

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
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the matter of a Petition for an Administrative
Injunction involving Raymond Cole and Ray's
Barbershop, Respondents.

FINAL DECISION AND ORDER

Order No. **ORDER0007991**

Division of Legal Services and Compliance Case No. 19 UNL 012

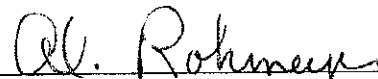
The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 8th day of June, 2022



Aloysius Rohmeyer
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 Raymond Cole and Ray's
Barbershop, Respondents.

DHA Case No. SPS-22-0008
DLSC Case No. 19 UNL 012

PROPOSED DECISION AND ORDER

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

Raymond Cole
6017 Sheridan Road
Kenosha, WI 53143

Ray's Barbershop
Attn: Raymond Cole
6017 Sheridan Road
Kenosha, WI 53143

Department of Safety and Professional Services
P.O. Box 8368
Madison, WI 53708-8368

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

Attorney Alicia M. Kennedy
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 Notice of Hearing and Petition for an Administrative Injunction against the Respondents Raymond Cole and Ray's Barbershop. The Petition for an Administrative Injunction (Petition) alleged that the Respondents engaged in the practice of barbering without the necessary credentials in violation of Wis. Stat. §§ 454.22(1), 454.25(2), and Wis. Admin. Code § SPS 50.240(1).

The Division served the Respondents on January 28, 2022, by sending a copy of the Notice of Hearing and Petition to their last known address, which is 6017 Sheridan Road, Kenosha, Wisconsin 53143, via regular and certified mail. The Respondents failed to file an Answer to the Petition within 20 days from the date of service, as required by Wis. Admin. Code § SPS 3.08, and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on March 4, 2022.

At the March 4, 2022 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 the Respondents' failure to file an Answer to the Petition and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ), Andrea Brauer, found them to be in default and issued a Notice of Default and Order on March 8, 2022. Consistent with this notice, the Division filed a recommended proposed decision and order by the deadline of April 4, 2022.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–14 are taken from the Division's Petition for an Administrative Injunction filed in this matter.

1. Respondent Raymond Cole, of Kenosha, Wisconsin, is not and has never been licensed to practice barbering in the State of Wisconsin.
2. Respondent Ray's Barbershop is not and has never been licensed as a barbering establishment in the State of Wisconsin.
3. On December 16, 2014, the Department conducted a complaint-based inspection of Ray's Barbershop. Respondent Cole only had an Illinois barber license and had never attempted to either obtain a Wisconsin barber license or a barbering establishment license.
4. On February 10, 2015, the Department issued a cease-and-desist letter to Raymond Cole and Ray's Barbershop.
5. On January 16, 2019, the Department received a complaint alleging that Respondents had provided barbering services to an individual. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 19 UNL 012 for investigation.
6. On May 10, 2019, the Department sent a letter to Respondent Raymond Cole to request his response to the complaint.
7. On May 28, 2019, Respondent Raymond Cole stated that Ray's Barbershop was no longer in business and was now a retail business location named Tony's Boutique.
8. On July 11, 2019, the Department conducted a complaint-based inspection of Ray's Barbershop. The entrance did not have a sign above it, but there were two barber poles in the windows on either side of the door, and a neon OPEN sign which was illuminated. Respondent

Raymond Cole stated that he did not give haircuts because he is not licensed, but that another individual gave haircuts at Ray's Barbershop.

9. Respondent Raymond Cole was given a cease-and-desist letter and informed that he needed to apply for a barber license and Respondent Ray's Barbershop needed to apply for a barbering establishment license.

10. According to Google reviews, customers have indicated receiving haircuts at Ray's Barbershop as recently as 8 months ago (approximately March 2021).

11. As of the date of this Administrative Injunction, Respondents have not applied for a barber license and/or a barbering establishment license.

