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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
Anna Maas, Ann Geiger Electrolysis,	:	LS0311132BAC
Ann Geiger Studios Inc.,	:	
Respondents.	:	

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 4th day of October, 2004.

Leon Lauer
Board Member
Barbering and Cosmetology Examining Board

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	PROPOSED
ANNA M. MAAS, ANN GEIGER	:	FINAL DECISION AND ORDER
ELECTROLYSIS, ANN GEIGER STUDIOS,	:	LS0311132BAC
RESPONDENTS.	:	

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

Anna M. Maas
Ann Geiger Electrolysis
3602 Atwood Avenue
Madison, WI 53714

Anna M. Maas
Ann Geiger Studios, Inc.
301 Hartwig Boulevard
Johnson Creek, WI 53038

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

Procedural history

The department's petition for an administrative injunction, case number LS 0311131 BAC, was consolidated for hearing with this matter alleging continued practice while under suspension, case number LS 0311132 BAC. Both matters were heard on February 6, 2004. Colleen Baird appeared on behalf of the department, Anna M. Maas appeared pro se on her own behalf. Ms. Maas did not file an answer to either the petition, case number LS 0311131 BAC or disciplinary complaint, case number LS 0311132 BAC.

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

Findings of Fact

1. Anna M. Maas (hereinafter "Maas") is an electrologist licensed in the state of Wisconsin, (lic.# 84-47). Maas was originally granted her license on May 17, 1958.
2. Maas is the owner of Ann Geiger Electrolysis, an electrology establishment, which was originally granted an establishment license (lic. # 70-237) on May 30, 1986. Ann Geiger Electrolysis is located at 3602 Atwood Avenue, Madison, Wisconsin, 53714.
3. Maas is the owner of Ann Geiger Studios, Inc., an electrology establishment, which was originally granted an establishment license (lic. # 70-580) on December 28, 2000. Ann Geiger Studios, Inc., is located at 301 Hartwig Boulevard, Johnson Creek, Wisconsin, 53038.
4. At all times relevant to this proceeding, Maas was operating two establishments, Ann Geiger Electrolysis in Madison, Wisconsin and Ann Geiger Studios, Inc., in Johnson Creek, Wisconsin.

PRIOR DISCIPLINARY PROCEEDINGS

5. On April 8, 2002, the Barbering and Cosmetology Board issued a Final Decision and Order, which reprimanded Maas for violation of the sanitation and safety regulations governing the practice of electrology. The board order required that Maas complete education in infectious disease control; that she submit to a professional review of her sterilization procedures; and that she submit the results of approved laboratory testing of her sterilizer. In addition, the Board imposed a forfeiture against Maas for the sanitation violations. (Exh. 2)
6. Maas timely paid the forfeiture, but failed to timely complete the remaining requirements of the April 8, 2002 order.
7. Pursuant to the terms of the April 8, 2002, order, Maas's individual and establishment licenses were summarily suspended without further notice or hearing by the Board's agent in correspondence dated June 3, 2002. (Exh. 3) (A copy of

the June 3, 2002, correspondence is not included in the record.)

8. On August 5, 2002, the Board issued an order affirming the suspension of her licenses and imposed an additional forfeiture upon Maas. (Exh. 3)

9. On December 6, 2002, the Madison Department of Public Health notified Maas that her failure to meet the requirements of the Barbering and Cosmetology Examining Board could lead to a communicable and infectious disease and ordered her to abate the human health hazard that exists at her establishment. (Exh. 4)

CONTINUED PRACTICE AFTER SUSPENSION

10. On March 4, 2003, the Department received a complaint alleging that Maas had provided electrology treatment on February 28, 2003, while her licenses were suspended.

11. On April 25, 2003, the Department contacted Maas to determine if she was engaged in unlicensed practice. Maas denied that she was engaged in practice. The Department investigators reminded Maas that she would not be able to have her license reinstated until she complied with the Board order and entered into an agreement with the Department of Revenue to repay her delinquent taxes.

12. As of June 2003, the Department was able to confirm that Maas finally removed the business signage on the exterior of her establishments.

13. On or about October 2003, the Department became aware that Maas had an advertisement for electrology services in a recent edition of a local publication. (Exh. 5)

14. On October 17, 2003, Kelley Sankbeil, an investigator with the Department, called the number listed in the advertisement for Ann Geiger Studios, Inc., in Johnson Creek, Wisconsin, to schedule an appointment for electrology. Maas answered the telephone and agreed to give Sankbeil an appointment later that afternoon at the Madison establishment. Maas confirmed that the discount coupon in the advertisement was still valid for the first treatment.

