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**Before the
State Of Wisconsin
Cosmetology Examining Board**

In the Matter of Disciplinary Proceedings Against
Lamar D. Skinner, Sr.

FINAL DECISION AND ORDER

Order No. 4112

Division of Legal Services and Compliance Case No. 14 BAC 079

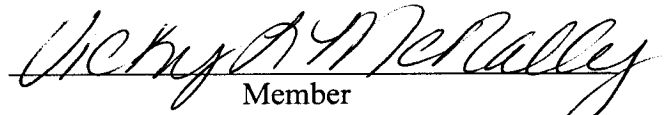
The State of Wisconsin, Cosmetology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Cosmetology Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 22 day of June, 2015.


Member
Cosmetology Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Lamar D. Skinner, Sr.

DHA Case No. SPS-14-0099
DLSC Case No. 14 BAC 079
ORDER 0004112

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Lamar D. Skinner, Sr.
P.O. Box 258042
Madison, WI 53725

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

Department of Safety and Professional Services, Division of Legal Services and Compliance, by

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

PROCEDURAL HISTORY

These proceedings were initiated on December 18, 2014, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division) filed and served a Notice of Hearing concerning a citation issued to Respondent Lamar D. Skinner, Sr. in the amount of \$1,000. The citation was issued based on the Division's allegation that Respondent was providing personal care services outside of a licensed establishment, in violation of Wis. Admin. Code § Cos 2.045(1).

On January 5, 2015, a telephone prehearing conference was held before the undersigned administrative law judge (ALJ), during which a hearing and related deadlines were set. On February 16, 2015, Respondent contacted the Division of Hearings and Appeals, requesting assistance in issuing subpoenas for individuals he wished to have testify at the hearing. A telephone conference was held between the ALJ and parties on February 8, 2015 during which the ALJ agreed to issue subpoenas for three individuals. The subpoenas were sent to the parties

by email and regular mail on February 18, 2015 for Respondent to arrange to have them served. A hearing was held in this matter on March 5, 2015. The Division submitted a written argument with respect to the issue of discipline on March 19, 2015 and Respondent submitted a response on April 2, 2015.

FINDINGS OF FACT

1. Respondent Lamar D. Skinner, Sr. owns a cosmetology establishment called Barbers Town, LLC (Barbers Town), and he is also a barber/cosmetologist by profession. He holds a cosmetology manager's license as well as a cosmetology establishment license for Barbers Town. Respondent has been the manager of record for Barbers Town since the establishment license was granted on July 28, 2011 and is the sole employee there. (Ex. 3, p. 2; Hrg. Tr., pp. 19, 26)

2. In April 2013, Respondent failed to renew Barbers Town's establishment license and also failed to renew his cosmetology manager license. These licenses went from active to expired on April 8, 2013. Respondent renewed his establishment license for Barbers Town on December 10, 2014 and his manager's license on December 26, 2014. (Div. Exs. 2, 3; Hrg. Tr., pp. 24-25)

3. With brief exceptions, including a 30 to 45-day time period around July of 2013 when Barbers Town was closed for moving or remodeling, Respondent had been operating Barbers Town, including cutting hair for pay, continuously for the three years prior to the March 5, 2015 hearing. (Hrg. Tr., pp. 19-20)

4. In November of 2014, the Department received a complaint about unlicensed practice at the address for Barbers Town. (Hrg. Tr., p. 28)

5. Candace Bloedow has worked for the Department since 1991 and is a consumer protection investigator, advanced. On November 26, 2014, Bloedow entered Barbers Town and observed Respondent standing behind a service chair with a young man, exchanging cash. There were hair clippings around the chair. Bloedow assumed based on her observations and years of experience as an investigator for the Department that the two men were exchanging cash for a haircut which Respondent had just given. (Hrg. Tr., pp. 28-29, 32, 42)

6. Bloedow informed Respondent that she had received a complaint of unlicensed practice, after which Respondent pointed to certificates on the wall behind him. Bloedow reminded him that the licenses had expired. (Hrg. Tr., pp. 29-30)

7. Department employee Ralph Draeger testified that the policies in the Department had changed with respect to whether licensees were required to take continuing education courses in order to renew their licenses. Draeger believed that for the 2009-2011 biennium, the Department required continuing education for renewal so that those renewing in 2011 would need to present proof of continuing education. However, that policy changed, and for the 2011-2013 biennium, continuing education would not be required; therefore, those renewing in 2013 would not need to show proof of continuing education. Currently, continuing education is again required to renew a license. (Hrg. Tr., pp. 47-48)

DISCUSSION

Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is “more likely than not” that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d 129, 743 N.W.2d 460, citing *United States v. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995).

