

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- 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>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
 :
SHAY L. BENITEZ : FINAL DECISION AND ORDER
and MAKING WAVES, : LS# 0610121BAC
RESPONDENTS. :

Division of Enforcement Case File Number 04 BAC 048

The parties to this action for the purposes of Section 227.53 of the Wisconsin statutes are:

Shay L. Benitez
1472 20th Street
Turtle Lake, Wisconsin 54889

Making Waves
205 Riverside Boulevard
Amery, Wisconsin 54001

Barbering and Cosmetology Examining Board
Post Office Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation and Licensing
Division of Enforcement
Post Office Box 8935
Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

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. Shay L. Benitez (Date of Birth is April 19, 1971) is duly licensed as a barbering or cosmetology manager in the state of Wisconsin (license #81-30667). This license was first granted on July 12, 2005, and is current through June 30, 2007. The last address reported to the Department of Regulation and Licensing (hereinafter Department) by Ms. Benitez is 1323 64th Street, Turtle Lake, WI 54889.

2. Ms. Benitez was also licensed as a barbering or cosmetology practitioner in the state of Wisconsin (license # 82-81236). This license was first granted on September 19, 2002, and has been in expired status with the Department since July 1, 2005.

3. Making Waves was licensed as a manicuring establishment in the state of Wisconsin (license #80-30794). This license was first granted on November 11, 2002, and has been in expired states with the Department since July 1, 2005. Ms. Benitez is listed with the Department of Regulation and Licensing as the current owner of Making Waves. As owner, Ms. Benitez is and was at all times relevant to this action responsible for compliance with Ch. 454, Stats. and Wisconsin Administrative Code Chs. BC 2, 3 and 4. The last address reported to the Department for Making Waves was 205 Riverside Boulevard, Amery, Wisconsin 54001.

4. An inspection of Making Waves by Investigator Douglas M. Austin of the Department of Regulation and Licensing on May 12, 2005, found that there was no posting of either the cost of services or that a patron had the right to be informed of the cost of services. Investigator Austin also found hair in brushes and rollers and that the practitioner licenses and establishment license were not posted in a conspicuous place. Ms. Benitez informed Investigator Austin that she had operated Making Waves without the required licensed manager since October 2004. Investigator Austin told Ms. Benitez that she could not operate Making Waves without a licensed manager and would have to close Making Waves until she hired a manager.

5. On March 24, 2006, Officer John Carlson of the Amery, Wisconsin Police Department visited Making Waves. Officer Carlson had his hair cut by Ms. Benitez and he paid for the services by a personal check payable to Making Waves. The check was endorsed by Making Waves and cashed.

6. In resolution of this matter, Shay L. Benitez and Making Waves consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Barbering and Cosmetology Examining Board has jurisdiction to act in this matter pursuant to Sec. 454.15, Stats.

2. The Wisconsin Barbering and Cosmetology Examining Board is authorized to enter into the attached stipulation pursuant to Sec. 227.44(5), Stats.

3. By conduct referred to in the above Findings of Fact, Shay L. Benitez and Making Waves have violated:

1. Wis. Stat. sec. 454.06(7). The examining board shall furnish a certificate to each licensee, certifying the holder is licensed to practice barbering or cosmetology, aesthetics, electrology or manicuring or is a licensed manager. The licensee shall post the certificate in a conspicuous place in the licensed establishment.
2. Wis. Stats. Sec. 454.08(1)(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).
3. Wis. Stats. Sec. 454.08(8). The examining board shall furnish a certificate to the owner of a licensed establishment certifying that the establishment is licensed by the examining board. The owner shall post the certificate in a conspicuous place in the establishment.
4. Wis. Stat. sec. 454.15(2)(c). Engaged in the practice of barbering or cosmetology, aesthetics, electrology or manicuring which evidences a lack of knowledge or ability to apply professional principles or skills.
5. Wis. Stat. sec. 454.15(2)(i). Any violation of Chapter 454 or of the Administrative Code promulgated under Chapter 454 is cause for discipline.
6. Wis. Admin. Code § BC 2.03(1). Services provided by any licensee shall be performed in a manner that is constant with basics and accepted practice standards and in accordance with all state statutes, board rules and local codes and ordinances.
7. Wis. Admin. Code § BC 2.04(1). Licensees may not assist or participate in the unauthorized or unlicensed practice of barbering and cosmetology, aesthetics, electrology or manicuring.
8. Wis. Admin. Code § BC 2.04(2). Licensees shall report to the board unauthorized or unlicensed practice or other violations of ch. 454, Stats., and chs. BC 1 to 9.

