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**Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

In the Matter of a Petition for an Administrative
Injunction Involving Wilson Alberto Feliciano Estrada,
Respondent

FINAL DECISION AND ORDER

Order No. 0004791

Division of Legal Services and Compliance Case No. 15 UNL 051

The State of Wisconsin, Department of Safety and Professional Services, 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, Department of Safety and Professional Services.

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 30th day of June, 2016.

A handwritten signature in black ink, appearing to read "Michael J. Berndt", written over a horizontal line.

Michael J. Berndt
Chief Legal Counsel
Department of Safety and Professional Services



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of a Petition for an Administrative
Injunction Involving Wilson Alberto Feliciano Estrada,
Respondent

DHA Case No. SPS-16-0036
DLSC Case No. 15 UNL 051

PROPOSED DECISION AND ORDER

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

Wilson Alberto Feliciano Estrada
1149 Eastman Avenue #6
Green Bay, WI 54304

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney Renee M. Parton
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 when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Petition for an Administrative Injunction against Respondent Wilson Alberto Feliciano Estrada (Respondent). The Petition for an Administrative Injunction alleged Respondent engaged in the practice of barbering and cosmetology without a credential in violation of Wis. Stat. §§ 454.22(1) and 454.04(1)(a).

The Division served Respondent on April 11, 2016, by sending a copy of the Notice of Hearing and Petition for an Administrative Injunction to his last known address, which is 1149 Eastman Avenue #6, Green Bay, Wisconsin 54304, and to his last known business address, which is 611 George Street, Green Bay, Wisconsin 54302. Respondent failed to file an Answer

to the Petition for an Administrative Injunction within 20 days from the date of service, as required by Wis. Admin. Code § SPS 3.08(4), and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on May 13, 2016.

At the May 13, 2016 telephone prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 3.13 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Petition for an Administrative Injunction and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on May 13, 2016. Consistent with this notice, the Division filed a recommended proposed decision and order by the deadline of May 25, 2016.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-8 are taken from the Division's Petition for an Administrative Injunction against Respondent filed in this matter.

1. Respondent resides at 1149 Eastman Avenue #6, Green Bay, Wisconsin 54304.
2. Respondent's business address is 611 George Street, Green Bay, Wisconsin.
3. Respondent is not and has never been licensed in the State of Wisconsin to practice barbering or cosmetology.
4. On July 23, 2015, a Department investigator conducted an inspection of Executive Cuts, an unlicensed barbering establishment located at 611 George Street, Green Bay, Wisconsin.
5. During the July 23, 2015 inspection, the Department investigator observed Respondent cutting hair and receiving payment for his services.
6. On January 13, 2016, Department investigators conducted a follow-up inspection of Executive Cuts located at 611 George Street, Green Bay, Wisconsin.
7. Executive Cuts was open for business during the January 13, 2016 inspection.
8. Respondent was present at Executive Cuts during the January 13, 2016 inspection.

Facts Related to Default

9. The Petition for an Administrative Injunction and Notice of Hearing in this matter were served on Respondent on April 11, 2016 at his last known home and business addresses, by both certified and regular mail consistent with Wis. Admin. Code § SPS 3.07. The Notice of Hearing advised Respondent: "If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered

against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than \$10,000 for each offense. Each day of continued violation constitutes a separate offense.”

10. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 3.08(4).

11. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 13, 2016. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached no later than May 11, 2016. The Notice instructed Respondent: “The Respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent.”

12. Respondent failed to provide a telephone number at which he could be reached for the May 13, 2016 prehearing conference. At the prehearing conference, the Division provided two potential telephone numbers for Respondent, at which the ALJ attempted to contact Respondent. Neither number was in service.

13. Based on Respondent’s failure to Answer the Petition for an Administrative Injunction and failure to appear at the May 13, 2016 prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 3.13 and Wis. Admin. Code § HA 1.07(3)(c).

14. On May 13, 2016, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than May 25, 2016, a recommended proposed decision and order.

15. The Division timely filed its recommended proposed decision and order by May 25, 2016.

16. Respondent did not file a response to the Notice of Default or to the Division’s recommended proposed decision and order.

Facts Related to Licensure

Findings of Fact 17–22 are taken from the undisputed Affidavit of Susan Theisen filed by the Division in this matter.

17. On May 16, 2016, the Records Management Supervisor of the Department’s Division of Professional Credential Processing performed a search of Department credentialing records for the names “Wilson Alberto,” “Wilson Feliciano,” and “Wilson Estrada.” She also performed a general search of the names “Alberto,” “Feliciano,” and “Estrada” and reviewed the list of all credential holders with these names.

18. According to the results of the Records Management Supervisor’s May 16, 2016 records search, on May 16, 2016, Wilson Alberto Feliciano Estrada was not and never had been any of the following:

- a. a licensed barber,
- b. a licensed barbering manager,
- c. an apprentice in barbering,
- d. a temporary barbering permit holder,
- e. a licensed cosmetologist,
- f. a licensed cosmetology manager,
- g. an apprentice in cosmetology, or
- h. a temporary cosmetology permit holder.

