (i), Stats., and s. BC 2.04 Wis. Adm. Code.

ORDER

NOW THEREFORE, IT IS ORDERED that the respondent, Julian L. McKnight, pay a forfeiture in the amount of One Hundred Dollars ($100.00), part or all of which may be reduced by any amount paid by the respondent to obtain a current establishment license.

This order is effective as of the date it is signed by the Barbering and Cosmetology Examining Board's designee.

OPINION

Mr. McKnight is licensed in Wisconsin as a barber or cosmetologist. He practices barbering or cosmetology at Fade Masters, an establishment located in Milwaukee. Fade Masters was a licensed establishment at least up until July 1, 1993, at which time the license expired. Thereafter, at least on May 18, 1994, July 13, 1994, and December 13, 1994, the establishment operated without a current license. As of the date of the hearing, no application for an establishment license had been filed with the Department of Regulation and Licensing or with the Barbering and Cosmetology Examining Board.

Having found that Mr. McKnight violated ch. 454, Stats., and s. BC 2.04, Wis. Adm. Code, 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. MacIntyre*, 41 Wis. 2d 481 (1969).

The Administrative Law Judge accepts the recommendations made by Mr. Gloe that Mr. McKnight be required to pay a forfeiture in the amount of $100.00, and that all or part of that amount be reduced by any amount paid by the respondent to obtain a current establishment license. This measure is designed to assure protection of the public and to deter other licensees from engaging in similar misconduct.

The purpose of licensing statutes is not to benefit those persons licensed to practice under the statute, but rather to protect the public by the requirement of a license as a condition precedent to practicing in a given profession. Such statutes are grounded in the state's police power to protect the public welfare through safeguarding the life, health, and property of its citizens. *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168, 188, 349 N.W. 2d 68 (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 18th day of April 1995.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge