

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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Before The  
State Of Wisconsin  
DEPARTMENT OF REGULATION AND LICENSING

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In the **MATTER OF THE ALLEGED  
UNLICENSED PRACTICE BY  
NAILTORIOUS, NICHOLE WHEELER, AND  
TIFFANY C. MASON**, Respondent

FINAL DECISION AND ORDER  
Order No. 0000144

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Division of Enforcement Case No. 08 UNL 104

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make 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, Department of Regulation and Licensing.

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 at Madison, Wisconsin on the 17<sup>th</sup> day of April, 2010.

Celia M. Jackson, Secretary  
Department of Regulation and Licensing



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the **MATTER OF THE ALLEGED  
UNLICENSED PRACTICE BY  
NAILTORIOUS, NICHOLE WHEELER, AND  
TIFFANY C. MASON**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. DRL-09-0119

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Division of Enforcement Case File # 08 UNL 104

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

Nailtorious  
Attn: Nichole Wheeler  
3501 W. Capitol Dr.  
Milwaukee, WI 53216

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

**PROCEDURAL HISTORY**

These proceedings were initiated when the Wisconsin Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, Nailtorious. The Division filed said Complaint with the Division of Hearings and Appeals on November 23, 2009. On that same date, the Division sent a copy the Complaint and a Notice of Hearing via certified and first class mail to Respondent Nailtorious at its most recent addresses on file with the Department of Regulation and Licensing; 3501 W. Capitol Drive, Milwaukee, WI 53216. The Notice of Hearing stated that Respondent Nailtorious, by Nichole Wheeler, was required to file a written Answer to the Complaint within 20 days, failing which "[it would] be found to be in default and a default judgment [could] be entered against [it] on the basis of the Complaint and other evidence and the [Wisconsin Real Estate Appraisers] Board [could] take disciplinary action against [it] and impose the costs of the investigation, prosecution and decision of this matter upon [it] without further notice or hearing."

To date, no Answer has been filed.

On January 11, 2010, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent Nailtorious and Attorney Angela Arrington of the Division of Enforcement for February 8, 2010. This Notice instructed Respondent Nailtorious, again by Nichole Wheeler, to contact the undersigned ALJ to provide the telephone number for which it could be reached for the February 8, 2010 telephone conference. It was sent to the addresses on file for Respondent Nailtorious, as provided above.

Respondent Nailtorious did not contact the undersigned ALJ with a telephone number that it could be reached at for the February 8, 2010 telephone conference, thus, the telephone conference that was conducted on that date was without its participation. At the conference, Attorney Arrington made a motion for default pursuant to Wis. Admin. Code § RL 2.14. The undersigned ALJ summarily accepted Attorney Arrington's default motion and issued a Notice of Default instructing Respondent Nailtorious that it was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The Notice of Default further ordered Attorney Arrington to provide the undersigned ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by February 16, 2010. Attorney Arrington provided the undersigned ALJ with the Division's written recommendations as to discipline and costs on or about February 10, 2010.

Respondent Nailtorious, by Nichole Wheeler, has failed to respond to either the Notice of Default issued against it, or the recommendations provided by Attorney Arrington on February 10, 2010.

Accordingly, the Board in this matter makes the following:

#### FINDINGS OF FACT

1. Respondent Nailtorious is not licensed in the State of Wisconsin as a Manicuring Establishment or a Barbering and Cosmetology Establishment.
2. The most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) for Nailtorious is 3501 W. Capitol Dr., Milwaukee, WI 53216.
3. On or about November 18, 2008, the Department received a complaint alleging unlicensed practice at Nailtorious.
4. On March 12, 2009, an investigator from the Department performed an unannounced inspection of Nailtorious at 3501 W. Capitol Dr. in Milwaukee, Wisconsin. The inspection revealed violations and a case was subsequently opened for investigation.
5. The March 12, 2009 inspection and subsequent investigation revealed that Nailtorious was operating without a manicuring establishment license.

6. The March 12, 2009 inspection and subsequent investigation revealed that Tiffany C. Mason was working as a manicurist at Nailtorious without a valid Wisconsin manicurist license. Ms. Mason's license (# 85-5129) expired on 07/01/2005.

7. The March 12, 2009 inspection and subsequent investigation revealed that Nichole Wheeler worked as a manicurist at Nailtorious without a valid Wisconsin manicurist license.

8. To date, Ms. Mason has not renewed her manicurist license, Ms. Wheeler has not obtained a manicurist license, and Nailtorious has not obtained a manicuring establishment license.

9. Nailtorious understands that in order for it to operate as a manicuring establishment, it must first obtain a manicuring establishment license.

10. Nailtorious understands that in order for anyone to provide manicuring services at any manicuring establishment, s/he must first obtain current manicurist credentials.

#### CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.21, **Enforcement of Laws Requiring Credentials**.

2. Wisconsin Administrative Code § RL 2.08(1) provides in relevant part that "[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent," and that "[s]ervice by mail is complete upon mailing." Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default were mailed to Respondent Nailtorious at its last known address, it was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

3. Respondent Nailtorious has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09.

4. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. Respondent Nailtorious has admitted the allegations of the Complaint by not filing an Answer.

5. Pursuant to Wis. Admin. Code § BC 3.01(1); "Barbering and cosmetology, electrology, and manicuring shall not be practiced outside the confines of a licensed establishment except as provided in s. BC. 2.045...."

6. Respondent Nailtorious has violated Wis. Admin. Code § BC 3.01(1) by operating as a manicuring establishment without a valid license.

## DISCUSSION

By failing to provide an Answer to the Complaint filed against it, Respondent Nailtorious has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § RL 2.09. It is, thus, undisputed that Respondent Nailtorious was operating as a manicuring establishment without a valid license. Such conduct clearly violates Wis. Admin. Code § BC 3.01(1). A special order enjoining Respondent Nailtorious from continuing to operate as a manicuring establishment is, therefore, appropriate.

## ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent Nailtorious is ENJOINED and PROHIBITED as follows:

1. NAILTORIOUS SHALL NOT OPERATE OR OFFER TO OPERATE A MANICURING ESTABLISHMENT UNTIL THEY OBTAIN A VALID WISCONSIN MANICURING ESTABLISHMENT LICENSE FOR SUCH AN ESTABLISHMENT.

2. NAILTORIOUS SHALL NOT OPERATE OR ENDORSE OTHERS TO PRACTICE MANICURING UNLESS THEY HAVE OBTAINED THE PROPER MANICURIST AND MANICURING ESTABLISHMENT CREDENTIAL.

3. Violation of the order described in Paragraphs 1 and 2 above may result in a forfeiture of up to \$10,000 for each offense, and each day of continued violation constitutes a separate offense. Violation of the order described in Paragraphs 1 and 2 above may also constitute a referral to the office of the local District Attorney or Attorney General for further action.

Dated at Madison, Wisconsin on March 26, 2010.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By:   
Amanda Tollefsen  
Administrative Law Judge