

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY : PROCEEDINGS AGAINST : NGON MINH HO, dba : LOVELY NAILS AND NAIL CENTRAL : RESPONDENTS :	FINAL DECISION AND ORDER Case No. LS 9802123BAC DOE Case No. 97 BAC 180
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The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

Ngon Minh Ho 8261 N. 48th St Brown Deer, WI 53223	Lovely Nails 4319 W. Bradley Rd Brown Deer, WI 53223	Nail Central 4924 W. North Ave. Milwaukee, WI 53208
Barbering and Cosmetology Examining Board PO Box 8935 Madison, WI 53708-8935		Division of Enforcement PO Box 8935 Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Ngon Minh Ho (D.O.B. 02/03/64), 8261 N. 48th St., Brown Deer, WI 53223 is duly licensed as a manicurist in the state of Wisconsin (license #1895). This license was granted on May 5, 1995, based upon Mr. Ho's licensure in Florida as a manicurist.

2. On October 29, 1997, Mr. Ho's Florida manicurist license was revoked. The Florida Board of Cosmetology found that Mr. Ho had obtained his Florida license based upon false representations that he had completed required training for this license at Artistic Nail Academy, a Florida manicuring school. True and correct copies of the Florida Administrative Complaint and Final Order are attached to this Order as Exhibit A.

3. Mr. Ho did not contest the Florida action referred to in paragraph 2, above, as he did not receive notice of the proceedings. Mr. Ho contends that he attended and completed a full course of instruction at Artistic Nail Academy.

4. Lovely Nails, 4319 W. Bradley Rd., Brown Deer, WI 53223 is duly licensed in the state of Wisconsin as a manicuring establishment (license #793).

5. Mr. Ho obtained an establishment license for Lovely Nails (#793) based in part upon his representation of himself as "responsible licensee."

6. At all times relevant to this action Mr. Ho owned and operated Lovely Nails (license #793) as a manicuring establishment. As owner of Lovely Nails, Mr. Ho was responsible for compliance with ch. 454, Stats. and chapters BC 2, 3 and 4 of the Wisconsin Administrative Code.

7. On exact dates unknown, but at least on or about November 21, 1997, staff at Lovely Nails, 4319 W. Bradley Rd., Brown Deer, WI 53223, failed to provide manicuring services in a manner consistent with safe, basic and accepted practice, in that manicuring instruments and equipment were not disinfected between customers, nor were manicuring instruments that were not disinfected disposed of after one use.

8. Nail Central, 4924 W. North Ave., Milwaukee, WI 53208 is duly licensed in the state of Wisconsin as a manicuring establishment (license #1106).

9. Mr. Ho obtained an establishment license for Nail Central (#1106) based in part upon his representation of himself as "responsible licensee."

10. In resolution of these proceedings, Mr. Ho consents to entry of the following Conclusions Of Law and Order.

CONCLUSIONS OF LAW

By the conduct referred to above, Ngon Minh Ho is subject to disciplinary action against his manicurist license, pursuant to sec. 454.15(2), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Within one (1) month of the effective date of this Order, Mr. Ho shall present documentation to the Bureau of Business Licensure and Regulation, PO Box 8935, Madison, WI 53708 that he has made arrangements for an educational equivalency evaluation with a licensed school of barbering and cosmetology or manicuring.

2. Mr. Ho shall complete the educational equivalency evaluation within three (3) months of the effective date of this Order and submit documentation to the Bureau of Business Licensure and

Regulation of completion of the evaluation, together with proof of his registration with Continental Testing Service [Tel. (800) 359-1313] for the examination for a manicurist's license.

3. Within six (6) months of the effective date of this Order, Mr. Ho shall present documentation of successful completion of the examination for a manicurist's license in the state of Wisconsin.

IT IS FURTHER ORDERED that:

4. By no later than twelve (12) months from the effective date of this Order, Ngon Minh Ho shall pay to the Department of Regulation and Licensing a forfeiture of TWO HUNDRED dollars (\$200.00). *Payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to:*

Michelle Neverman
Department Monitor
Division of Enforcement
Post Office Box 8935
Madison, WI 53708.

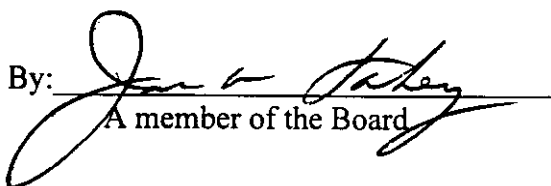
5. In the event that Mr. Ho fails to timely comply with the terms of this Order as set forth above, the manicurist license of Mr. Ho (#1895) **SHALL BE SUSPENDED**, without further notice or hearing, until Mr. Ho has complied with the terms and requirements of this Order.

a. Pursuant to the authority of Wis. Admin. Code ch. RL 3, Mr. Ho is **ENJOINED** and **PROHIBITED** from practice as a manicurist in this State without a current and unsuspended license.

b. Respondent is hereby notified that a violation of this paragraph may result in a forfeiture of up to \$10,000 for each offense, and each day of a continued violation constitutes a separate offense.

