

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
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**FILE COPY**

STATE OF WISCONSIN  
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST : FINAL DECISION  
: AND ORDER  
HUNG MINH PHAM, :  
RESPONDENT. : LS9804201BAC  
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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:

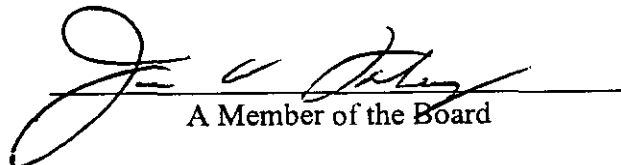
ORDER

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 6/1/98 day of June 1998.

  
A Member of the Board

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

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|                          |   |                          |
|--------------------------|---|--------------------------|
| IN THE MATTER OF         | : |                          |
| DISCIPLINARY PROCEEDINGS | : | <b>PROPOSED DECISION</b> |
| AGAINST                  | : | Case No. LS-9804201-BAC  |
| <b>HUNG MINH PHAM,</b>   | : |                          |
| RESPONDENT.              | : |                          |
|                          | : |                          |

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**SUMMARY**

This is a disciplinary action by the Barbering and Cosmetology Examining Board against Hung Minh Pham. Mr. Pham was alleged to have provided incomplete and inaccurate information to the board in his application for licensure as a manicurist in Wisconsin. Mr. Pham did not respond to the complaint in writing as required, nor did he appear for the scheduled hearing. Upon Mr. Pham's default, the allegations of the complaint were accepted as true. Mr. Pham's misstatements in his application constitute a violation of section 454.15(2)(a) of the Wisconsin Statutes, and discipline is imposed; specifically, Mr. Pham's license is revoked.

**PARTIES**

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

**Complainant:**

Division of Enforcement  
Department of Regulation and Licensing  
Madison, WI 53708-8935

**Respondent:**

Hung Minh Pham  
1919 Durand Ave.  
Racine, WI 53403

**Disciplinary Authority:**

Barbering and Cosmetology Examining Board  
1400 East Washington Ave.  
Madison, WI 53703

## PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 98 BAC 009) with the Barbering and Cosmetology Examining Board on April 20, 1998. A disciplinary proceeding (hearing) was scheduled for May 18, 1998. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on April 21, 1998 to Hung Minh Pham at 1919 Durand Ave., Racine, WI 53403. This certified mailing was returned to the department on May 11, 1998 marked "unclaimed".

B. No answer was filed by Mr. Pham.

C. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on May 18, 1998. Mr. Pham did not appear. The Barbering and Cosmetology Examining Board was represented by attorney Steven Gloe of the Department's Division of Enforcement. Mr. Gloe moved that Mr. Pham be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. The hearing was recorded; no transcript was prepared. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

## APPLICABLE STATUTES AND RULES

### Statutes

#### 454.12 Disciplinary proceedings and actions.

...

(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:

(a) Made a material misstatement in an application for license or permit or renewal.

...

## FINDINGS OF FACT

1. The respondent, Hung Minh Pham, is licensed to practice manicuring in the state of Wisconsin, under license number 2810.
2. Mr. Pham's last address on record with this department is 1919 Durand Ave., Racine, WI 53403.
3. The Complaint and Notice of Hearing in this matter were mailed to Mr. Pham at his last address on record with this department.

4. Mr. Pham's Wisconsin license was granted on February 27, 1997, based on his previous licensure in Arkansas.

5. Mr. Pham's Arkansas licensure was granted based on his previous licensure in Florida.

6. In his application for Wisconsin licensure, dated February 1, 1997, in response to "[p]rovide the name of each state in which a license was obtained" and "[p]lease indicate whether the license was obtained through examination or reciprocity", Mr. Pham listed only his Arkansas license -- with no mention of his Florida license -- and stated that it was obtained through examination.

7. On November 21, 1997, Mr. Pham's Florida manicurist license was revoked. The Florida Board of Cosmetology found that Mr. Pham 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.

### CONCLUSIONS OF LAW

I. The Barbering and Cosmetology Examining Board has personal jurisdiction over the respondent, Hung Minh Pham, based on his holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats. Under sec. RL 2.08 (1), Wis. Admin. Code, a respondent may be served by mailing to his or her last-known address.

II. The Barbering and Cosmetology Examining Board is the legal authority responsible for issuing and controlling credentials for manicurists, under chapter 454, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., and sec. 454.15, Stats.

III. Hung Minh Pham is in default, under sec. RL 2.14, Wis. Admin. Code, and the Barbering and Cosmetology Examining Board may enter an order on the basis of the complaint and other evidence.

IV. The violation in Finding of Fact 6 above constitutes unprofessional conduct, under sec. 454.15(2)(a), Stats., and discipline is appropriate, under sec. 454.15, Stats.

### ORDER

THEREFORE, IT IS ORDERED that the license granted to Hung Minh Pham be revoked, effective on the fifth day after this order is signed by a member of the Barbering and Cosmetology Examining Board.