Violations

The question in this case is whether the Division met its burden of establishing by a preponderance of the evidence that Respondent provided personal care services outside of a licensed establishment, in violation of Wis. Admin. Code § Cos 2.045(1). I conclude that the Division’s evidence was sufficient to establish this violation.

Wisconsin Admin. Code § Cos 2.045(1) provides, in relevant part, that “[l]icensees¹ shall not provide personal care services outside of a licensed establishment.” “Personal care services” include “shampooing, setting, combing, brushing, cutting, chemical waving, chemical relaxing, bleaching or coloring the hair.” Wis. Admin. Code § Cos 1.01(13m).

The undisputed evidence demonstrates that Respondent’s establishment license for Barbers Town was expired from April 8, 2013 until December 10, 2014, over a year and a half. The evidence also establishes that during most of this time period, Respondent provided personal care services at Barbers Town. Respondent himself testified that, with the exception of some brief time periods, he has been cutting hair in his establishment, Barbers Town, more or less continuously for the three years prior to hearing.

Respondent admits that he failed to renew his license, but argues that this was due to confusion relating to continuing education requirements. Respondent has failed to explain how the changes in continuing education requirements prevented him from renewing his license for over a year and a half. Respondent also takes issue with the fact that the Department did not act sooner on his expired establishment license. However, as Bloedow explained, the Department did not receive information regarding Barbers Town’s expired license until November, 2014. That same month, the Department took action, including Bloedow making a visit to Barbers Town. In any event, the delay does not provide a justification for operating an unlicensed establishment.

In his written argument, Respondent also states that Bloedow “lied under oath twice” during her hearing testimony. He does not elaborate in his written argument but presumably, he is referring to the same credibility issues he raised at hearing. Respondent questioned Bloedow on the fact that the citation states that Respondent was cutting hair in an unlicensed establishment whereas Bloedow testified she did not actually see Respondent cutting hair but

¹ “Licensee” means “a person who holds a license, permit, certificate or registration issued by the board or who has the right to renew a license, permit, certificate or registration issued by the board.” Wis. Admin. Code § Cos 1.01(10).

deduced that he had just finished doing so based on her many investigatory visits to barber and cosmetology establishments and from the evidence she saw, namely, Respondent and a man exchanging money in a barbershop at a service chair which was surrounded by hair clippings. The record supports the inference that Respondent had performed a haircut. Moreover, Respondent never specifically testified that he was not cutting hair at that time or at any time during the unlicensed period, nor was there any evidence that he informed Bloedow he had not been cutting hair. In fact, Respondent confirmed in his testimony that he had cut hair for compensation at his establishment, Barbers Town, and that he did so during the unlicensed period.

Respondent also questioned Bloedow about the fact that the letter to him informing him of the citation refers to him at one point as “R,” rather by his name. (Resp. Ex. B; Hrg. Tr., pp. 36-39) As Bloedow explained, however, the Department typically uses “R” to refer to a Respondent. (Hrg. Tr., p. 37) Moreover, Respondent has not shown how use of the abbreviation “R” helps undermine the Division’s evidence showing that he performed haircuts in an unlicensed establishment. Thus, Respondent’s accusations that Bloedow lied under oath are baseless.

Based on the foregoing, the Division met its burden of proving that Respondent performed personal care services in his unlicensed establishment, in violation of Wis. Admin. Code § Cos 2.045(1).