This Order shall become effective upon the date of its signing.

WISCONSIN BARBERING AND COSMETOLOGY BOARD

By: 
A member of the Board

6/11/98
Date



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Lawton Chiles
Governor

Richard T. Farrell
Secretary

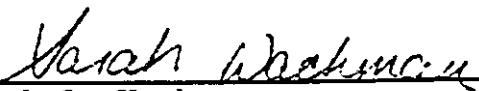
CERTIFICATION

I, Sarah L. Wachman, Agency Clerk and Custodian of Records, HEREBY certify the following to be true and correct as on file with the Florida Department of Business and Professional Regulation.

Attached is a true and correct copy of the Final Order, including the Administrative Complaint, issued in case number 97-07148, as maintained by the Department of Business and Professional Regulation. The attached is a regularly received and retained record of the Florida Department of Business and Professional Regulation v. Ngon Minh Ho, and is received and retained in the ordinary course of business of the Florida Department of Business and Professional Regulation;

As the Agency Clerk and Custodian of Records, I am the keeper of the seal and certify that the seal affixed to this document is the true seal for the Florida Department of Business and Professional Regulation.





Sarah L. Wachman
Agency Clerk

AGENCY CLERK
OFFICE OF THE GENERAL COUNSEL
NORTHWOOD CENTRE - 1940 NORTH MONROE STREET - TALLAHASSEE, FLORIDA 32399-2217
TELEPHONE (850) 921-0342 - FAX (850) 488-5761 - TDD 1-800-955-5771

Exhibit A

Personally appeared before me, the undersigned authority, Sarah L. Wachman, Department Agency Clerk and Custodian of Records, Department of Business and Professional Regulation, who being sworn, says that the fixed seal is the official seal of the Department of Business and Professional Regulation, a state agency.

Sarah Wachman

Sarah L. Wachman
Agency Clerk

STATE OF FLORIDA
COUNTY OF LEON

Before me, personally appeared, Sarah L. Wachman, whose identity is personally known to me as Department Agency Clerk, and who, acknowledges that her signature appears above.

Sworn and Subscribed to, before me this 13th day of January, 1998.

Notary Public-State of Florida

Carolyn C. Cannon
Type or Print Name



CAROLYN C. CANNON
MY COMMISSION # CC434170 EXPIRES
January 19, 1999
BONDED THRU TROY FAIR INSURANCE, INC.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF COSMETOLOGY

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
Petitioner,

vs.

CASE NO 97-07148

HO, NGON MINH

Respondent.

ADMINISTRATIVE COMPLAINT

NOW COMES the Petitioner, Department of Business and Professional Regulation, hereafter referred to as "Petitioner", and files this Administrative Complaint before the Board of Cosmetology against HO, NGON MINH, hereafter referred to as "Respondent", and alleges:

1. Petitioner is the state agency charged with regulating the practice of cosmetology and cosmetologists pursuant to Section 20.165, Florida Statutes, and Chapters 455 and 477, Florida Statutes.
2. At all times material hereto, Respondent has been a licensed cosmetologist in Florida; specifically, a licensed nail specialist, having been issued license number FV-0532777.
3. Respondent's last known address is: 7110 SW 117 AVE
MIAMI, FL 33183.
4. Respondent has signed an application stating that Respondent had completed the required training offered by the Artistic Nail Academy, Inc., of North Miami Beach, Florida.
5. The president of the Artistic Nail Academy thereafter submitted the application to the Board of Cosmetology for processing on behalf of the Respondent.
6. The Board of Cosmetology processed the application and subsequently issued the Respondent a nail specialist's license.
7. The Board of Cosmetology relied on the information and representations contained in the application when it issued the nail specialist's license to the Respondent.
8. The Respondent did not complete the training as required by Chapter 477, Florida Statutes.
9. The owners of the Artistic Nail Academy have admitted to the Petitioner that the Respondent never attended any classes nor completed any of the training offered by the Artistic Nail Academy, Inc.

COUNT I

105

10. Section 477.029(1)(e), Florida Statutes, states that it is unlawful for any person to give false or forged evidence to the department in obtaining a license from the Board of Cosmetology.

11. Based on the foregoing paragraphs, Respondent is in violation of section 477.029(1)(e), Florida Statutes, and is therefore subject to disciplinary action.