IT IS FURTHER ORDERED that Hung Minh Pham pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

## OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Barbering and Cosmetology Examining Board alleging that the respondent, Hung Minh Pham, provided incomplete and inaccurate information in his application for licensure as a manicurist in Wisconsin. The burden of proof in disciplinary proceedings is on the complainant, the Division of Enforcement, to prove the allegations of the complaint by a preponderance of the evidence. In this case, Mr. Pham did not respond to the complaint in writing as required by administrative rule, nor did he appear for the hearing, and the complainant is entitled to proceed by default. The allegations of the complaint are accepted as proven.


In his application for Wisconsin licensure, Mr. Pham omitted reference to previous licensure in Florida, and he stated falsely that previous Arkansas licensure was granted by examination, when in fact it was granted by reciprocity based on the previous Florida licensure. These misstatements were themselves violations of statute (sec. 454.15(2)(a), Stats.), but underlying the misstatements was an even more disturbing fact, that Mr. Pham's Florida license was based upon a claim that he had completed training as a manicurist, which the State of Florida later (on November 21, 1997) determined to be false.

The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in various cases involving attorneys, such as State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 N.W.2d 235 (1969), State v. Cory, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct. Little, if anything, can be done to rehabilitate Mr. Pham, and this order is unlikely to reach and deter others who might falsify information in order to obtain licensure. Consequently, the overriding concern in this case is the protection of the public. The record here indicates that Mr. Pham obtained manicurist's licenses in three states without the training, skills and experience required to practice safely. The protection of the public requires that his license be removed.

Mr. Pham is free to respond to this order by contacting the board. Under sec. RL 2.14, Wis. Admin. Code, he may show why his default should be excused, and be given an opportunity to respond to the charges in the complaint.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, and in a case such as this where the respondent has not cooperated in any way, including either failing to keep the department informed of his address or failing to pick up a certified mailing from the department, an order for costs is appropriate.

Dated and signed: May 18, 1998



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John N. Schweitzer  
Administrative Law Judge  
Department of Regulation and Licensing

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

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In the Matter of Disciplinary Proceedings Against

Hung Minh Pham,

AFFIDAVIT OF MAILING

Respondent.

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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, LS9804201BAC, upon the Respondent Hung Minh Pham by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent 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 221 158 975.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

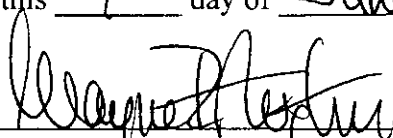
Hung Minh Pham  
1919 Durand Avenue  
Racine WI 53403



\_\_\_\_\_  
Kate Rotenberg  
Department of Regulation and Licensing  
Office of Legal Counsel

Subscribed and sworn to before me

this 9<sup>th</sup> day of June, 1998.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin

My commission is permanent



## NOTICE OF RIGHTS OF APPEAL

TO: HUNG MINH PHAM

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

STATE OF WISCONSIN  
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

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|                               |   |                     |
|-------------------------------|---|---------------------|
| IN THE MATTER OF DISCIPLINARY | : |                     |
| PROCEEDINGS AGAINST           | : | ORDER FIXING COSTS  |
|                               | : | Case # LS9804201BAC |
| HUNG MINH PHAM,               | : |                     |
| RESPONDENT.                   | : |                     |

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On June 1, 1998, the Barbering and Cosmetology Examining Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on or about June 16, 1998, the Barbering and Cosmetology Examining Board received the *Affidavit of Costs* in the amount of \$153.75, filed by Attorney Steven M. Gloe. On or about June 4, 1998, the Barbering and Cosmetology Examining Board received the *Affidavit of Costs of the Office of Legal Services* in the amount of \$64.91, filed by Administrative Law Judge John N. Schweitzer. The Barbering and Cosmetology Examining Board considered the affidavits on August 3, 1998, and orders as follows:

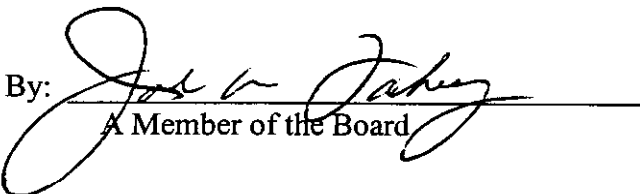
ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of \$218.66, which is 100% of the costs set forth in the affidavits of costs of Attorney Steven M. Gloe and Administrative Law Judge John N. Schweitzer, which are attached hereto and made a part hereof, are hereby assessed against respondent, and shall be payable by him to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before September 2, 1998, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the Barbering and Cosmetology Examining Board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached "*Guidelines for Payment of Costs and/or Forfeitures*" should be enclosed with the payment.

Dated this 3rd day of August, 1998.

