

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST  
GWENDOLYN M. TANNER,  
d/b/a NAIL NETWORK,  
RESPONDENT.

FINAL DECISION AND ORDER  
LS9810221BAC

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 7<sup>th</sup> day of December, 1998.

By: John Fahey

A member of the Board

**STATE OF WISCONSIN**

BEFORE THE BARBERING AND COSMETOLOGY BOARD

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IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS  
AGAINST  
**GWENDOLYN M. TANNER,**  
d/b/a NAIL NETWORK,  
RESPONDENT.

**PROPOSED DECISION**  
Case No. LS-9810221-BAC

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**SUMMARY**

This is a disciplinary action by the Barbering and Cosmetology Board against Gwendolyn M. Tanner, doing business as Nail Network. It was alleged that Nail Network did not have a sink separate from public toilet facilities within the establishment, that Ms. Tanner provided false information about this in her license application, and that she failed to comply with a remedial order. All three allegations were proven by a preponderance of the evidence, and all three are violations of chapter BC 3 of the Wisconsin Administrative Code. A ten-day suspension of her practitioner's license and a forfeiture of \$200.00 are imposed as discipline, along with an order that she pay the cost of this proceeding.

**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:

Gwendolyn M. Tanner  
7516 West Appleton Ave.  
Milwaukee, WI 53216

Disciplinary Authority:

Barbering and Cosmetology Board  
Madison, WI 53703

**PROCEDURAL HISTORY**

A. This case was initiated by the filing of a complaint (DOE case # 95 BAC 081) with the Barbering and Cosmetology Board on October 22, 1998. A disciplinary proceeding (hearing) was scheduled for November 23, 1998. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on October 22, 1998 to Gwendolyn Tanner, who received it on October 23, 1998.

B. Ms. Tanner did not file an answer.

C. A prehearing conference was held on November 13, 1998. Ms. Tanner did not dispute the allegations of the complaint, but she felt that the settlement proposed to her by the Division of Enforcement was not fair.

D. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on November 23, 1998. Ms. Tanner did not appear. The Barbering and Cosmetology Board was represented by attorney Steven Gloe of the Department's Division of Enforcement. The hearing was recorded. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

E. Mr. Gloe moved that Ms. Tanner be found in default under sec. RL 2.14, Wis. Admin. Code, for failing to file an answer and failing to appear at the hearing, and the motion was granted.

**APPLICABLE STATUTES AND RULES**

**Statutes**

**454.15 Disciplinary proceedings and actions.**

(2) ... 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.

(i) Violated this chapter or any rule promulgated under this chapter.

(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.

**Wisconsin Administrative Code**

**BC 3.01**

(6) Establishments shall provide areas designated for storing, cleaning and disinfecting equipment.

**BC 3.04**

(4) Falsification of any information on the application may be grounds for denial, suspension or revocation of the establishment license and subject the applicant to penalties as indicated in s.

**BC 3.05**

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

**FINDINGS OF FACT**

1. The respondent, Gwendolyn M. Tanner, is licensed to practice manicuring in the state of Wisconsin, under license number 678.

2. Ms. Tanner owns Nail Network, a manicuring establishment located at 7516 West Appleton Avenue in Milwaukee, Wisconsin.

3. On September 21, 1995, Ms. Tanner signed and filed a specialty establishment application for Nail Network, which included a floor plan showing a sink separate from the public toilet facilities.

Based on the information in the application, the department issued license number 576 to Nail Network to operate as a manicuring establishment.

4. On January 5, 1996, an inspection was made of Nail Network. There was no sink separate from the public toilet facilities. Ms. Tanner was issued an Order to Correct on the same date.

5. Ms. Tanner returned a Notice of Compliance dated January 8, [1996] which stated "sink installed on Feb. 15".

6. A follow-up inspection of Nail Network was made on April 4, 1996. No sink had been installed. Ms. Tanner was using a sink in the barbering and cosmetology establishment adjacent to her manicuring establishment.

