

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	:	FINAL DECISION AND ORDER
	:	AS TO RESPONDENT
THE SPA AT WEST WOOD, CHERRISE	:	SPA AT WEST WOOD
GASTER, AND SPA AT WEST WOOD,	:	
RESPONDENTS.	:	LS0904068BAC

Division of Enforcement Case File # 07 BAC 131

The parties to this action for the purpose of Wis. Stats. § 227.53 are:

Spa at West Wood
Waukesha Health System
2900 Golf Road
Pewaukee, WI 53072

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53707-8935

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

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Barbering and Cosmetology Examining Board (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. Respondent Spa at West Wood is licensed in the State of Wisconsin as a Manicuring Establishment, license # 71-3268. This license was first granted to it on January 18, 2008 and is current through March 31, 2009. The most recent address on file with the Department of Regulation and Licensing for Spa at West Wood is c/o Waukesha Health System, 2900 Golf Road, Pewaukee, WI 53072.

2. In response to a complaint received by the Wisconsin Department of Regulation and Licensing, an investigator and an attorney from the Division of Enforcement performed an unannounced inspection at The Spa at West Wood on October 8, 2007.

3. At the time of inspection, The Spa at West Wood was licensed in the State of Wisconsin as a Barbering and Cosmetology Establishment, license # 80-33852. The license was first granted to it on March 17, 2006 and was changed to inactive status on February 1, 2008. The most recent address on file for The Spa at West Wood is c/o Waukesha Health System, 2900 Golf Road, Pewaukee, WI 53072.

4. The October 8, 2007 inspection and follow-up investigation revealed the following violations:

The establishment opened for operation on October 1, 2005 but had no establishment license of any kind until March 17, 2006, so there was practice outside of a licensed establishment for 5+ months;

During the time the establishment had a full-service barbering and cosmetology establishment license from March 17, 2006 through January 31, 2008, it operated without a full-time manager – the manager of record worked “as needed” and not 30 hours per week;

Licenses were not posted in a conspicuous area – they were in a backroom/office;

Disinfectant used for manicuring instruments was not being stored in covered containers;

Manicuring instruments were not being properly cleaned between clients;

Disposable nail files were being reused; and

Pedicure spas were dirty.

5. At the conclusion of the inspection on October 8, 2007, the investigator issued an Order to Correct to The Spa at West Wood, requesting that corrective measures be taken by October 16, 2007.

6. The Order to Correct was returned to the Department and indicated that the violations had been corrected or were in the process of being corrected.

7. On January 18, 2008, the State of Wisconsin granted Spa at West Wood a manicuring establishment license, # 71-3268.

8. On February 1, 2008, the barbering and cosmetology establishment license for The Spa at West Wood, # 80-33852, was changed to inactive status.

CONCLUSIONS OF LAW

1. The Wisconsin Barbering and Cosmetology Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 454.15, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. The Spa at West Wood, violated:

- a. Wis. Stat. § 454.08(1) and Wis. Admin. Code § BC 3.01 by failing to obtain an establishment license before opening for operation;
- b. Wis. Admin. Code § BC 3.02(1) by operating without a full-time manager;
- c. Wis. Stat. § 454.06(7) and Wis. Admin. Code § BC 2.07(2) by failing to have all licenses posted in a conspicuous place in the establishment;
- d. Wis. Admin. Code § BC 4.10(4) by failing to cover containers holding disinfectant used for manicuring instruments;
- e. Wis. Admin. Code § BC 4.10(1) by failing to properly clean manicuring instruments between clients;
- f. Wis. Admin. Code § BC 4.10(3) by reusing disposable nail files; and
- g. Wis. Admin. Code § BC 4.01(1) by failing to ensure pedicure spas were maintained in a clean, sanitary and safe condition.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondent Spa at West Wood, (license # 71-3268) is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. Respondent Spa at West Wood shall pay a FORFEITURE in the amount of TWO THOUSAND SEVEN HUNDRED DOLLARS (\$2,700.00) within 90 days of the date of this Order and shall pay COSTS in the amount of NINE HUNDRED DOLLARS (\$900.00) within 90 days of the date of this Order.

3. 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
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fail to timely submit any payment as ordered, then Respondent's license SHALL BE SUSPENDED without further notice or hearing until Respondent has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

IT IS FURTHER ORDERED that file 07 BAC 131 is hereby closed as to Respondent Spa at West Wood.

Dated this 6th day of April, 2009.

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Jeannie M. Bush