15. Maas told Sankbeil that she would be the person actually providing the electrology treatment and that she was the provider mentioned in the advertisement as having "31 years of experience."

16. On October 17, 2003, at approximately 3:55 p.m., Sankbeil arrived at Ann Geiger Electrolysis, 3602 Atwood Avenue, Madison, Wisconsin, for the scheduled appointment. Sankbeil identified herself as the caller who was given an appointment for services that day. Maas identified herself as the person who had talked to Sankbeil.

17. Sankbeil indicated that she wanted electrolysis on her eyebrows and upper lip. Maas stated that Sankbeil would have to let the unwanted hair grow out prior to the electrolysis treatment because she could not remove the hair until it was raised above the surface of the skin.

18. In response to a question about the cost of the electrology treatment, Maas told Sankbeil that she would not know until she examined her skin under better lighting conditions. A sign was posted in the establishment listing the hourly prices for treatment. (Exh. 8-1)

19. Maas handed Sankbeil a card titled "Electrolysis Case History" to complete before the treatment. After completing the card, Sankbeil asked Maas whether she was busy on Fridays. Maas replied, "Sometimes ... depends," and Maas and Sankbeil agreed to set up an appointment for the following week. Sankbeil requested an appointment on either Monday, November 3, 2002, or Friday, November 7, 2003. Maas responded, "sounds great, let me think on that." (Exh. 7)

20. Sankbeil filled out the case history card and gave it to Maas who began to review it. At that point, Investigator Candace Bloedow entered the establishment and both she and Sankbeil introduced themselves as investigators with the Department.

21. The investigators proceeded to conduct an unannounced inspection of the establishment. Upon entering the treatment

area, the Investigators found numerous electrology certificates from organizations and educational institutions referring to Maas. (Exh. 8-2,3)

22. Sankbeil and Bloedow observed that the treatment area was set up and prepared for treatment. The electrology machine “on” light was glowing red, indicating the machine was plugged in and turned on. Clean paper towels were draped across the pillow on the treatment table. A lighted magnifying lens was attached to the treatment table. (Exh 8-4,5,6,7,8,9,10,11,12,13)

23. The investigators observed a rolling cart in the treatment room, containing a sharps container, cotton balls, gloves, and lancets. Maas indicated that she did not use the lancets, The box containing the lancets was about 3/4 full. (Exh. 8-7,8,9,10,11)

24. Three packages of disposable needles were observed on another table in the treatment room. One of the packages was unopened, another package was partially used and the third package was empty. Each package contains fifty needles. (Exh. 8-12,13)

25. The investigators found a box full of metal scissors. Maas indicated that she used the scissors to place items in the sterilizer. She explained that she first cleaned the items in her ultrasonic cleaner and then ran them through the sterilizer. (Exh. 8-14)

26. Maas indicated that she had her sterilizer tested for accuracy by an independent laboratory; however, she could not recall the name of the laboratory that tested the sterilizer, could not recall the date of the last testing and did not have copies of any lab test reports. The investigators found a supply of unused testing envelopes. (Exh. 8-15, 16)

27. The investigators found trash containers in the treatment room and bathroom filled to overflowing with dirty paper towels. Mold was observed on the inside of the trash container in the treatment room. The sharps container in the treatment room was nearly full. (Exh. 8-17,18,19)

28. The investigators observed cleaning supplies on top of the medicine cabinet and not stored in a locked storage cabinet. (Exh. 8-20,21)

29. Maas initially denied that she had been providing electrology treatments, but when asked why she had purchased electrolysis needles and supplies if she was not practicing, she admitted that she had provided some free electrolysis services to a neighbor. Maas admitted that she had performed electrolysis in 2002 and in 2003, at both of her establishments.

30. During the inspection, an unidentified male entered the establishment, and said to Maas that he had been unable to reach her by phone and wanted to make an appointment. Maas urged the man to leave. Investigator Bloedow asked if he had come for an electrology appointment, but he would not answer and left the building.

