

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	:	
	:	FINAL DECISION AND ORDER
MARLENE K. BUNGARTZ AND	:	
MARLENE'S LITTLE BIRCH SALON,	:	
RESPONDENTS.	:	ORDER 0003152

Division of Legal Services and Compliance Case No. 13 BAC 027

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

Marlene K. Bungartz
313 N. Main St.
Birchwood, WI 54817

Marlene's Little Birch Salon
313 N. Main St.
Birchwood, WI 54817

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 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 Marlene K. Bungartz (dob February 21, 1952) is licensed in the State of Wisconsin as a Cosmetology Manager, having license number 12550-81, first issued on February 13, 1974, and current through March 31, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 313 North Main Street, Birchwood, Wisconsin 54817.

2. Respondent Marlene's Little Birch Salon (Salon) is licensed in the State of Wisconsin as a Cosmetology Establishment, having license number 35118-80, first issued on July 13, 2007, and current through March 31, 2015. Respondent's most recent address on file with the Department is 313 North Main Street, Birchwood, Wisconsin 54817.

3. At all times relevant to this complaint, Respondent Bungartz owned and managed Respondent Salon.

4. On June 20, 2013, a Department investigator made an unannounced visit to Marlene's Little Birch Salon and observed the following violations:

- a. Individual licenses were not posted in the establishment.
- b. The establishment license was not posted in the establishment.
- c. Multiple poisonous substances were stored in a public bathroom and not locked in a cabinet or closet.
- d. A wax pot was left uncovered.
- e. Loose hair was found in both shampoo bowls, and the bowls were not cleaned between customers.
- f. Waxing spatulas were used for multiple applications.
- g. Manicure implements, such as emery boards and buffer blocks, were reused.
- h. One container of disinfectant was found uncovered by the dispensing area.

5. Respondent Bungartz admitted she was absent from the salon for approximately four months and that she did not have a full time manager during her absence.

6. In resolution of this matter, Respondents consent 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 Bungartz violated Wis. Admin. Code §§ Cos 2.07(2) and 3.01(13) by failing to post all required licenses, permits and notices.

3. By the conduct described in the Findings of Fact, Respondent Bungartz violated Wis. Admin. Code §§ Cos 2.06(5) and 3.02(1) by operating an establishment without a full time manager for more than 90 days.

4. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code § Cos 3.01(6) by failing to keep poisonous substances that are stored in a public area in a locked cabinet or closet.

5. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code § Cos 4.01(4) by failing to dispense substances in a manner which will prevent contamination of the unused portion of the substance.

6. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code §§ Cos 4.01(1) and 4.01(5) by failing to keep shampoo bowls and basins in a sanitary and safe condition.

7. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code § Cos 4.08(3)(b) by failing to dispose of waxing spatulas after each use.

8. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code §§ Cos 4.01(3) and 4.10(4) by failing to dispose of manicure instruments that cannot be cleaned and disinfected or sterilized following each use.

9. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code § Cos 4.02(5) by failing to keep disinfectant in a covered container.

10. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code § Cos 2.08(1) by failing to comply with the sanitation and safety precautions contained in Wis. Admin. Code Chapter Cos 4.

11. As a result of the above violations, Respondents Bungartz and Salon are subject to discipline pursuant to Wis. Stat. §§ 454.15(2)(i) and 454.15(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Marlene K. Bungartz and Respondent Marlene's Little Birch Salon are REPRIMANDED.

3. Respondent Bungartz shall pay a FORFEITURE in the amount of \$500.00 and COSTS of this matter in the amount of \$320.00 within 120 days of the date of this Order.

4. Respondent Salon shall pay a FORFEITURE in the amount of \$500.00 and COSTS of this matter in the amount of \$320.00 within 120 days of the date of this Order.

5. Payment of forfeiture and costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent by Respondent 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

6. 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 either Respondent fails to timely submit payment of the forfeiture and costs as ordered, Respondents' licenses (nos. 12550-81 or 35118-80) 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.

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

WISCONSIN COSMETOLOGY EXAMINING BOARD

by: *Geraldine Deuter*
A Member of the Board

4-15-2014
Date

STATE OF WISCONSIN
BEFORE THE COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARLENE K. BUNGARTZ AND
MARLENE'S LITTLE BIRCH SALON,
RESPONDENTS.

:
:
:
:
:
:

STIPULATION

ORDER 000 3152

Division of Legal Services and Compliance Case No. 13 BAC 027

Respondents Marlene K. Bungartz and Marlene's Little Birch Salon 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 Respondents' 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 have 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 joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Marlene K. Bungartz
Marlene K. Bungartz, Respondent
313 N. Main St.
Birchwood, WI 54817
License no. 12550-81

11-6-2013
Date

Marlene K. Bungartz
Marlene's Little Birch Salon, Respondent
313 N. Main St.
Birchwood, WI 54817
License no. 35118-80

11-6-2013
Date

Aloysius F. Rohmeyer
Aloysius Rohmeyer, Attorney
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

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Date

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