9. Wis. Admin. Code § BC 2.045(1). Licensees shall not provide personal care services outside of a licensed establishment except for person who are unable to leave their homes because of illness or disability or for persons who are in hospitals, nursing homes, correctional institutions or other institutions.
10. Wis. Admin. Code § BC 2.05(2). An establishment shall either post a list of services in a conspicuous place or display a sign which states “All establishment patrons have the right to be informed of the costs of services before the services are provided.”
11. Wis. Admin. Code § BC 2.06. The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and chs. BC 2, 3 and 4.
12. Wis. Admin. Code § BC 2.06(5). In the case of the owner of a barbering and cosmetology establishment, employ a manager who shall have direct authority over the operation of the establishment.
13. Wis. Admin. Code § 2.08(1)(a). Licensees holding current licenses or permits granted under ch. 454, Stats., shall:
 - (a) Be responsible for compliance with the sanitation and safety precautions contained in ch. BC 4.
14. Wis. Admin. Code § BC 2.08(1)(b). Licensees holding current licenses or permits granted under ch. 454, Stats., shall:
 - (b) Be responsible for their own professional practice, conduct and compliance with ch. BC. 2.
15. Wis. Admin. Code § BC 3.01(1). Barbering and cosmetology, aesthetics, electrology and manicuring shall not be practiced outside the confines of a licensed establishment except as provided in s. BC 2.045.
16. Wis. Admin. Code § BC 3.01(13). The establishment license shall be posted in the establishment.
17. Wis. Admin. Code § BC 4.01(1). All areas of an establishment and the equipment, tools and implements for services shall be maintained in a clean, sanitary and safe condition.
18. Wis. Admin. Code § BC 4.02(3). Disinfection for combs, lifts, brushes, rollers and all other contact equipment shall consist of cleaning with soap and water to remove organic material, spraying with a tuberculocidal disinfectant as defined in s. BC 1.01, and air drying.

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Shay L. Benitez and Making Waves shall severally and jointly pay to the Department of Regulation and Licensing a forfeiture of ONE THOUSAND FIVE HUNDRED dollars (\$1,500.00) and full costs of ONE THOUSAND THREE HUNDRED dollars (\$1,300.00) on the following schedule:

Payment	Payment Date	Amount
1	March 15, 2007	\$400.00
2	June 15, 2007	\$400.00
3	September 15, 2007	\$400.00
4	December 15, 2007	\$400.00
5	March 15, 2008	\$400.00
6	June 15, 2008	\$400.00
7	September 15, 2008	\$400.00

Payment shall be made by *certified check or money order*, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Post Office Box 8935
Madison, Wisconsin 53708-8935

IT IS FURTHER ORDERED that in the event that Shay L. Benitez and Making Waves fail to timely submit any payment of the forfeiture and costs as set forth above, the barbering or cosmetology manager license of Shay L. Benitez (#81-30667), the barbering or cosmetology practitioner license of Shay L. Benitez (82-81236) and the establishment license of Making Waves (#80-30794) **SHALL BE SUSPENDED**, without further notice or hearing, until Shay L. Benitez and Making Waves have complied with the terms of this Order.

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

BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Jeannie M. Bush
A member of the Board

2/5/07
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

SHAY L. BENITEZ :
and MAKING WAVES, :
RESPONDENTS. :

STIPULATION
LS#0610121BAC

Division of Enforcement Case File Number 04 BAC 048

It is hereby stipulated between Shay L. Benitez and Making Waves (herein after "Respondents"), personally on her own behalf and on behalf of Making Waves, and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement (04 BAC 048). The Division of Enforcement filed a formal complaint naming the Respondents on October 12, 2006. Respondents consent to the resolution of this matter by stipulation.

2. Respondents understand that by the signing of this Stipulation they voluntarily and knowingly waives their rights, including: the right to a hearing on the allegations against them, 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; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; 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 them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Respondents are aware of their right to seek legal representation and have been provided an opportunity to obtain legal advice prior to signing this stipulation.

4. Respondents agree 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 or other agent for the Division of Enforcement and any member of the Barbering and Cosmetology Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or their attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondents are informed that should the Board adopt this stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department policy.

8. The Division of Enforcement joins Shay L. Benitez and Making Waves in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Shay L. Benitez

Date

Respondent

1472 20th Street

Turtle Lake, Wisconsin 54889

License Numbers 81-30667

and 82-81236

On behalf of Making Waves

Date

Respondent

205 Riverside Boulevard

Amery, Wisconsin 54001

License Number 80-30794

Claudia Berry Miran

Date

Attorney

Division of Enforcement

Post Office Box 8935

Madison, Wisconsin 53708-8935