

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

CO LEIGH CO SALON LLC AND  
NICOLE L. MOSER,

RESPONDENTS.

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FINAL DECISION AND ORDER

**ORDER 0000921**

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Division of Enforcement Case No. 09 BAC 044

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

Co Leigh Co Salon LLC  
120 East Mifflin Street  
Madison, WI 53703

Nicole L. Moser  
c/o Co Leigh Co Salon LLC  
120 East Mifflin Street  
Madison, WI 53703

Barbering and Cosmetology Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

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

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 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 Co Leigh Co Salon LLC is licensed in the State of Wisconsin as a barbering and cosmetology establishment, having license # 80-34396. This license was first granted on October 6, 2006, and is current through March 31, 2013. The most recent address on file

with the Department of Regulation and Licensing (Department) for Co Leigh Co Salon LLC is 120 East Mifflin Street, Madison, WI 53703.

2. Respondent Nicole Moser is licensed in the State of Wisconsin as a barbering and cosmetology manager, having license # 81-31302. This license was first granted on September 21, 2006 and is current through March 31, 2013. The most recent address on file with the Department for Ms. Moser is 125 N. Hamilton Street #404, Madison, WI 53703.
3. Ms. Moser is the owner and manager of record for Co Leigh Co Salon LLC. As owner and manager, Ms. Moser is responsible for the establishment's compliance with Wis. Stat. Ch. 454 and Wis. Admin. Code §§ BC 2, BC 3 and BC 4.
4. On or about May 21, 2009, the Department received a complaint alleging that licensed practitioner Shannon K. Lund (previously known as Shannon K. Connors) was leasing a booth without the required barbering and cosmetology manager license and barbering and cosmetology establishment license. The complaint alleged that the unlicensed practice was occurring at Respondent Co Leigh Co Salon LLC.
5. On March 4, 2011, an investigator from the Department performed an unannounced inspection of Co Leigh Co Salon LLC. No sanitation violations were discovered upon inspection. Ms. Moser was not present during the inspection. The investigator advised the practitioner present of the allegations and requested a response from Ms. Moser.
6. On March 5, 2011, Ms. Moser contacted the investigator and stated that Ms. Lund was no longer under contract with her and had terminated her relationship with Co Leigh Co Salon LLC. Ms. Moser stated that she had executed a booth lease agreement with Ms. Lund.
7. On March 10, 2011, Ms. Moser provided copies of two booth lease agreements to the Investigator entitled "Work Station Renter/Independent Contractor Agreement". The first agreement (2007 Agreement), signed by Ms. Moser and Ms. Lund (then known as Shannon Connors) had an effective date of December 1, 2007 and expired on November 30, 2009. The second agreement (2009 Agreement), signed by Ms. Moser and Ms. Lund, had an effective date of December 1, 2009, and was terminated on November 30, 2010.
8. The 2007 Agreement contains the following:
  - a. Under paragraph C, the parties agreed that "Associate desires to rent a work station area from Establishment Owner, and perform general cosmetology services for the general public[;]".
  - b. Under paragraph 3 titled "Establishment Owner's Duties", Ms. Moser agreed in subsection (c.) to "maintain the Manager's License [f]or the premises and provide all of the duties, requirements, [s]upervision, management and instruction required by the Wisconsin Department of Licensing and Regulations."
  - c. In paragraph 7 titled "Relationship of the Parties", Ms. Moser agreed in subsection (b.) that "[t]he Establishment Owner shall maintain the Manager's License for the premises and provide all requirements of the duties, supervising,

management and instruction required by the Wisconsin Department of Licensing and Regulations.”

- d. In paragraph 7 titled “Relationship of the Parties”, Ms. Moser agreed in subsection (c.) that “[t]he Associate is not subject to the Establishment Owner’s control or direction.”
- e. In paragraph 7 titled “Relationship of the Parties”, Ms. Moser agreed in subsection (e.) that “[t]he Establishment Owner is not hiring, supervision, or paying the Associate and provides [n]o equipment, materials or labor other than those contained in this agreement.”