BARBERING AND COSMETOLOGY EXAMINING BOARD

By:   
A Member of the Board

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS : AFFIDAVIT OF COSTS
AGAINST :
HUNG MINH PHAM, : Case No. LS-9804201-BAC
RESPONDENT. :

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

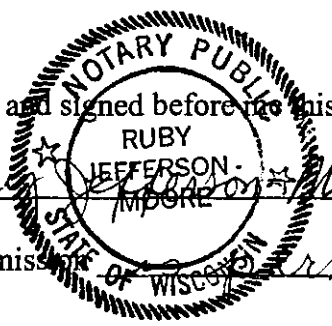
- 1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.
3. Expenses for the Office of Board Legal Services in this matter are set out below:

Table with 3 columns: Expense Category, Description, Amount. Includes 'Court Reporter Costs' (\$0.00) and 'Administrative Law Judge Expense' (Total \$64.91).

Total allocable costs for Office of Board Legal Services \$64.91

John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 4th day of June, 1997.
RUBY JEFFERSON-MOORE, Notary Public, State of Wisconsin.
My commission expires permanent.



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STATE OF WISCONSIN  
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST :  
HUNG MINH PHAM, :  
RESPONDENT :

AFFIDAVIT OF COSTS  
LS9804201BAC

98BAC009

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

Being duly sworn Steven Gloe, the undersigned employee of the Department of Regulation and Licensing, upon information and belief, deposes and states as follows

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 -- STEVEN GLOE

| DATE   | ACTIVITY  | HOURS         | MINUTES         |
|--|---|---------------|-----------------|
| 04/20/1998   | Review file, case conference, review and sign complaint and notice of hearing | 2             | 0               |
| 05/18/1998   | Hearing preparation and attend hearing  | 1             | 45              |
| <b>TOTAL PROSECUTING ATTORNEY EXPENSE ---</b>                                      |   | <b>3</b>      | <b>45</b>       |
| <b>(Based on their average salary and benefits at the Division of Enforcement)</b> |   | <b>TOTALS</b> | <b>3 45</b>     |
| <b>AT \$41.00 PER HOUR =</b>   |   |               | <b>\$153.75</b> |

PROSECUTING ATTORNEY EXPENSE —

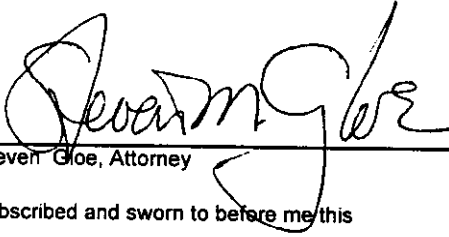
EXPENSE SUMMARY

STEVEN GLOE

\$153.75


TOTAL ASSESSABLE COST >>>>

\$153.75



Steven Goe, Attorney

Subscribed and sworn to before me this  
16th of June, 1998

  
Notary Public  
My commission is permanent



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

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Marlene A. Cummings  
Secretary

Tommy G. Thompson  
Governor  
June 17, 1998

1400 E. WASHINGTON AVENUE  
P O BOX 8935  
MADISON WISCONSIN 53708-8935  
(608) 266-2112

HUNG MINH PHAM  
1919 DURAND AVENUE  
RACINE WI 53403

RE: In The Matter of Disciplinary Proceedings Against Hung Minh Pham, Respondent,  
LS9804201BAC, Assessment of Costs

Dear Mr. Pham:

On June 1, 1998, the Barbering and Cosmetology Examining Board issued an order involving your license to practice manicuring in the state of Wisconsin. The order requires payment of costs of the proceedings.

Enclosed please find the Affidavits of Costs of the Office of Legal Services and the Division of Enforcement in the above captioned matter. The total amount of the costs of the proceedings is \$218.66.

Under sec. RL 2.18, Wis. Adm. Code, objections to the affidavits of costs shall be filed in writing. Your objections must be received at the office of the Barbering and Cosmetology Examining Board, Room 281, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before July 1, 1998. After reviewing the objections, if any, the Barbering and Cosmetology Examining Board will issue an Order Fixing Costs. Under sec. 440.23, Wis. Stats., the board may not restore or renew a credential until the holder has made payment to the department in the full amount assessed.

Thank you.

Sincerely,

Pamela A. Haack  
Administrative Assistant  
Office of Legal Services

Enclosures

cc: Barbering and Cosmetology Examining Board  
Department Monitor

Regulatory Boards

Accounting; Architects; Landscape Architects; Professional Geologists; Professional Engineers; Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers; Marriage and Family Therapists and Professional Counselors; and Veterinary

Committed to Equal Opportunity in Employment and Licensing

# 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: \$218.66 Case #: LS9804201BAC

The amount of the forfeiture is: \_\_\_\_\_ Case # \_\_\_\_\_

Please submit a check or a money order in the amount of \$218.66

The costs and/or forfeitures are due: September 2, 1998

NAME: Hung Minh Pham LICENSE NUMBER: 2810

STREET ADDRESS: 1919 Durand Avenue

CITY: Racine STATE: WI ZIP CODE: 53403

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

COSTS  FORFEITURE

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

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**

**For Receiving Use Only**

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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