12. The practice of barbering is defined as, for compensation, arranging, styling, dressing, shampooing, cleansing, curling, dyeing, tinting, coloring, bleaching, waxing, waving, straightening, cutting, shaving, trimming, relaxing, singeing, or performing similar work upon the hair of the head, neck, or face of any person by any means.

13. Pursuant to Wis. Stat. § 454.22(1), a license is required to engage in the practice of barbering.

14. Pursuant to Wis. Stat. § 454.25(2) and Wis. Admin. Code § SPS 50.240(1), barbering may not be practiced outside the confines of a licensed establishment.

Facts Related to Default

15. The Petition and Notice of Hearing in this matter were served on Respondents on January 28, 2022 to their last known address, by both certified and regular mail consistent with Wis. Admin. Code § SPS 3.07. The Notice of Hearing advised Respondents: "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 and Ray's Barbershop from engaging in the practice of barbering and practicing barbering without a barbering establishment license, or use of a related 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."

16. Respondents did not file an Answer as required by Wis. Admin. Code § SPS 3.08.

17. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 4, 2022 at 11:30 a.m. Notice of this prehearing conference was sent to both parties, with instructions that Respondents provide to the ALJ a telephone number at which they could be reached no later than March 3, 2022. The Notice instructed: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

18. Respondents failed to provide a telephone number and could not be reached for the March 4, 2022 prehearing conference.

19. At the time scheduled for the prehearing conference, the ALJ attempted to contact Respondents at the telephone number on file with the Division. Respondents did not answer the telephone. The ALJ left the line open for more than 10 minutes, consistent with Wis. Admin. Code § HA 1.07, but the Respondents did not return the ALJ's phone call. The Respondents have not otherwise contacted the ALJ.

20. Based on Respondents' failure to Answer the Petition and failure to appear at the March 4, 2022 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).

21. On March 8, 2022, the ALJ issued a Notice of Default and Order, finding the Respondents in default and ordering the Division to file and serve a recommended Proposed Decision and Order no later than April 4, 2022.

22. The Division timely filed a recommended Proposed Decision and Order.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdiction

The Department has authority to conduct investigations, hold hearings, and make findings as to whether a person or business entity has engaged in the practice of barbering or cosmetology without a required credential. If the Department determines that a person or entity has engaged in practice without a credential, the Department may issue a special order enjoining the person or entity from continuing the practice. Wis. Stat. § 440.21(1) and (2); Wis. Stat. ch. 454, subch. II.

The undersigned ALJ has authority to preside over these administrative injunction proceedings pursuant to Wis. Admin. Code § SPS 3.09. This proposed decision and order is issued pursuant to Wis. Stat. § 227.43(2m).

Default

As stated in the March 8, 2022 Notice of Default and Order, the Respondents are in default for failing to file an Answer to the Petition and failing to appear for the telephone prehearing conference. As a result, an order may be entered against them 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).

Violations

Pursuant to Wis. Stat. § 454.22(1), no person may engage in the practice of barbering unless the person is a licensed barber or cosmetologist, holds a temporary barbering or cosmetology permit, or is a barbering or cosmetology apprentice or student. The act of cutting hair for compensation constitutes the practice of barbering. Wis. Stat. § 454.20(2).

The practice of barbering outside of a licensed establishment is also generally prohibited, subject to a discrete list of exceptions outlined in Wis. Stat. § 454.25(1). For example, a licensed barber or cosmetologist may cut hair outside of a licensed establishment if the person owns, manages, is

employed by, or is affiliated with a licensed establishment and brings a copy of his or her license certificate to the location where services are provided. Wis. Stat. § 454.25(1)(ar).¹

The Division alleges that Mr. Cole gave haircuts in Ray's Barbershop, although he did not hold a barbering license and Ray's Barbershop was not licensed as a barbering establishment. It is undisputed that the Respondents do not hold any barbering credentials. According to the Petition, Mr. Cole disputes that he engaged in unauthorized practice and claims instead that another individual gives haircuts at the business's location, which is now called Tony's Boutique. If this assertion were true, then the Respondents would not necessarily have violated any licensing laws. However, because the Respondents have not participated in these proceedings or raised any defenses on their own behalf, I find that the Division's other factual allegations in this matter are sufficient to satisfy its burden to prove that the unauthorized conduct occurred.

