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

In the Matter of the Disciplinary Proceedings
Against Latreece A. Tolley, Respondent.

FINAL DECISION AND ORDER

ORDER 0008946
Order No. _____

Division of Legal Services and Compliance Case No. 23 BAC 018

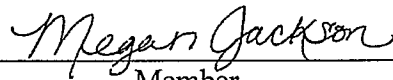
The State of Wisconsin, Cosmetology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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, Cosmetology Examining Board.

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 22nd day of January, 2024.



Member

Wisconsin Cosmetology
Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Latreece A. Tolley, Respondent

DHA Case No. SPS-23-0060
DLSC Case No. 23 BAC 018

PROPOSED DECISION AND ORDER

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

Latreece A. Tolley
2427 W. Melvina St.
Milwaukee, WI 53206
cosstudylaw@gmail.com

Wisconsin Cosmetology Examining Board
P.O. Box 8366
Madison, WI 53707-8366

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

Attorney Alicia Kennedy
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190
Alicia.Kennedy@wisconsin.gov

PROCEDURAL HISTORY

On August 25, 2023, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served the Notice of Hearing and the Complaint in this matter on Latreece A. Tolley (Respondent) by mailing a copy to her address on file with the Department via both certified and regular mail, pursuant to Wis. Stat. § 440.11(2) and Wis. Admin. Code § SPS 2.08. The Respondent did not file an Answer to the Complaint as required by Wis. Admin. Code § SPS 2.09(4).

Following expiration of the 20-day period to file an Answer, the undersigned Administrative Law Judge (ALJ), Andrea Brauer, scheduled a telephone prehearing conference for October 6, 2023, at 11:30 a.m. The Respondent did not appear.

On October 9, 2023, the ALJ issued a Notice of Default and Order against the Respondent. The Division timely filed a recommended Proposed Decision and Order. The Division's recommended findings and order are hereby adopted.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-14 are set forth in the Division's Complaint against Respondent filed in this matter.

1. Respondent Latreece A. Tolley (Birth Year 1989) was licensed by the State of Wisconsin as a manicurist, having license number 11703-85, first issued on November 16, 2021 and expired as of April 1, 2023. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew this license upon payment of a fee until March 31, 2028.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2427 West Melvina Street, Milwaukee, Wisconsin 53206.

3. On January 20, 2021, the Department received a complaint alleging that Respondent was performing unlicensed manicuring services at a manicuring establishment (GNS). The Division of Legal Services and Compliance (DLSC) subsequently opened a case against GNS for investigation.

4. On January 30, 2023, the Department emailed Respondent at her email address of record to request a response to the complaint against GNS. No response was received.

5. On February 6, 2023, the Department emailed Respondent at her email address of record to request a response to the complaint against GNS. No response was received.

6. On February 16, 2023, the Department referred a case against Respondent to its intake division.

7. On February 24, 2023, the Department emailed Respondent at her email address of record to request a response to the complaint against GNS. No response was received.

8. On March 6, 2023, the Department emailed Respondent at her email address of record to request a response to the complaint against GNS. No response was received.

9. On March 14, 2023, the Department emailed Respondent at her email address of record to request a response to the complaint GNS. No response was received.

10. On March 14, 2023, the Department mailed a letter to Respondent at her mailing address of record to request a response to the complaint against her. No response was received.

11. On March 29, 2023, the Department's letter of March 14, 2023 was returned to the Department. The envelope was marked "return to sender, vacant, unable to forward."

12. On April 1, 2023, Respondent's manicurist license expired.

13. On May 1, 2023, the present case was opened for investigation.

14. On May 4, 2023, the Department mailed a letter to Respondent at an alternate address found on Lexis Nexis (4679A North 19th Place, Milwaukee, Wisconsin 53209). No response was received.

