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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 Anson Eklund, Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008133**

Division of Legal Services and Compliance Case No. 19 UNL 048

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 22 day of August, 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 Anson Eklund, Respondent.

DHA Case No. SPS-22-0029
DLSC Case No. 19 UNL 048

PROPOSED DECISION AND ORDER

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

Anson Eklund
E19054 Dolotta Rd.
Augusta, WI 54722

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

A Notice of Hearing and Petition for Administrative Injunction in this matter were served on Respondent Anson Eklund by the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), on April 14, 2022, by both certified and regular mail. The Division served an Amended Notice of Hearing and Petition on the Respondent on April 22, 2022. Respondent failed to file an answer to either Petition.

Following expiration of the 20-day time period to file an Answer, the undersigned administrative law judge (ALJ), Kristin P. Fredrick, scheduled a telephone prehearing conference for Thursday, May 26, 2022 at 10:00 am. The Notice of Telephone Prehearing Conference

instructed the Respondent to provide the ALJ with a telephone number where he could be reached for the May 26, 2022 prehearing. The Respondent did not contact the ALJ to provide a telephone number and failed to appear at the prehearing. Based on the Respondent's failure to file an Answer to the Petition and failure to appear at the 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). The ALJ found Respondent to be in default and issued a Notice of Default and Order on May 26, 2022. Consistent with this notice, the Division filed a recommended proposed decision and order by the deadline of June 27, 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 against Respondent filed in this matter.

1. Anson Eklund (Respondent) has a last known address at E19054 Dolotta Road, Augusta, Wisconsin 54722.
2. Respondent is not and has never been licensed in the state of Wisconsin to practice as a tattooist.
3. On June 2, 2019, the Department of Safety and Professional Services (Department) received a complaint alleging Respondent was tattooing in Osseo, Wisconsin, without a valid license.
4. The complainant provided the Department with copies of screenshots of messages between Respondent and another party. In one message, Respondent stated of living in Osseo, Wisconsin: "Ya, I like it. I get a ton of tattoo biz here so its [sic] working out lol."
5. On June 25, 2019, the Department sent a letter to Respondent requesting a response to the complaint and a copy of his Wisconsin tattooist license.
6. On July 2, 2019, Respondent replied that if he does tattoo outside of a shop, he obtains a temporary event license. Respondent stated he has been looking for a building to open his own shop and submitted a copy of his Minnesota Body Art Technician – Dual License (License No. 330750, expired March 31, 2020).
7. On October 18, 2019, a Department Investigator sent an email to Respondent requesting he apply for a tattooist license and a tattoo establishment license if he owned a shop. The response was due by November 1, 2019. No response was received.
8. On November 4, 2019, another email was sent to Respondent requesting the same information with a deadline of November 18, 2019. No response was received.

9. On November 22, 2019, a letter was mailed to Respondent requesting the same information as the above emails with a deadline of December 6, 2019. No response was received.

10. On December 10, 2019, another letter was mailed to Respondent requesting the same information with a deadline of December 26, 2019. No response was received.

11. On December 27, 2019, an email was sent to Respondent at his email address on record with a response due by January 10, 2020. No response was received.

12. On January 13, 2020, a letter was sent to Respondent at an address in La Crosse, Wisconsin with a response due by January 27, 2020. No response was received.

13. On February 7, 2020, a letter was sent to Respondent at another address located in Rose Creek, Minnesota with a response due by February 21, 2020. No response was received.

14. On January 13, 2021, the Investigator reviewed records to see if Respondent ever obtained his tattooing license or applied for one, however no records were found.

Facts Related to Default

15. The Petition for an Administrative Injunction and Notice of Hearing in this matter were served on Respondent on April 14, 2022, to his last known address, by both certified and regular mail. 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 working as a tattooist without a proper credential, 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. The Division served an Amended Notice of Hearing and Petition on the Respondent on April 22, 2022.

17. Respondent did not file an Answer to either the Petition or Amended Petition within the 20-day answer deadline.

18. Following expiration of the 20-day time period to file an Answer, the administrative law judge (ALJ) assigned to this matter scheduled a telephone prehearing conference for May 26, 2022 at 10:00 am. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached no later than May 25, 2022. The Notice warned the Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

19. Respondent did not contact the ALJ to provide a telephone number where he could be reached for the prehearing conference.

20. The Respondent could not be reached for the May 26, 2022 prehearing conference.

21. Based on Respondent's failure to Answer the Petition for an Administrative Injunction and failure to appear at or be available for the May 26, 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).

22. On May 26, 2022, the ALJ issued a Notice of Default and Order, finding the Respondent in default and requiring the Division to file and serve no later than June 27, 2022, a recommended Proposed Decision and Order.

23. The Division timely filed its recommended Proposed Decision and Order.

DISCUSSION

Jurisdictional Authority

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 tattooing without the 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. 463.

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. § 227.46(2m).