COUNT II

12. Petitioner realleges and incorporates by reference paragraphs 1-9 as if fully stated herein.

13. Section 477.0265(1)(e), Florida Statutes, states that it is unlawful for any person to obtain or attempt to obtain a license or registration for money, other than the required fee, or any other thing of value or by fraudulent representation.

14. The Respondent signed an application attesting that Respondent had completed the required training. The president of Artistic Nail Academy thereafter submitted the application to the Board of Cosmetology for processing on behalf of the Respondent.

15. The Board of Cosmetology relied on the representations and attestations contained in the application when it issued the nail specialist's license to the Respondent.

16. Based on the foregoing paragraphs, Respondent is in violation of section 477.0265(1)(e), Florida Statutes, and is therefore subject to disciplinary action.

WHEREFORE, Petitioner respectfully requests the Board of Cosmetology to enter an Order imposing one or more of the following penalties: revocation or suspension of the Respondent's license, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, restriction of Respondent's practice, and/or any other relief that the Board deems appropriate.

SIGNED this 21st day of April, 1997

Richard T. Farrell
Secretary



By: Charles F. Tunnicliff
Chief Attorney

PCP: 4/7/97

COUNSEL FOR THE DEPARTMENT:

James E. Manning
Attorney for the Petitioner
Department of Business & Professional Regulation
1940 North Monroe Street - Suite 60
Tallahassee, Florida 32399-0792
(904) 488-0062

FILED

Department of Business and Professional Regulation
AGENCY CLERK

CLERK Sarah L. Washburn

DATE 4-21-97

STATE OF FLORIDA
BOARD OF COSMETOLOGY

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION

Final Order No. BPR-97-07805 Date 10-30-97

FILED

Dept. of Business and Professional Regulation

AGENCY CLERK

Sarah Wachman, Agency Clerk

By: *Sarah Wachman*

Petitioner,

-vs-

CASE NO.: 97-07148

LICENSE NO.: FV 0532777

NGON MINH HO,

Respondent.

_____ /

FINAL ORDER

THIS MATTER came before the Board of Cosmetology at a public meeting on August 24, 1997, in Orlando, Florida. Pursuant to Administrative Complaint (attached hereto as Exhibit A), it was alleged that Respondent violated specified sections of Chapter 477, Florida Statutes. Service of the Administrative Complaint was effected by publication on May 29, June 5, 12 and 19, 1997. At the hearing, Petitioner was represented by James Manning. Because Respondent did not respond to the allegations in the Administrative Complaint and was not present at the proceedings, the hearing was conducted in accordance with Section 120.57(2), Florida Statutes. Evidence regarding the Administrative Complaint was received from Petitioner only.

After a complete review of the record in this matter, including consideration of the Administrative Complaint, written evidence, testimony and any mitigating or aggravating circumstances, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. The allegations of fact set forth in the Administrative Complaint are approved,

adopted, and incorporated herein by reference as the findings of fact by the Board.

2. The Board found no aggravating or mitigating circumstances in this matter pursuant to 61G5-30.001(4), F A.C.

3. There is competent, substantial evidence to support the Board's findings and conclusions.

CONCLUSIONS OF LAW

1. The conclusions of law set forth in the Administrative Complaint are approved, adopted, and incorporated herein by reference as the conclusions of law by the Board.

2. There is competent, substantial evidence to support the Board's findings and conclusions.

3. The violations committed by the Respondent warrant disciplinary action by the Board of Cosmetology.

4. Finding no aggravating or mitigating circumstances in this matter, the Board concludes that a penalty in conformity with the Disciplinary Guidelines in Rule 61G5-30.001, Florida Administrative Code, is appropriate.

PENALTY

In consideration of the foregoing findings of fact and conclusions of law, it is hereby ORDERED and ADJUDGED:

1. Respondent's license is revoked.
2. Respondent shall pay an administrative fine of One Thousand Dollars (\$1,000.00) in Ten (10) equal installments of One Hundred Dollars (\$100) each. The first payment shall be due 30 days after the rendition of this order and monthly

thereafter.

3. If Respondent wishes to become relicensed as a manicure specialist, he or she must complete all required schooling, submit an application for registration together with the required fees, and otherwise be eligible for such registration. The revocation of Respondent's license shall not be a bar to such relicensure.

4. If Respondent becomes relicensed during the time allowed for payment of the administrative fine set out above, then to assure payment of the fine, it is further ordered that all of Respondent's licensure shall be suspended with the imposition of the suspension stayed during the payment period. If the ordered fine is paid within that period, the suspension imposed shall not take effect. Upon payment in full of the fine, the suspension shall be lifted. If the licensee does not pay the fine within the period set out above, or if the licensee does not make all payments in a timely fashion, then the stay of suspension shall expire, and immediately upon expiration of the stay, the licensee shall surrender all licenses issued within the purview of the Board to the investigator of the Department of Business and Professional Regulation or shall mail same to the Board Office.

This Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE and ORDERED this 29th day of Oct, 1997.

BOARD OF COSMETOLOGY

Ed Broyles

ED BROYLES
EXECUTIVE DIRECTOR

NOTICE OF RIGHT TO JUDICIAL REVIEW UNLESS WAIVED

Pursuant to Section 120.68, Florida Statutes, any substantially affected person is hereby notified that they may appeal this Final Order by filing one copy of a Notice of Appeal with the clerk of the agency and by filing the filing fee and one copy of a Notice of Appeal with the District Court of Appeal within 30 days of the date this Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by United States Mail to Ngon Minh Ho, 7110 SW 117 Avenue, Miami, Florida 33183, and by hand delivery to James Manning, Staff Attorney, Department of Business and Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0750, by 5:00 P.M., this 30th day of Oct, 1997.

Ed Boyles

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
:
NGON MINH HO, dba :
LOVELY NAILS AND NAIL CENTRAL :
RESPONDENTS :

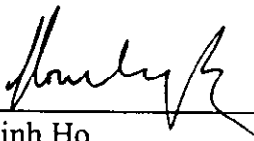
STIPULATION
Case No. LS 9802123BAC
DOE Case No. 97 BAC180

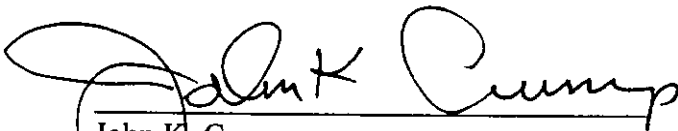
It is hereby stipulated between Ngon Minh Ho on his own behalf, by his Attorney John K Crump and on behalf of Lovely Nails and Nail Central; and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

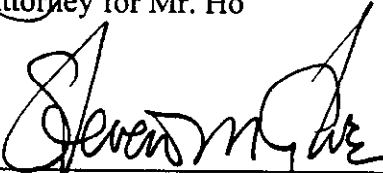
1. This Stipulation is entered into as a result of the above captioned disciplinary proceedings. The parties agree that this stipulation shall be submitted directly to the Barbering and Cosmetology Examining Board for its consideration in resolution of this matter.
2. Mr. Ho understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
3. Mr. Ho is aware of his right to seek legal representation and has obtained legal advice prior to signing this stipulation.
4. Mr. Ho agrees to the adoption of the attached Final Decision and Order by the Barbering and Cosmetology Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the attached order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Barbering and Cosmetology Examining Board assigned as an advisor in this investigation may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the Board may have in connection with their deliberations on the stipulation.

7. The Division of Enforcement joins Mr. Ho in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

X  May 5, 1998
Ngon Minh Ho Date
d/b/a Lovely Nails and
d/b/a Nail Central

 May 5, 1998
John K. Crump Date
Attorney for Mr. Ho

 5.11.98
Steven M. Gloe, Attorney Date
Division of Enforcement

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On June 1, 1998, the Barbering and Cosmetology Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: _____ Case #: _____

The amount of the forfeiture is: \$200.00 Case # LS9802122BAC

Please submit a check or a money order in the amount of \$ 200.00

The costs and/or forfeitures are due: July 1, 1999

NAME: Ngon Minh Ho LICENSE NUMBER: 1895

STREET ADDRESS: 8261 North 48th Street

CITY: Brown Deer STATE: WI ZIP CODE: 53223

Check whether the payment is for costs or for a forfeiture or both:

 COSTS X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

 X INDIVIDUAL ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Ngon Minh Ho,
d/b/a Lovely Nails and Nail Central,

AFFIDAVIT OF MAILING

Respondent.

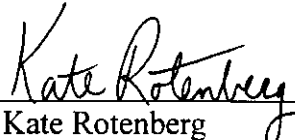
STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On June 9, 1998, I served the Final Decision and Order dated June 1, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9802122BAC, upon the Respondent Ngon Minh Ho's, d/b/a Lovely Nails and Nail Central, attorney by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 158 971.

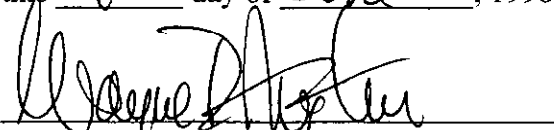
John K. Crump, Attorney
177 Green Bay Road
Thiensville WI 53092-1603



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 9th day of June, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: JOHN K CRUMP ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 6/9/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935