31. Several days prior to conducting the announced inspection, Bloedow had contacted Prestige Electrolysis Supply Inc., a Madison, Wisconsin, business which sells electrology equipment. The business verified that Maas had purchased supplies, after the date of her license suspensions, which are used in the practice of electrology. (Exh. 6)

Conclusions of Law

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

2. By engaging in the conduct described in Findings of Fact, 8 through 31, Anna M. Maas as an individual; Anna M. Maas, dba/Ann Geiger Electrolysis; and Anna M. Maas, dba/Ann Geiger Studios, Inc., has engaged in the practice of electrology without a credential required under Wis. Stats. § 454.04(1)(c), and practiced electrology in an unlicensed establishment in violation of Wis. Stats. § 454.08 (1)(b).

3. By engaging in the conduct described in Findings of Fact, 6 through 31, Anna M. Maas has failed to correct or take substantial steps approved by the examining board to correct a violation of any sanitary or other rule of the examining board

within the time limit stated by the examining board in a notification of violation. Wis. Stats. § 454.15(2)(b).

4. By engaging in the conduct described in Findings of Fact, 6 through 31, Anna M. Maas has engaged in conduct in the practice of electrology which evidences a lack of knowledge or ability to apply professional principles or skills. Wis. Stats. § 454.15 (2) (c).

Order

1. NOW THEREFORE, IT IS ORDERED that the electrologist license of Anna M. Maas as an individual; number 84-47, the electrology establishment license of Anna M. Maas, dba/Ann Geiger Electrolysis; number 70-237; and the electrology establishment license Anna M. Maas, dba/Ann Geiger Studios, Inc., number 70-580, be and hereby are REVOKED.

2. The respondents are ordered jointly and severally to pay the costs of the department pursuant to Wis. Stats. § 440.22(2).

Opinion

Applicable Law

Wis. Stats. § 454.15 (1) provides:

(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.

Wis. Stats. § 454.08 (1) (b), provides:

(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).

Wis. Stats. § 454.04 (1)(c), provides:

(c) No person may engage in electrology unless the person holds a current electrologist license, temporary permit or training permit issued by the examining board or is a student in an electrology course of instruction.

Wis. Stats. § 454.15 (2)(b), provides:

(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:

(b) Failed to correct or take substantial steps approved by the examining board to correct a violation of any sanitary or other rule of the examining board within the time limit stated by the examining board in a notification of violation.

Wis. Stats. § 454.15 (2) (c), provides:

(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:

(c) Engaged in conduct in the practice of barbering or cosmetology, aesthetics, electrolysis or manicuring which evidences a lack of knowledge or ability to apply professional principles or skills.

Discussion

As an initial matter, Ms. Maas is deemed to have constructively admitted the allegations of the complaint. She did not file an answer to the complaint denying the allegations contained therein nor at the hearing did she materially dispute the allegations. Therefore, Maas is estopped from disputing the allegations contained in the complaint.

Additionally, the department has issued an administrative injunction in case number LS 0311131 BAC, which included in the findings of fact that the three named respondents engaged in the practice of electrolysis while their respective licenses were suspended by the Barbering and Cosmetology Board. Those findings of fact are restated in this opinion and support a similar finding in this matter. Ms. Maas also testified that she was currently practicing electrolysis and had continued to knowingly practice electrolysis following her suspension by the Barber and Cosmetology Board. (RT p. 100-103) The unimpeached testimony of Kelly Sankbeil and Debra Bresser, in combination with the exhibits, establish an ongoing electrolysis practice clearly evidencing that Ms. Maas knowingly engaged in the practice of electrolysis following her suspension by the Barber and Cosmetology on August 5, 2002.

My review of the record indicates that Ms. Maas may have complied with a portion of the April 8, 2002, board order. The department conceded that Maas did complete the training, (RT pp.159-160), and Exhibit 17 demonstrates that she completed a written examination, dated May 30, presumably in the year 2002. Joyce Munson, who testified at the hearing as the department's expert, apparently was the person who performed the "professional review" of Maas' sterilization procedures which was required by the board order. This review as recounted by Munson, preceded Maas' May 30 written examination. Therefore, it appears that Maas substantially completed these requirements of her order within a very short time frame following the April 8, 2002, board order, though perhaps not technically within 30 days. No party addressed the timing of compliance. The final requirement of the board order was that within 30 days of the order Maas was to submit to the board the results of an approved laboratory testing of her dry heat sterilizer in accordance with manufacturer guidelines. This apparently wasn't done, according to Maas. (RT p. 105) Maas also admitted that she hasn't completed the requirements of the April 8, 2002, order, because she didn't have enough money. (RT p. 116)

When a credential holder is under suspension with conditions precedent to the lifting of that suspension, the credential holder must be diligent to comply with the conditions of the order and obtain a lifting of that suspension. The credential holder has a responsibility to fully comply with board orders and to obtain board permission to resume practice in instances such as this. Maas never petitioned the board to lift her suspension. Therefore, a failure of compliance must be taken seriously if the integrity of regulation and its purpose of public protection is to have validity and public confidence.