Default

The Division properly served the Respondent with a Notice of Hearing and Amended Petition for Administrative Injunction. Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 3.07. The Respondent did not file an Answer to either the Petition or Amended Petition as required under Wis. Admin. Code § SPS 3.08(4). "If the respondent fails to answer as required by s. SPS 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence." Wis. Admin. Code § SPS 3.13; *see also* Wis. Admin. Code § HA 1.07(3)(b) ("If a respondent fails to appear, the administrative law judge may...take the allegations in an appeal as true as may be appropriate...."). Allegations in a petition are admitted when not denied. Wis. Admin. Code § SPS 3.08(3).

In the present matter, the Respondent failed to file an answer to the Petition for Administrative Injunction within 20 days from the date of service contrary to Wis. Admin. Code § SPS 3.08(4). Thus, the Division moved for default against the Respondent pursuant to Wis. Admin. Code § SPS 3.13 and Wis. Admin. Code § HA 1.07(3)(b) and (c). The Respondent also failed to appear and participate in the prehearing telephone conference on May 10, 2022. As stated in the May 26, 2022 Notice of Default and Order, Respondent is in default for failing to file an

Answer to the Petition, failing to provide a telephone number and failing to appear for the telephone prehearing conference. Therefore, the Respondent is in default, and findings and an order may be entered based on the Petition. *See* Wis. Admin. Code § SPS 3.13; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations

Under Wis. Stat. 463.10(3), a license is required to in order to practice tattooing. Specifically, the law provides that:

LICENSE REQUIRED. Except as provided in sub. (5), no person may tattoo or attempt to tattoo another, designate or represent himself or herself as a tattooist or use or assume the title "tattooist" and no tattoo establishment may be operated unless the person and the establishment are licensed by the department under this section or by a local health department that is designated as the department's agent under s. 463.16. Except as provided in s. 463.16, fees for licenses issued under this section shall be as determined under s. 440.03(9).

Similarly, pursuant to Wis. Admin. Code § SPS 221.04(1)(b), "No person may tattoo or body pierce another person, use or assume the title of tattooist or body piercer, or designate or represent himself or herself as a body piercer unless the person has obtained a license from the department by application made upon a form furnished by the department under sub. (3)."

The Respondent did not participate in these proceedings and he has been found in default. Thus, I am authorized to take these allegations in the Petition as true pursuant to Wis. Admin. Code §§ SPS 3.13 and HA 1.07(3)(b). *See also* Wis. Admin. Code § HA 1.01(2). The unrefuted facts set forth in the Division's Petition establish that the Respondent was engaging in the practice of tattooing in Osseo, Wisconsin. (Complaint, ¶¶ 3 and 4) It is further undisputed that the Respondent was not licensed to practice as a tattooist in Wisconsin. (Id. ¶¶ 2 and 6) Therefore, I find that the Division's factual allegations in this matter are sufficient to satisfy its burden to prove the unauthorized conduct occurred.

Based on the above, I find that Respondent practiced tattooing without the required credential in violation of Wis. Stat. § 463.10(3) and Wis. Admin. Code § SPS 221.04(1)(b). A special order enjoining the Respondent from the continuation of the practice of tattooing in the State of Wisconsin is therefore reasonable and warranted pursuant to Wis. Stat. § 440.21(2).

CONCLUSIONS OF LAW

1. The Department has the authority to issue special orders enjoining persons or entities from engaging in the practice of tattooing without a credential pursuant to Wis. Stat. § 440.21(1) and (2); Wis. Stat. ch. 463.
2. Based upon the unrefuted facts alleged in the Amended Petition, the Department established that the Respondent engaged in the practice of tattooing in Wisconsin without a license contrary to Wis. Stat. § 463.10(3).

3. Based upon the unrefuted facts alleged in the Amended Petition, the Department established that the Respondent tattooed another person or assumed the title of tattooist without first obtaining a license from the Department contrary to Wis. Admin. Code § SPS 221.04(1)(b).
4. The Division of Hearings and Appeals has authority to preside over these administrative injunction proceedings and to issue this proposed decision and order pursuant to Wis. Stat. § 227.46(2m) and Wis. Admin. Code § SPS 3.09.

SPECIAL ORDER FOR ADMINISTRATIVE INJUNCTION

For the reasons set forth above, IT IS ORDERED that the Respondent, Anson Eklund, is hereby enjoined and prohibited from practicing tattooing in the state of Wisconsin in a capacity in which a credential is required until he is properly licensed by the Wisconsin Department of Safety and Professional Services. If the Department determines that there is probable cause to believe that the 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.

IT IS FURTHER ORDERED that the Respondent shall provide a copy of this Special Order for Administrative Injunction with any application submitted by the Respondent for a credential issued by the Department.

IT IS FURTHER ORDERED that if the Respondent violates this Special Order, the Respondent may be required to forfeit not more than \$10,000 for each offense, pursuant to Wis. Stat. § 440.21(4)(a). Each day of the continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover such forfeiture.

IT IS FURTHER ORDERED that the terms of the Special Order are effective the date it is signed by the Department.

Dated at Madison, Wisconsin on July 15, 2022.

STATE OF WISCONSIN
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By: _____

Kristin P. Fredrick, Administrative Law Judge