

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DONALD H. ELWOOD,
RESPONDENT.

:
:
:
:
:

FINAL DECISION AND ORDER

ORDER 0001513

Division of Enforcement Case No. 11 BAC 120

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

Donald H. Elwood
120 13th Street S
La Crosse, WI 54601

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

Division of Enforcement
Department of Safety and Professional Services
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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Donald H. Elwood (dob 3/22/1955) is licensed in the State of Wisconsin as a barbering or cosmetology manager, having license number 81-33837, first issued on 4/8/2011 and current through 3/31/2013. Respondent is also licensed as a barbering or cosmetology practitioner, having license number 82-86980, first issued on 3/15/2007 and current through 3/31/2013. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 120 13th Street S, La Crosse, WI 54601.
2. Respondent practices barbering and cosmetology at Salon Medusa, a barbering and cosmetology establishment owned by Respondent's mother, Dorothy Elwood, until her death

on 11/5/2010. Salon Medusa held license no. 80-30366, first issued on 4/3/2002 and expired on 3/31/2011. Respondent became owner of Salon Medusa following Ms. Elwood's death.

3. On August 12, 2011, the Department received a complaint from Ashley Steenhard, a former employee of Salon Medusa, who alleged that Respondent acted as manager at Salon Medusa when he did not hold a manager's license and that Respondent signed someone else's name on Ms. Steenhard's employment verification form that was submitted with her application for a manager's license. This case was subsequently opened for investigation.

4. On October 12, 2011, a Department investigator performed an unannounced inspection of Salon Medusa. The inspection revealed the following:

- a. Prices were not posted in a way that customers could see them.
- b. Loose hair was left in a dust pan and was not immediately placed in a covered container.
- c. A considerable amount of loose hair was found in strainers at the bottom of both shampoo bowls.
- d. None of the workstations had a topical antiseptic.

5. At the time of the inspection, Salon Medusa's establishment license was expired. On 11/7/2011, Respondent was granted a new establishment license, no. 80-38986, with Respondent listed as owner and manager.

6. After further investigation, the Department determined that Salon Medusa operated without a licensed manager from 2006 until Respondent obtained his manager's license on 4/8/2011. Respondent did not formally notify the Department that he was acting as manager until he applied for a new establishment license on 11/7/2011.

7. Ms. Steenhard's employment verification form included the following statements, "I certify that the applicant named above was employed under my supervision from Oct. 18th 2006 to Dec. 31st 2010 for a total of 8,444 hours...I, Scott Russell, Manager of Record, under the penalties of perjury, declare the foregoing statements are true to the best of my knowledge and belief, and that I personally signed this statement." "Scott Russell" was handwritten on the signature line. The form indicated that Mr. Russell's manager license number was 15662-081 and the date of the signature was 12/2/2010.

8. Scott Russell was licensed as a barbering or cosmetology manager, having license number 81-15662, first issued on 6/7/1982 and expired on 3/31/2011. Department records show Scott Russell was the responsible licensee for Salon Medusa as of 4/3/2002.

9. Respondent states that Scott Russell last worked at Salon Medusa in 2005.

10. The Department investigator showed Respondent Ms. Steenhard's employment verification form and Respondent admitted that he had signed the name of Scott Russell on the form. Respondent also admitted that Ms. Steenhard had never worked under Scott Russell.

11. Respondent's employment verification form submitted with his application for a manager's license contained a signature purporting to be that of Scott Russell dated 3/3/2011. The form stated that Respondent was under Mr. Russell's supervision from 3/15/2007 through 3/3/2011. Respondent signed Scott Russell's name on Respondent's employment verification form. Respondent did not work under Scott Russell.

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 the Findings of Fact, Respondent violated:

- a. Wis. Stat. § 454.08(1)(b) and Wis. Admin. Code §§ BC 2.045(1) and BC 3.01(1) by practicing in an unlicensed establishment from 4/1/2011 to 11/7/2011.
- b. Wis. Stat. § 454.08(6) by failing to employ a licensed manager for Salon Medusa between 11/5/2010 and 4/8/2011.
- c. Wis. Admin. Code § BC 3.01(4) by failing to remove loose hair regularly and place it in a closed container.
- d. Wis. Admin. Code § BC 4.01(5) by failing to keep shampoo bowls in a sanitary and safe condition.
- e. Wis. Admin. Code § BC 4.04(1) by failing to supply all work stations with a topical antiseptic.

3. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 454.15(2)(i).

4. By the conduct described in the Findings of Fact, Respondent is subject to discipline pursuant to Wis. Stat. § 454.15(2)(a) for making a material misstatement in two applications for license.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.
2. Respondent Donald H. Elwood's barbering or cosmetology manager license (number 81-33837) is REVOKED.
3. Respondent Donald H. Elwood shall not be granted a barbering or cosmetology manager license until he submits an accurate Form #2827 (Employment Verification for

Instructor or Manager Applicants). During the revocation period subsequent to the date of this Order, the denial, in whole or in part, of any application or petition by Respondent Donald H. Elwood for a barbering or cosmetology manager license authorized under Wis. Stat. ch. 454 shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stat. §§ 227.01(3) and 227.42.

4. At any time after meeting all requirements for a manger's license, including meeting the requirements of Wis. Stat. § 454.06(3) and submitting an accurate Form 2827 (Employment Verification for Instructor or Manager Applicants), Respondent Donald H. Elwood may petition the Barbering and Cosmetology Examining Board for reinstatement of his barbering or cosmetology manager license. The petition must be accompanied by a statement from Respondent, signed under oath, stating the following:

- a. That Respondent has complied with all of the statutory and administrative rule requirements to obtain a barbering or cosmetology manager's license.
- b. That Respondent has not operated his establishment without a manager for more than 90 days following the date of this Order.

5. Respondent Donald H. Elwood (license no. 82-86980) is REPRIMANDED.

6. Respondent Donald H. Elwood shall pay a FORFEITURE in the amount of \$3100 and COSTS of this matter in the amount of \$560 pursuant to the following schedule:

<u>Payment Due Date</u>	<u>Amount Due</u>
July 31, 2012	\$610
October 31, 2012	\$610
January 31, 2013	\$610
April 30, 2013	\$610
July 31, 2013	\$610
October 31, 2013	\$610

7. Payment of forfeiture and costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor
Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

8. 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 fails to timely submit payment of the forfeiture and costs as ordered, Respondent's license (no. 82-86980) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the forfeiture and costs.

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

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

by:

 For BAC
A Member of the Board

4/30/2012
Date