

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

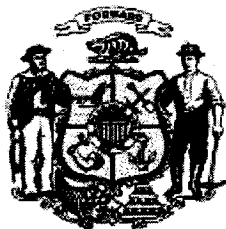
The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



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

In the Matter of Disciplinary Proceedings Against
Patricia Helt, Respondent

FINAL DECISION AND ORDER

Order No. 0004777

Division of Legal Services and Compliance Case No. 15 BAC 041

On June 23, 2016, the State of Wisconsin, Cosmetology Examining Board, delegated authority to Department of Safety and Professional Services Chief Legal Counsel Michael Berndt to review and decide this matter. Chief Legal Counsel Berndt, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes 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 to petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 24th day of June, 2016.

Michael Berndt, Chief Legal Counsel
Department of Safety and Professional
Services for the Cosmetology Examining
Board



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

In the Matter of Disciplinary Proceedings Against
Patricia Helt, Respondent

DHA Case No. SPS-16-0007
DLSC Case No. 15 BAC 041

PROPOSED DECISION AND ORDER

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

Patricia Helt
708 Frances Court, Apt. 13
Sun Prairie, WI 53590

Wisconsin 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 January 13, 2016, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing on a Citation for Administrative Forfeiture, which was issued to Respondent Patricia A. Helt (Respondent), pursuant to Wis. Stat. § 454.15(3), on October 28, 2015. The citation alleged Respondent violated Wis. Admin. Code §§ Cos 2.045 and 3.01(1) and imposed a \$1,000 forfeiture for these violations.

At the prehearing conference on February 8, 2016, which all parties attended, the parties agreed to resolve the issues of fact and law by joint stipulation, and Respondent agreed to resolve the issue of discipline through briefing rather than a hearing. By Briefing Order dated February 8, 2016, the undersigned administrative law judge ordered the parties to file a stipulation no later than February 22, 2016 and to submit written arguments regarding the

appropriate amount of the forfeiture no later than March 7, 2016. On February 17, 2016, the parties entered into a Joint Stipulation of Facts and Conclusions of Law, in which the parties stipulated to the relevant facts and Respondent stipulated she violated Wis. Admin. Code § Cos 3.01(1) by practicing cosmetology outside the confines of a licensed establishment and Wis. Admin. Code § Cos 2.045 by providing personal care services outside of a licensed establishment. The Division timely filed its argument for discipline. Respondent did not file any argument.

FINDINGS OF FACT

The following facts are taken from the parties' Joint Stipulation of Facts and Conclusions of Law.

1. Respondent Patricia A. Helt is licensed by the State of Wisconsin as a cosmetology practitioner, having license number 80315-82, first issued on August 30, 2011 and current through March 31, 2017.

2. Respondent is also licensed by the State of Wisconsin as a cosmetology manager, having license number 35997-81, first issued on August 17, 2015 and current through March 31, 2017.

3. Since approximately September 2014, Respondent has rented a booth at a cosmetology establishment located at 1515 Monroe Street, Madison, Wisconsin 53711 (Monroe Street address)

4. Since approximately September 2014, Respondent has performed cosmetology services at her booth located at the Monroe Street address.

5. On July 27, 2015, an investigator with the Department performed an investigation at Respondent's booth located at the Monroe Street address.

6. During the July 27, 2015 investigation, the Department investigator observed Respondent cutting hair for compensation at her booth located at the Monroe Street address.

7. From September 2014 to August 17, 2015, Respondent did not hold a cosmetology manager license.

8. From September 2014 to September 11, 2015, Respondent's booth located at the Monroe Street address did not have an establishment license.

DISCUSSION

The parties have stipulated that Respondent violated Wis. Admin. Code § Cos 3.01(1) by practicing cosmetology outside the confines of a licensed establishment and violated Wis. Admin. Code § Cos 2.045(1) by providing personal care services outside of a licensed establishment. The facts, as stipulated to by the parties, confirm these violations. Thus, the only remaining issue is what discipline, if any, should be imposed for these violations. The Division

argues that this tribunal should uphold the Division's \$1,000 citation issued to Respondent. Respondent has failed to submit any argument with respect to discipline.

Wisconsin Stat. § 454.15(2)(i) 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 administrative rules promulgated under that subchapter (specifically, Wis. Admin. Code §§ Cos. 3.01(1) and 2.045(1)), 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:

(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.

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).

The \$1,000 forfeiture sought is consistent with the purposes of discipline articulated in *Aldrich*. With respect to protection of the public, I note that Respondent provided cosmetology and personal care services outside of a licensed establishment for almost a year, a very significant amount of time. When individuals practice without holding the required licenses, boards cannot fulfill their responsibility of protecting the public by ensuring that members of the profession are subject to rules which impose accountability and minimal levels of competence. *See Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W. 2d 664, 667-68 (1984). Regarding rehabilitation and deterrence, the \$1,000 forfeiture will serve as a strong reminder to Respondent and to other licensees of the importance of obtaining the required licensure and the consequences for failing to do so.

In addition, the \$1,000 forfeiture sought is consistent with the amount issued in other cases involving the same or similar violations. The Division has provided proof of seven prior instances in 2015 in which the Board issued \$1,000 citations for conduct involving violations of Wis. Admin. Code § Cos 2.045(1) and/or § Cos 3.01(1). One of the citations resulted in a contested case hearing and final decision issued by the Board. *See In the Matter of Disciplinary Proceedings Against Lamar D. Skinner, Sr.*, Order 0004112 (June 22, 2015). That case is similar to this case in that a \$1,000 forfeiture was imposed on an individual who, for approximately a year and a half, provided personal care services in an establishment which was not licensed.

Finally, the \$1,000 forfeiture is a less serious consequence than the discipline which the Division could have sought under Wis. Stat. § 454.15(2) and is also a significantly lower forfeiture 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, as stated, Respondent operated her booth without an establishment license for almost a year.

Based on Wis. Stat. § 454.15(3), the criteria set forth in *Aldrich*, and the Board's consistent practice of issuing \$1,000 citations for similar violations, a forfeiture in the amount of \$1,000 is warranted, particularly as Respondent has made no argument to suggest otherwise.

CONCLUSIONS OF LAW

1. Respondent violated Wis. Admin. Code § Cos 3.01(1) by practicing cosmetology outside the confines of a licensed establishment.
2. Respondent violated Wis. Admin. Code § Cos 2.045(1) by providing personal care services outside of a licensed establishment.
3. A forfeiture in the amount of \$1,000 is warranted under Wis. Stat. § 454.15(3) and the factors delineated in *Aldrich*.

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:

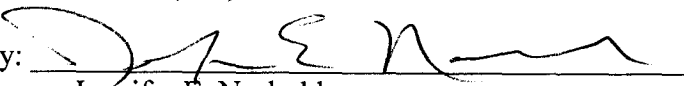
Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Patricia Helt.

Dated at Madison, Wisconsin on April 13, 2016.

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