9. The 2009 Agreement contains the following:

- a. Under paragraph E, the parties agreed that “Associate desires to rent a work station area from Establishment Owner, and perform general cosmetology services for the general public[;]”.
- b. Under paragraph 4 titled “Establishment Owner’s Duties”, Ms. Moser agreed in subsection (b.) to “maintain the Manager’s License and Establishment License for the premises and provide all of the duties, requirements, supervision, management and instruction required by the Wisconsin Department of Licensing and Regulations.”
- c. In paragraph 8 titled “Relationship of the Parties”, Ms. Moser agreed that “[t]he parties intend this Agreement to establish an Independent Contractor relationship. The Establishment Owner only provides space for Associate to conduct Associate’s cosmetology services, and the conduct and control of all services performed are the sole responsibility of the Associate. Associate is **not** considered an agent or employee of the Establishment Owner for any purpose, and is **not** entitled to any benefits of any employer/employee relationship.” (emphasis in original).
- d. In paragraph 8 titled “Relationship of the Parties”, Ms. Moser agreed in subsection (f.) that “[t]he Establishment Owner is not hiring, supervising, or paying the Associate...[t]he parties recognize that the Establishment Owner is to provide all the services necessary and required by the Wisconsin Department of Licensing and Regulation of a holder of a Management License.”

10. During the three years covered by the 2007 Agreement and 2009 Agreement, Ms. Lund continuously operated the booth under the terms of the lease with Ms. Moser and Co Leigh Co Salon LLC without a barbering and cosmetology manager license or a barbering and cosmetology establishment license. Following termination of the 2009 Agreement, Ms. Lund no longer leases a booth and is not employed by Ms. Moser and Co Leigh Co Salon LLC.

11. In resolution of this matter, Respondents Co Leigh Co Salon LLC and Nicole L. Moser consent 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 Wis. Stat. § 454.15, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
2. By the conduct described in Findings of Fact paragraphs 6-10, Respondents Co Leigh Co Salon LLC and Nicole Moser have violated Wis. Admin. Code § BC 3.02(2)(b) by leasing a booth to a licensed individual who did not hold a manager's and an establishment license.
3. As a result of these violations, Respondents Co Leigh Co Salon LLC and Nicole Moser are subject to discipline pursuant to Wis. Stat. § 454.15(2)(i) and § 454.15(3).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondents Co Leigh Co Salon LLC (license #80-34396) and Nicole L. Moser (license #81-31302) are hereby **REPRIMANDED**.

IT IS FURTHER ORDERED that:

2. Respondent Co Leigh Co Salon LLC shall pay a **FORFEITURE** in the amount of **\$500.00** and **COSTS** in the amount of **\$270.00**, for a total of **\$770.00**. A down payment of \$145.00 shall be submitted within 60 days of the date of this order and five more payments of \$125.00 will be due every 60 days from the date of the previous payment due date until the full \$770.00 is paid in full.
3. Respondent Nicole L. Moser shall pay a **FORFEITURE** in the amount of **\$500.00** and **COSTS** in the amount of **\$270.00**, for a total of **\$770.00**. A down payment of \$145.00 shall be submitted within 60 days of the date of this order and five more payments of \$125.00 will be due every 60 days from the date of the previous payment due date until the full \$770.00 is paid in full.
4. Payment of the costs and forfeiture shall be made 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) 261-7904, Fax (608) 266-2264

5. 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 Respondents' licenses. 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 Respondents fail to timely submit payment of the costs and forfeiture as set forth above, the Respondents' licenses (Co Leigh Co Salon LLC - #80-34396; Nicole L. Moser - #81-31302) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondents have complied with payment of the costs and forfeiture.

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

Dated this 27 day of June, 2011.

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Janice M. Bouch