**CONCLUSIONS OF LAW**

I. The Barbering and Cosmetology Board has personal jurisdiction over Gwendolyn M. Tanner, based on her holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats.

II. The Barbering and Cosmetology Board is the legal authority responsible for issuing and controlling credentials for manicurists, under ch. 454, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 454.15, Stats., and ch. BC 3, Wis. Admin. Code.

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

IV. Ms. Tanner provided false information to the board in her application for a manicuring establishment license, which is a violation of section 454.15(2)(a), Stats. Discipline is appropriate, under sections 454 (2) and (3), Stats.

V. Ms. Tanner failed to comply with an Order to Correct issued on behalf of the board, and she falsely stated that she had complied, which is a violation of section BC 3.05(3), Wis. Admin. Code and section 454(2)(i), Stats. Discipline is appropriate, under sections 454 (2) and (3), Stats.

**ORDER**

THEREFORE, IT IS ORDERED that the license issued to Gwendolyn M. Tanner to practice as a manicurist be suspended for a period of ten calendar days, starting on the fifth day after the date on which the final order is signed by a member of the Barbering and Cosmetology Board, as authorized by sec. 454.15(2), Stats.

IT IS FURTHER ORDERED that Gwendolyn M. Tanner pay a forfeiture of \$200.00 payable to the Department of Regulation and Licensing within 60 days after the date on which the final order is signed, as authorized by sec. 454.15(3), Stats., and that if payment is not received by that date, her license shall be summarily suspended, under sec. 440.22 (3), Stats.

IT IS FURTHER ORDERED that Gwendolyn M. Tanner pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code. Costs will be set forth in a separate order for costs following the filing of the final decision, and if Ms. Tanner fails to pay the costs within 60 days of the date of the order, her license will be summarily suspended, under sec. 440.22 (3), Stats.

## 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 Board alleging that the respondent, Gwendolyn M. Tanner, violated the rules regulating the practice of manicuring. The disciplinary complaint in this matter alleged that Ms. Tanner provided false information to the board in her application for an establishment license that her manicuring establishment contained a sink separate from public toilet facilities, that an Order to Correct was issued to her and that she sent in a Notice of Compliance which falsely stated that she had installed a sink. The burden of proof was on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Ms. Tanner did not file an answer or appear at the scheduled hearing. She is therefore in default, and findings of fact and conclusions of law may be made on the basis of the complaint and other evidence. I conclude that the allegations were proven by a preponderance of the evidence, that Ms. Tanner committed the violations as alleged, and that discipline is appropriate.

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), State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976), and Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990). The reasoning in those cases has been extended by regulatory agencies, including the Department of Regulation and Licensing, to disciplinary proceedings for other professions. The courts have said that the purposes of discipline are to protect the public and the profession from further misconduct by the offender, to deter the other professionals from engaging in similar misconduct, and to foster the offender's rehabilitation.

Ms. Tanner and all manicurists must realize that the standards which have been promulgated by the board are for the protection of the public. Public discipline is necessary to deter other professionals from similar misconduct. The violation was not a minor or inadvertent one, and a reprimand would not be sufficient. The violation was a conscious falsehood on two separate occasions, and a suspension is necessary to emphasize the seriousness of lying to the board. In addition, forfeitures of \$100.00 for the false information on the initial application and \$100.00 for the false statement that the situation had been corrected, are appropriate.

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. In some cases, the costs of investigating and prosecuting unprofessional conduct are imposed on the disciplined individual so that they will not have to be borne by the profession as a whole. In other cases, costs are used as an incentive to encourage respondents to cooperate with the process, and thus to impose costs only if the respondent is uncooperative or dilatory. Ms. Tanner did not accept the settlement proposed by the Division of Enforcement and took her case to hearing, which she has a right to do. However, she then did not appear for her hearing, causing an unnecessary expense. For that reason, an order for costs is appropriate.

Dated and signed: November 23, 1998

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