

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."

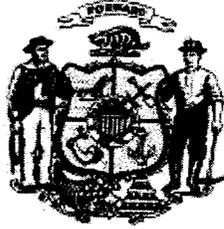
The status of an appeal may be found on court access websites at:

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

- 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
Hanh Pham, Respondent

FINAL DECISION AND ORDER

Order No. 0005157

Division of Legal Services and Compliance Case No. 15 BAC 058

On February 6, 2017, 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 7th day of February 2017.

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

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
Hanh Pham, Respondent

DHA Case No. SPS-16-0058
DLSC Case No. 15 BAC 058

PROPOSED DECISION AND ORDER

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

Hanh Pham
5603 W. Burnham Street
West Allis, WI 53219

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 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 Complaint against Respondent Hanh Pham (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 454.15(2)(a) because Respondent made a material misstatement in her application for licensure.

The Division served Respondent on September 26, 2016, by sending a copy of the Notice of Hearing and Complaint to her address on file with the Department by both certified and

regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4), and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on November 1, 2016.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint 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 November 1, 2016. Consistent with the notice, the Division submitted a recommended proposed decision and order by November 21, 2016.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-10 are set forth in the Division's Complaint against Respondent filed in this matter.

1. Respondent Hanh Pham is licensed in the State of Wisconsin to practice cosmetology, having license number 98622-82, first issued on May 1, 2015 and current through March 31, 2017.

2. Respondent's most recent address on file with the Department is 5603 West Burnham Street, West Allis, Wisconsin 53219.

3. On April 22, 2015, Respondent submitted an Application for Licensure by Endorsement (Application) for a Wisconsin cosmetology practitioner license to the Department.

4. Respondent indicated on the Application that she was currently licensed through examination in the State of Illinois with license number 011.288762. Respondent included an alleged certified copy of Certification of Licensure from the Illinois Department of Financial and Professional Regulation (IDFPR) dated April 20, 2015.

5. On the Application, Respondent signed her name to the statement:

I understand that failure to provide requested information, making any materially false statement and/or giving any materially false information in connection with my application for a credential . . . may result in . . . denial, revocation, suspension or limitation of my credential, or any combination thereof, or such other penalties as may be provided by law.

6. On May 29, 2015, the Department received an inquiry from the Alabama Board of Cosmetology regarding Respondent's Wisconsin cosmetology practitioner license. The Department subsequently opened Division of Legal Services and Compliance Case No. 15 BAC 058 for investigation.

7. At the Department's request, a staff person from IDFPR reviewed the Certification of Licensure document submitted by Respondent with her Application. IDFPR determined that the license number listed on the document belonged to another person and that the document was artificial.

8. On March 25, 2016, and April 15, 2016, a Department investigator sent letters to Respondent's address on record with the Department, requesting information pertaining to Case No. 15 BAC 058.

9. Respondent did not respond to the Department investigator's requests.

10. On August 15, 2016, the Department called Respondent at the telephone number on record with the Department. The phone number was not in service.

Facts Related to Default

11. The Complaint and Notice of Hearing in this matter were served on Respondent on September 26, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "[i]f you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Cosmetology Examining Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

12. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

13. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a prehearing conference for November 1, 2016, at 10:00 am. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which she could be reached for the conference no later than October 26, 2016. The Notice further informed Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."

14. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

15. At the prehearing conference, the Division provided a telephone number for Respondent, but indicated that the last time the Division attempted to contact Respondent at that number, the number was disconnected. The ALJ attempted to contact Respondent at the number provided by the Division; however, the number was not in service.

16. On November 1, 2016, the ALJ issued a Notice of Default and Order finding that Respondent was in default and requiring the Division to serve no later than November 22, 2016, a recommended proposed decision and order.

17. The Division timely filed its recommended proposed decision and order.

18. Respondent did not file a response to either the Notice of Default and Order or to the Division's submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the November 1, 2016 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the telephone conference held on November 1, 2016. *See* Wis. Admin. Code §§ SPS 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Wis. Stat. § 454.15(2)(a)

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 454.15(2)(a), which grants the Wisconsin Cosmetology Examining Board (Board) the authority to discipline any license or license holder for making a material misstatement in an application for license or permit or renewal, or in an application to classify a license as an inactive license.

