

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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Before The
State Of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING

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

FINAL DECISION AND ORDER
Order No. 0000145

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 17th day of April, 2010.

A handwritten signature in black ink, appearing to read "Celia M. Jackson".

Celia M. Jackson, Secretary
Department of Regulation and Licensing



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

**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-09-0118**

Division of Enforcement Case File # 08 UNL 104

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

Nichol 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, Nichole Wheeler. 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 Wheeler at two addresses on file with the Department of Regulation and Licensing; 2924 N. 28th Street, Milwaukee, WI 53201, and 3501 W. Capitol Drive, Milwaukee, WI 53216. The Notice of Hearing stated that Respondent Wheeler was required to file a written Answer to the Complaint within 20 days, failing which "[she would] be found to be in default and a default judgment [could] be entered against [her] on the basis of the Complaint and other evidence and the [Wisconsin Real Estate Appraisers] Board [could] take disciplinary action against [her] and impose the costs of the investigation, prosecution and decision of this matter upon [her] 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 Wheeler and Attorney Angela Arrington of the Division of Enforcement for February 8, 2010. This Notice instructed Respondent Wheeler to contact the undersigned ALJ to provide the telephone number for which she could be reached for the February 8, 2010 telephone conference. It was sent to both addresses on file for Respondent Wheeler, as provided above.

Respondent Wheeler did not contact the undersigned ALJ with a telephone number that she could be reached at for the February 8, 2010 telephone conference, thus, the telephone conference that was conducted on that date was without her 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 Wheeler that she 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. At the ALJ's request, she provided additional factual information on March 25, 2010.

Respondent Wheeler has failed to respond to either the Notice of Default issued against her, 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 Nichole Wheeler is not licensed in the State of Wisconsin as a Manicurist.
2. The most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) for Respondent Wheeler is 3501 W. Capitol Drive, Milwaukee, WI 53216.
3. On or about November 18, 2008, the Department received a complaint alleging unlicensed practice at Nailtorious, 3501 W. Capitol Dr., Milwaukee, WI 53216.
4. On March 12, 2009, an investigator from the Department performed an unannounced inspection of Nailtorious in Milwaukee, Wisconsin. The inspection revealed violations [of the Wisconsin Administrative Code] 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 Respondent 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, Respondent Wheeler has not obtained a manicurist license¹, and Nailtorious has not obtained a manicuring establishment license.

9. Respondent Wheeler understands that in order for her to practice as a manicurist in Wisconsin, she must first obtain a Wisconsin manicurist credential.

10. Respondent Wheeler understands that in order for anyone to provide manicuring services at any manicuring establishment, they 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 Wheeler at her last known addresses, she was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

3. Respondent Wheeler 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 Wheeler has admitted the allegations of the Complaint by not filing an Answer.

¹ In a March 25, 2010 phone conversation with the ALJ, Attorney Arrington further confirmed that Respondent Wheeler does not and did not hold a valid barber or cosmetologist license, manager license, temporary permit or training permit issued by the examining board, nor was she an apprentice under Wis. Stat. § 454.10 or a student in a manicuring or barbering or cosmetology course of instruction at any relevant time. See Wis. Stat. § 454.04(1)(d), produced *infra* at p. 4.

5. Pursuant to Wis. Stat. § 440.21(2); “If... the department² determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.”

6. Pursuant to Wis. Stat. § 454.04(1)(d); “No person may engage in manicuring unless the person ... holds a current manicurist license, barber or cosmetologist license, manager license, temporary permit or training permit issued by the examining board or is an apprentice under s. 454.10 or a student in a manicuring or barbering or cosmetology course of instruction.”

7. Respondent Nichole Wheeler has violated Wis. Stat. § 454.04(1)(d) by engaging in manicuring services without a valid manicurist credential.

DISCUSSION

By failing to provide an Answer to the Complaint filed against her, Respondent Wheeler has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § RL 2.09. It is, thus, undisputed that Respondent Wheeler was working as a manicurist at Nailtorious without a valid Wisconsin manicurist license in March of 2009. Indeed, she never held a valid manicurist license in Wisconsin. It is further undisputed that neither Nailtorious, nor Respondent Wheeler’s colleague, Tiffany C. Mason, held valid licenses at this time. Such conduct by Respondent Wheeler clearly violates Wis. Stat. § 454.04(1)(d).³ A special order enjoining Respondent Wheeler from the continued practice of manicuring is, therefore, appropriate.

ORDER

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

1. NICHOLE WHEELER SHALL NOT PRACTICE OR OFFER TO PRACTICE AS A MANICURIST IN WISCONSIN UNTIL SHE OBTAINS A VALID WISCONSIN MANICURIST CREDENTIAL.

2. NICHOLE WHEELER SHALL NOT PRACTICE OR ENDORSE OTHERS TO PRACTICE MANICURING UNLESS THEY HAVE OBTAINED THE PROPER MANICURIST CREDENTIAL.

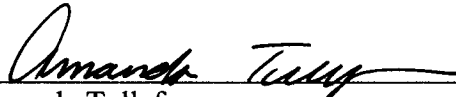
² Per Wis. Stat. § 227.43(1m), the “department” [of Regulation and Licensing] has contracted with the Division of Hearings and Appeals for the transfer of the ALJ function to the Division of Hearings and Appeals.

³ The Division alleges that Respondent Wheeler’s conduct further violates Wis. Admin. Code BC § 2.04(1). However, this provision provides that *licensees* may not assist or participate in the unauthorized or unlicensed practice of barbering and cosmetology, aesthetics, electrology or manicuring. Because Respondent Wheeler was not a licensee as that term is defined in BC § 9.01(1), she cannot be found to have violated this provision of the Barbering and Cosmetology Code.

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.⁴

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

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⁴ See Wis. Stat. § 440.21(4).