

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KIMBERLEE J. MCCLAIN and
ELITE DESIGN STUDIO,
RESPONDENTS.

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FINAL DECISION AND ORDER

ORDER 0003147

Division of Legal Services and Compliance Case No. 13 BAC 073

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

Kimberlee J. McClain
9911 W. Forest Home Ave., Ste. 105
Hales Corners, WI 53130

Elite Design Studio
9911 W. Forest Home Ave., Ste. 105
Hales Corners, WI 53130

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

Division of Legal Services and Compliance
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 Wisconsin Cosmetology 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 Kimberlee J. McClain is licensed in the State of Wisconsin as a cosmetology manager, having license number 25657-81, first issued on May 4, 1994, and current through March 31, 2015. Kimberlee J. McClain's most recent address on file with the Department is 9911 West Forest Home Avenue, Suite 105, Hales Corners, Wisconsin 53130.

2. Respondent Elite Design Studio is licensed in the State of Wisconsin as a cosmetology establishment, having license number 32883-80, first issued on March 29, 2005, and current through March 31, 2015. Elite Design Studio's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 9911 West Forest Home Avenue, Suite 105, Hales Corners, Wisconsin 53130.

3. Kimberlee J. McClain is listed in Department records as the owner of Elite Design Studio as well as the manager of record at the salon.

4. Department records show that the establishment license for Elite Design Studio was in expired status from April 1, 2011 through April 25, 2013. Previously the establishment license had been in expired status from July 1, 2005 through August 2, 2005 and April 1, 2009 through April 23, 2009.

5. Department records show that Kimberlee J. McClain's manager license was in expired status from April 1, 2011 through April 25, 2013. Previously McClain's manager license had been in expired status from July 1, 2001, through February 21, 2005, July 1, 2005, through August 2, 2005, July 1, 2007, through February 7, 2008, and April 1, 2009 through April 23, 2009.

6. In a letter dated May 22, 2013, McClain admitted to operating with expired licenses, explaining that it was because she didn't receive her renewal notice.

7. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin 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 McClain violated Wis. Stat. § 454.04(1)(a) and Wis. Admin. Code § COS 2.04(1) by practicing with an expired cosmetology manager's license.

3. By the conduct described in the Findings of Fact, Respondent McClain violated Wis. Stat. § 454.08(1)(b) and Wis. Admin. Code § COS 2.045(1) and § COS 3.01(1) by practicing outside a licensed establishment.

4. As a result of the above violations, Respondent's McClain and Elite Design are subject to discipline pursuant to Wis. Stat. § 454.15(2)(i)

ORDER

1. The attached Stipulation is accepted.
2. Respondent McClain is REPRIMANDED.
3. Respondent McClain shall pay a FORFEITURE in the amount of \$1000 to be paid in installments of \$500 by 90 days from the date of this Order and another \$500 by 180 days from the date of this Order.
4. Respondent Elite Design Studio is REPRIMANDED.
5. Within 90 days from the date of this Order, Respondent Elite Design Studio shall pay a FORFEITURE in the amount of \$1000 to be paid in installments of \$500 by 270 days from the date of this Order and another \$500 by 360 days of this Order.
6. Payment of forfeiture shall be made payable to the Wisconsin Department of Safety and Professional Services and sent by Respondents to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov
7. 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' 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 Respondents fail to timely submit payment of the forfeiture as ordered, Respondents' licenses (no. 25657-81 and 32883-80) 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 forfeiture and costs.
8. This Order is effective on the date of its signing.

WISCONSIN COSMETOLOGY EXAMINING BOARD

by: Geraldine L. Reuter
A Member of the Board

4-15-2014
Date

STATE OF WISCONSIN
BEFORE THE COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KIMBERLEE J. MCCLAIN and
ELITE DESIGN STUDIO,
RESPONDENTS.

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STIPULATION

ORDER 0003147

Division of Legal Services and Compliance Case No. 13 BAC 073

Respondents Kimberlee J. McClain, Elite Design Studio and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondents consent to the resolution of this investigation by Stipulation.

2. Respondents understand that by signing this Stipulation, Respondents voluntarily and knowingly waive the following rights:

- the right to a hearing on the allegations against Respondents, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondents;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondents' own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondents under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondents are aware of Respondents' right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

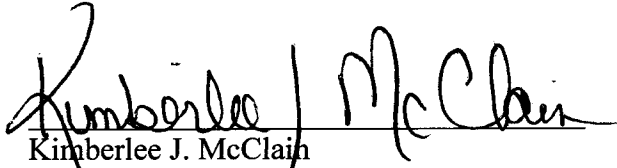
4. Respondents agree to the adoption of the attached Final Decision and Order by the Wisconsin Cosmetology Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

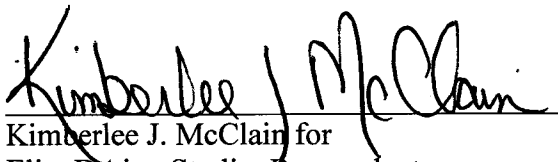
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondents, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondents are informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

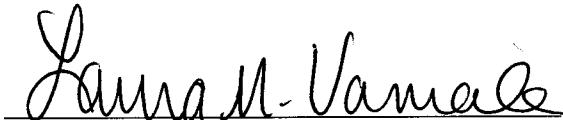
8. The Division of Legal Services and Compliance join Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Kimberlee J. McClain
9911 W. Forest Home Ave. Ste. 105
Hales Corners, WI 53130
License no. 25657-81

Sept 26, 2013
Date


Kimberlee J. McClain for
Elite Design Studio, Respondent
9911 W. Forest Home Ave. Ste. 105
Hales Corners, WI 53130
License no. 32883-80

Sept 26, 2013
Date


Laura M. Varriale, Attorney
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

RECEIVED
10/1/13
Date
DEPT OF SAFETY & PROFESSIONAL SERVICES
DIVISION OF ENFORCEMENT