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).

Revocation of the respondents' licenses has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondents or that an interest exists in being rehabilitated. The respondents have not come forward to show remorse, an explanation, or to substantially dispute the findings of the complaint. The conduct alleged demonstrates a dangerous indifference to the health, safety and welfare of clients and the public.

Absent some mitigating evidence (of which none has been presented), imposing anything less than revocation would not aid in rehabilitation. Further, to not revoke respondents licenses would also wrongly signal others to engage in similar conduct without consequence, thus not constituting proper deterrence. Revocation will therefore act to safeguard the public and deter

such conduct by other credential holders.

Revocation is therefore appropriate in this case for continuing to practice while suspended by the board.

Finally, the inspection of the respondents' premises by the department and the results of that inspection combined with the testimony of the department's expert witness establish by a preponderance of the evidence that Ms. Maas continued to practice electrology evidencing a lack of knowledge or ability to apply professional principles or skills. Even without expert testimony, a cursory review of the photographic evidence admitted in the case sends a chilling reminder of the reason why such establishments and practitioners are licensed in the interest of protecting the public's health, safety and welfare. (Exh. 8-17,18,19) The pictures demonstrate mold and filth. Ms. Maas has evidenced the inability to practice electrology with the knowledge and ability to apply professional principles or skills. The board, in its April 8, 2002, order, provided Maas the opportunity to improve her practice, to learn and implement safe practice. Maas has appeared to have learned little if anything, even when given this second chance.

The department called Joyce Munson, to provide her expert opinion on what aspects of the respondent's practice were observed to be below the minimum standard in the practice of electrology. Ms. Munson has been licensed as a licensed electrologist for over 15 years in the state of Wisconsin and owns an electrology establishment Eau Claire, Wisconsin. Ms. Munson has a school of electrology, the Eau Claire Institute of Electrology, where she also acts as an instructor. Ms. Munson also has a nursing background with a four-year degree, graduating cum laude from the University of Wisconsin-Eau Claire in nursing.

Ironically, Ms. Munson was the professional previously retained by Maas to perform the professional review of Maas' sterilization procedures as required by the board's April 8, 2002, order. It appears that Maas has learned little, if anything under Ms. Munson's tutelage according to Ms. Munson's review of the photographs of Ms. Maas' establishment and review of the investigators' testimony. (RT pp 166-187)

Specifically, Ms. Munson testified that it was a violation of the standards of practice for there to be dirty tissues on the bottom of Maas' equipment cart, (RT p. 176), and a violation of code because Maas didn't dispose of her garbage in a liner in the proper way or maintain her office in a sanitary manner, evidenced by the appearance of mold. (RT p. 177) Maas did not have the proper required posting of the written protocol on blood borne pathogens. (RT p. 177) Maas also did not have required containers for soiled linens. (RT p. 177) Maas also couldn't produce a quality assurance file showing the report forms for the periodic testing of her sterilizer. (RT pp.178-179)

Maas' client consultation form also fell below the minimum required standards:

Q. Okay. Okay. Ms. Munson, is there anything else in the photographs that you presently have in front of you which you had previously reviewed that you feel shows -- that in your opinion would show a violation of state law in regard to electrology practice?

A. A picture of her consultation concerns me, and hearing the testimony of the people who have gone through a consultation. She is not addressing vital areas that our state tests students that go for board exams. For a minimum competence level, they need to ask questions in certain areas that her form does not cover. They need to know if they have metal in their body. They need to know where it is so they place their electrodes correctly. If current flows through them, it can create lye, it can heat up. An implant staples from angioplasty, there's a lot of procedures nowadays that have metal in their body. There's nothing addressing that she's asked any questions about that. She's not asked anything about skin -- skin diseases. You know, there -- there's so much infection control as far as that. I'd say her consultation is far, far below minimum standards. The form doesn't have enough questions. She didn't review it with the people that were interviewed. And this would not fly for entry-level minimum competence in our profession. (RT pp.179-180)

Revocation is therefore appropriate based on this separate and independent ground of continued unsafe practice.

Costs

Section 440.22(2), Stats., 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 Chiropractic Examining 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 ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, 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.

Date: 9-10-2004

William Anderson Black
Administrative Law Judge