The Division alleges that it performed an inspection of Ray's Barbershop after receiving a complaint, which claimed that the Respondents had provided unauthorized barbering services. During the inspection, the business's location was found to be operating as a barbering establishment with two barber poles and an illuminated "open" sign. In addition, subsequent Google reviews further indicate customers continued receiving haircuts at Ray's Barbershop following the inspection. Because the Respondents are in default, I am authorized to take these allegations as true pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(b). *See also* Wis. Admin. Code § HA 1.01(2).

Based on the above, I find that Mr. Cole practiced barbering without a required credential in violation of Wis. Stat. § 454.22(1). Mr. Cole and Ray's Barbershop also engaged in the unauthorized practice of barbering outside of a licensed establishment in violation of Wis. Stat. § 454.25(2). A special order enjoining the Respondents from the continuation of the practice may therefore be issued pursuant to Wis. Stat. § 440.21(2).

Administrative Injunction

The Division requests that a special order be issued enjoining Mr. Cole and Ray's Barbershop from the practice of barbering without a credential, as outlined in the order below. Because the Division has proven that the Respondents engaged in the practice of barbering without the required credentials, the recommended special order is warranted and is authorized pursuant to Wis. Stat. § 440.21(2).

ORDER

1. Unless and until Respondent Raymond Cole is properly licensed as a barber by the Wisconsin Department of Safety and Professional Services, or as a cosmetologist by the Wisconsin

¹ The Division also alleges Wis. Admin. Code § SPS 50.212 and 50.240(1) as a basis for issuing a special order in this case. However, because 2017 Wisconsin Act 82 repealed the authority under which those rules were promulgated, and they are also inconsistent with the exceptions for practice outside of a licensed establishment authorized in Wis. Stat. § 454.25(1), these are unauthorized rules which the agency no longer has authority to enforce. The Department was directed to promulgate new rules related to the use of a chemical process in the practice of barbering outside of a licensed establishment, but it has not yet done so. Wis. Stat. § 454.25(ag); *see* Wis. Stat. § 227.26(4).

Cosmetology Examining Board,² Mr. Cole is enjoined and prohibited from the practice of barbering in the state of Wisconsin.

2. Unless and until Respondent Ray's Barbershop is properly licensed as a barbering establishment by the Wisconsin Department of Safety and Professional Services, or as a cosmetology establishment by the Wisconsin Cosmetology Examining Board,³ Ray's Barbershop is enjoined and prohibited from operating a barbering or cosmetology establishment in the state of Wisconsin.

3. Respondents shall provide a copy of this Administrative Injunction with any application submitted by Respondents for a credential issued by the Department.

4. If the Department determines that there is probable cause to believe that either 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.

5. 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).

Dated at Milwaukee, Wisconsin on April 27, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (414) 227-4027
Fax: (608) 264-9885
Email: andrea.brauer@wisconsin.gov

By: Andrea Brauer
Andrea Brauer
Administrative Law Judge

² Pursuant to Wis. Stat. § 454.01(7m)(a), barbering is including in the definition of the practice of cosmetology. Therefore, should Respondent Cole become properly licensed as a cosmetologist, he may practice barbering pursuant to Wis. Stat. § 454.04.

³ Pursuant to Wis. Stat. § 454.01(7m)(a), barbering is including in the definition of the practice of cosmetology. Therefore, should Respondent Ray's Barbershop become properly licensed as a cosmetology establishment, the establishment may include barbering services pursuant to Wis. Stat. § 454.08(1)(b).