Discipline

Wisconsin Stat. § 454.15(2) states that the Cosmetology Examining Board (Board) may revoke, limit, or suspend a license under the subchapter governing the Board or may reprimand the holder of a license if it finds that the licensee has violated an administrative rule promulgated under that subchapter. Because Respondent violated an administrative rule promulgated under the specified subchapter, Wis. Admin. Code § Cos 2.045, the Division could have sought one of the forms of discipline delineated in Wis. Stat. § 454.15(2). Instead, the Division seeks a forfeiture in the amount of \$1,000 under Wis. Stat. § 454.15(3), which provides, in pertinent part:

(3) The examining board may, in addition to or in lieu of a reprimand or revocation, limitation, suspension or denial of a license or permit, assess against a person who has done any of the things under sub. (2) (a) to (i) a forfeiture of not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

In seeking this forfeiture amount, the Division notes that Respondent operated Barbers Town while it was unlicensed for approximately a year and a half, that each day of unlicensed operation is a separate offense for which \$1,000 could be imposed and that the amount is consistent with the \$1,000 forfeitures which have been issued in five other cases from 2012-2013 involving violations of Wis. Admin. Code § Cos 2.045(1).²

Respondent argues that the \$1,000 amount is excessive considering the confusion surrounding continuing education requirements at the time, and states that the amount would be

² The Division has provided these forfeiture notices with its written argument.

detrimental to him, his family, his customers, the economy and the community he serves. He states that his establishment “is an important part of the fabric that makes up this great city.”

While I have no reason to doubt the success or significance of Respondent’s business or the impact the forfeiture amount will have on him, I conclude that the forfeiture amount is nonetheless appropriate.

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). As noted, both Barbers Town and Respondent’s manager license were expired for over a year and half, a very significant amount of time. Respondent never adequately explained how the change in continuing education requirements affected his ability to renew or led him to believe his licensure was current. It is up to licensees to make sure they understand current licensing requirements and comply with them. Moreover, this amount is consistent with the amount issued in other cases involving the same violation and during the same time period in which this confusion over continuing education allegedly occurred.

The \$1,000 forfeiture will serve as a strong reminder to both Respondent and to other licensees of the importance of maintaining current licensure and the consequences of failing to do so. Unless those who practice remain licensed, the Board cannot fulfill its responsibility of protecting the public by ensuring that members of the profession are subject to rules that impose accountability and a minimal level of competence. The forfeiture amount will therefore rehabilitate Respondent, deter others from engaging in unlicensed practice, and protect the public from unlicensed practice.

Finally, a forfeiture is a less serious consequence than the discipline which could have been sought under Wis. Stat. § 454.15(2), and is also significantly less than the statute allows, as Wis. Stat. § 454.15(3) authorizes the Board to assess a \$1,000 forfeiture for each day of violation. Here, Respondent operated for approximately a year and a half while unlicensed.

Costs

In addition to assessing a \$1,000 forfeiture in this matter, the Division also requests that Respondent be ordered to pay the full costs of these disciplinary proceedings. The Division’s authority to assess costs is set forth in Wis. Stat. § 440.22, which states, in relevant part:

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder.

This provision only allows imposition of costs on a credential holder when the disciplinary authority orders “suspension, limitation or revocation of the credential or reprimands the holder.” Here, there was no request for any of these forms of discipline and no such discipline has been ordered. Instead, only a forfeiture was requested and ordered. Because the governing statutory

authority does not allow for imposition of costs upon issuance of only a forfeiture, I am without authority to order costs in this case.

CONCLUSIONS OF LAW

1. The Division met its burden of establishing that Respondent provided personal care services outside of a licensed establishment, in violation of Wis. Admin. Code § Cos 2.045(1).

2. The Division properly issued a forfeiture to Respondent in the amount of \$1,000 pursuant to Wis. Stat. § 454.15(3) and *Aldrich*.

3. Costs of these disciplinary proceedings may not be assessed against Respondent under Wis. Stat. § 440.22 because his license has not been suspended, limited or revoked, nor has he been reprimanded.

ORDER

For the reasons set forth above, IT IS ORDERED that Respondent shall pay a forfeiture in the amount of \$1,000 by mailing a check or money order no later than 60 days from the date the final decision and order is issued in this matter, payable to the Wisconsin Department of Safety and Professional Services and sent to:

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

Dated at Madison, Wisconsin on May 11, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Jennifer E. Nashold

Administrative Law Judge