19. The Records Management Supervisor's May 16, 2016 search of credentialing records, described in paragraph 17 above, would have identified any such credential, if one existed.

20. On May 17, 2016, the Records Management Supervisor also performed a search of Department credentialing records for any credential associated with the following location: 611 George Street, Green Bay, Wisconsin.

21. According to the results of the Records Management Supervisor's records search, on May 17, 2016, there was not and never had been a licensed school of barbering, cosmetology, aesthetics, electrology or manicuring at this location. On May 17, 2016, there also was not and never had been a licensed specialty school of aesthetics, electrology or manicuring at this location.

22. The Records Management Supervisor's search of credentialing records, described in paragraph 20 above, would have identified any such credential, as Department records associate the credential with its location.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the May 13, 2016 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Petition for an Administrative Injunction and failing to appear for the telephone prehearing conference. As a result, an order may be entered against him on the basis of the Petition and other evidence. *See* Wis. Admin. Code § SPS 3.13; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violation of Wis. Stat. §§ 454.22(1) and 454.04(1)(a):

The Division alleges Respondent has engaged in the practice of barbering and cosmetology without a credential in violation of Wis. Stat. §§ 454.22(1) and 454.04(1)(a). The

undisputed facts of this case show that Respondent was observed cutting hair for compensation without a credential.

Wisconsin Stat. § 454.22(1) prohibits the unlicensed practice of barbering. It states:

No person may engage in barbering unless the person is one of the following: (a) A licensed barber. (b) A licensed barbering manager. (c) An apprentice in barbering under s. 454.26. (d) A student in a barbering course of instruction. (e) A person who holds a temporary permit to practice barbering granted by the department under s. 454.23(7). (f) A licensed cosmetologist. (g) A licensed cosmetology manager. (h) An apprentice in cosmetology under s. 454.10. (i) A student in a cosmetology course of instruction. (j) A person who holds a temporary permit to practice cosmetology granted by the cosmetology examining board under s. 454.06(10).

Wisconsin Stat. § 454.04(1)(a) prohibits the unlicensed practice of cosmetology. It states, subject to exceptions which do not apply in this case, that:

. . . no person may engage in cosmetology unless the person has received training in the areas of service provided and holds a current cosmetologist license or cosmetology manager license issued by the examining board that is not an inactive license or temporary permit issued by the examining board or is an apprentice under s. 454.10 or a student in a cosmetology course of instruction.

The act of cutting hair constitutes the practice of both barbering and cosmetology. Pursuant to Wis. Stat. § 454.20(2), barbering means, among other things, cutting hair for compensation, and Wis. Stat. § 454.01(7m)(a) states that cosmetology means, among other things, performing barbering for compensation.

The undisputed facts of this case show that a Department investigator observed Respondent cutting hair and receiving payment for his services on July 23, 2015 at an unlicensed barbering establishment named Executive Cuts. During a follow-up inspection at Executive Cuts on January 13, 2016, Department investigators observed the establishment was open for business and Respondent was present in the establishment during the inspection. Department records show that as of May 16, 2016, Respondent was not and has never been a licensed barber, barbering manager, cosmetologist, or cosmetology manager. He also has never held a temporary barbering or cosmetology permit and has never been an apprentice in barbering or cosmetology. Department records also show that Respondent was not working as a student, as Wis. Stat. § 454.01(15) defines a student as someone who is learning at a licensed school, specialty school or exempted school. Department records show that as of May 17, 2016, the location where Department investigators observed Respondent cutting hair was not and has never been any of the schools delineated in Wis. Stat. § 454.01(15).

Therefore, Respondent engaged in the unauthorized and unlicensed practice of barbering and cosmetology in violation of Wis. Stat. §§ 454.22(1) and 454.04(1)(a).

Administrative Injunction

The Department requests that this tribunal issue a special order enjoining Respondent from the practice of barbering and/or cosmetology without a credential. Pursuant to Wis. Stat. § 440.21(2): “If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.”

In light of the facts of this case, a special order enjoining Respondent from the practice of barbering and/or cosmetology without a credential is warranted.

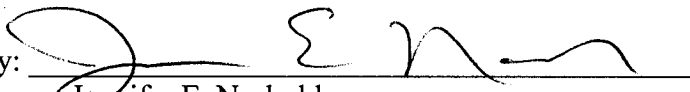
ORDER

Accordingly, IT IS ORDERED that Respondent Wilson Alberto Feliciano Estrada is hereby ENJOINED from the continuation of the practice of barbering and/or cosmetology or use of the title, unless and until Respondent is properly credentialed or is an apprentice or a student in barbering or cosmetology as required by Wis. Stat. §§ 454.04(1)(a) and 454.22(1), effective on the date the final decision and order is signed by the Department.

Violation of this special order may result in a forfeiture of up to \$10,000 for each day of violation. *See* Wis. Stat. § 440.21(4)(a). If the Department determines that there is probable cause to believe that Respondent has violated any terms of this Administrative Injunction, the Department may refer the violations covered by this decision and order to any appropriate prosecutorial unit for review for possible criminal charges.

Dated at Madison, Wisconsin on May 25, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
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By: 
Jennifer E. Nashold
Administrative Law Judge