

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE COSMETOLOGY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

NICOLE M. SCHWARK AND  
EAST TOWN SPA, INC.,  
RESPONDENTS.

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FINAL DECISION AND ORDER

*ORDER 0003153*

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Division of Legal Services and Compliance Case No. 13 BAC 015

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

Nicole M. Schwark  
3162 South 55th Street  
Milwaukee, WI 53219

East Town Spa, Inc.  
718 East Wells Street  
Milwaukee, WI 53202

Wisconsin Cosmetology Examining Board  
P.O. Box 8366  
Madison, WI 53708-8366

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

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 Nicole M. Schwark (dob November 14, 1970) is licensed in the State of Wisconsin as a Barbering or Cosmetology Manager, having license number 28974-81, first issued on February 21, 2002, and current through March 31, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 3162 South 55th Street, Milwaukee, Wisconsin 53219.

2. Respondent East Town Spa, Inc. (Spa) is licensed in the State of Wisconsin as a Barbering or Cosmetology Establishment, having license number 30242-80, first issued on February 5, 2002, and current through March 31, 2015. Respondent's most recent address on file with the Department is 718 East Wells Street, Milwaukee, Wisconsin 53202.

3. At all times relevant to this complaint, Respondent Schwark owned and managed Respondent Spa.

4. On April 19, 2013, a Department investigator made an unannounced visit to Respondent Spa and observed that licensed aestheticians, R. R. and R. R., were scheduled for massage and body therapy appointments.

5. Respondent Schwark told the investigator she allowed an individual with an expired temporary barbering or cosmetology practitioner permit, D. D., to work at Respondent spa from September 2012 to January 2013. Respondent failed to report this unlicensed practice to the Board.

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, Respondents violated Wis. Admin. Code §§ Cos 2.04 (1) and (2) by assisting in the unauthorized or unlicensed practice of barbering and cosmetology and failing to report unauthorized practice to the Board.

3. By the conduct described in the Findings of Fact, Respondents violated Wis. Admin. Code § Cos 2.06 by failing to be responsible for compliance with Wis. Admin. Code § Cos 2.03(2) by allowing licensees to provide services for which they were not competent to perform by training and licensure.

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

#### ORDER

1. The attached Stipulation is accepted.

2. The Barbering or Cosmetology manager license issued to Respondent Nicole M. Schwark (license number 28974-81) is **SUSPENDED** for a period of 10 business days, effective 15 days after the date of this Order.

3. Respondent East Town Spa, Inc. is **REPRIMANDED**.

4. Within 90 days from the date of this Order, Respondent Schwark shall pay a FORFEITURE in the amount of \$500.00 and COSTS of this matter in the amount of \$500.00.

5. Within 90 days from the date of this Order, Respondent Spa shall pay a FORFEITURE in the amount of \$500.00 and COSTS of this matter in the amount of \$500.00.

6. Payment of forfeiture and costs 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 7190, Madison, WI 53707-7190  
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' 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 (no. 28974-81 or 30242-80) 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:   
A Member of the Board

9-30-2014  
Date

STATE OF WISCONSIN  
BEFORE THE COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

NICOLE M. SCHWARK AND  
EAST TOWN SPA, INC.,  
RESPONDENTS.

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STIPULATION

ORDER 000 3153

Division of Legal Services and Compliance Case No. 13 BAC 015

Respondents Nicole M. Schwark and East Town Spa, Inc. 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.



Nicole M. Schwartz, Respondent  
3162 South 55th Street  
Milwaukee, WI 53219  
License no. 28974-81

12.17.13


Date



East Town Spa, Inc., Respondent  
718 East Wells Street  
Milwaukee, WI 53202  
License no. 30242-80

12.17.13

Date



Sarah Wynn, Attorney  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

12/18/13

Date