The undisputed facts establish that on April 22, 2015, Respondent submitted an Application to become a Wisconsin licensed cosmetologist. Respondent indicated on the Application that she was currently licensed through examination in the State of Illinois, with license no. 011.288762. Included with the Application was a certified copy of Certification of Licensure from the Illinois Department of Financial and Professional Regulation (IDFPR) dated April 20, 2015. On the Application, Respondent signed the following statement:

I understand that failure to provide requested information, making any materially false statement and/or giving any materially false information in connection with my application for a credential . . . may result in . . . denial, revocation, suspension or limitation of my credential, or any combination thereof, or such other penalties as may be provided by law.

IDFPR notified the Department that the Certification of Licensure form received with Respondent's Application was fraudulent. IDFPR stated license no. 011.288762 belonged to another person.

Pursuant to Wis. Stat. § 454.13(1), the Board may issue a license to practice cosmetology to an applicant who is licensed in another state of the United States and to whom has completed at least 4,000 hours of experience in licensed practice, has never been disciplined by the licensing authority of another jurisdiction, and is not a party to a proceeding before the licensing agency. Without the Certification of Licensure form from Illinois, Respondent would not have qualified for a Wisconsin cosmetology license. Therefore, the fraudulent form is a material misstatement in an application for licensure.

As further proof of Respondent's fraudulent application, the Department was unable to contact Respondent at any of the contact information provided with the application. The Department sent a certified letter to the address provided which was returned undeliverable. The telephone number provided on the application was not in service.

Based on the facts of this case and that Respondent has made no argument to the contrary, I conclude that Respondent is subject to discipline pursuant to Wis. Stat. § 454.15(2)(a).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's cosmetologist license be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

Revocation is necessary to protect the public from other instances of misconduct and to deter other credential holders from engaging in similar conduct. Respondent certified that giving any materially false information could result in revocation of her license. Respondent provided fraudulent information to the Department in order to gain a license in Wisconsin. The purpose of requiring a cosmetologist to be licensed is to ensure the public that the licensee can be trusted to practice honestly and competently. Respondent's deceitful behavior with the Board demonstrates she cannot be trusted. In fact, without the fraudulent certification from Illinois, Respondent would not have been granted her license in the first place.

Further, by deceiving the Board, Respondent has demonstrated that she does not respect the Board's authority or rules of her profession. This was also demonstrated by Respondent's lack of cooperation throughout the Department's investigation and in this proceeding. Thus, the Board cannot assure the public of Respondent's competency or even qualifying knowledge or fitness to practice cosmetology. Therefore, revocation of Respondent's license is an appropriate response to her disrespect for the law, the public welfare, and the licensing authority governing her profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is not plausible in this case, as Respondent purposely misled the Board and refused to cooperate with the Board which granted her license. Having obtained no information from Respondent, the Board cannot ascertain whether rehabilitative measures might be effective. Moreover,

revocation in this case is necessary to deter other licensees from submitting fraudulent application materials. Licensees need to know this conduct will not be tolerated.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's cosmetologist license is warranted.

Costs

As a result of Respondent's license being revoked by the Board, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. See Wis. Stat. § 440.22(2). In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d. 237, 751 N.W.2d 385. The Board has also, in previous orders, considered many factors, addressed below, when determining if all or part of the costs should be assessed against a Respondent. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts were deemed particularly relevant to the instant case. The Division proved every count it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Additionally, Respondent's conduct and violations are serious. Respondent submitted fraudulent documents to intentionally mislead the Board into granting her a license. Respondent did not cooperate with the Department's investigation or with the hearing proceedings. As a result, the Division sought a revocation of Respondent's license to practice cosmetology in Wisconsin, the most severe discipline available. Further, Respondent made no argument concerning whether costs should be assessed against her. When Respondent fails to argue a position, the Division is not obliged to make the argument for her. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all cosmetology licensees in Wisconsin.

Based on the foregoing, all of the costs of this proceeding shall be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, it is hereby ORDERED that Respondent Hanh Pham's cosmetologist license (no. 98622-82) is REVOKED, effective on the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount

to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Madison, Wisconsin on November 23, 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