Facts Related to Default

15. On August 25, 2023, the Division served the Notice of Hearing and Complaint on the Respondent by both certified and regular mail, consistent with Wis. Admin. Code § 2.08. The Notice of Hearing advised Respondent: "If 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 Board may take disciplinary action against you and impose the costs of the investigation, prosecution, and other costs pursuant to Wis. Admin. Code § SPS 2.18, without further notice or hearing."

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

17. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for October 6, 2023, at 11:30 a.m. Notice of the prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which they could be reached no later than October 5, 2023. 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."

18. Respondent failed to provide a telephone number and could not be reached for the October 6, 2023 prehearing conference.

19. Based on Respondent's failure to file an Answer to the Complaint and failure to appear at the October 6, 2023 prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

20. Respondent is in default for failing to appear at the telephone conference held on October 6, 2023 and for failing to file an Answer to the Complaint. Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. See Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3).

21. On October 9, 2023, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than November 10, 2023, a recommended Proposed Decision and Order.

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

DISCUSSION

Jurisdictional Authority

The Wisconsin Cosmetology Examining Board (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 454.15. Wisconsin Stat. § 440.03(1) provides that the Department “may promulgate rules defining uniform procedures to be used by the department . . . and all examining boards and affiliated credentialing boards attached to the department or an examining board, for . . . conducting [disciplinary] hearings.” These rules are codified in Wis. Admin. Code ch. SPS 2. Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

Default

As stated in the October 9, 2023 Notice of Default and Order, Respondent is in default for failing to file an answer and failure to appear at the October 6, 2023 prehearing conference. See Wis. Admin. Code §§ SPS 2.09(4), 2.14, and Wis. Admin. Code § HA 1.07(3). Further, allegations in a complaint are deemed admitted when not denied. See Wis. Admin. Code § SPS 2.09(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).

Burden of Proof

The burden of proof in disciplinary proceedings before the Board is a preponderance of the evidence. See Wis. Stat. § 440.20(3). By nature of a default finding, this burden is satisfied on the basis of the Complaint and any other evidence set forth in this decision. See Wis. Admin. Code § SPS 2.14.

Violation

The Board has the authority to reprimand a credential holder, or to deny, limit, suspend, or revoke a credential, if the credential holder fails to respond within 30 days to a request for information from the Department in connection with an investigation of alleged misconduct of the credential holder. Wis. Stat. § 440.20(5)(a).

The undisputed facts show that Respondent failed to respond to the Department's requests for information. By failing to cooperate with the Department during an investigation, Respondent is subject to discipline pursuant to Wis. Stat. § 440.20(5)(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 Latreece A. Tolley be reprimanded and the right to renew her manicurist license be suspended until she cooperates with the Board's investigation by providing the requested information to the Board. The recommended discipline is consistent with the purposes articulated in *Aldrich*.

"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 suspension is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

Respondent has demonstrated a lack of respect for the Board's authority. Respondent failed to cooperate throughout the Department's investigation and in this proceeding. Therefore, a reprimand and a suspension of the right to renew her manicurist license is an appropriate response to her disregard for the law and the licensing authority governing her profession.

Promoting rehabilitation is one of the purposes of discipline; however, whether rehabilitation can be achieved is unknown in this case, as Respondent has refused to cooperate with the Board who granted her credential during the investigation process. The Board cannot ascertain whether rehabilitative measures might be effective. Moreover, a reprimand and suspension of Respondent's right to renew her license in this case is necessary to deter other licensees from refusing to cooperate with the Board as it relates to a disciplinary matter.

Even though Respondent's credential is currently expired, the reprimand and suspension of her right to renew her license are necessary and appropriate. Pursuant to Wis. Stat. § 440.08(3)(a) and Wis. Admin. Code § Cos 9.02, she retains a right to renew the credential simply by paying the application renewal fee and a late renewal penalty of \$25. Thus, absent the suspension of the right to renew, Respondent would have an automatic right to renew her credential until March 31, 2028. The fact that Respondent retains a right to renew makes the reasoning for discipline against active licensees equally appropriate to discipline against expired licensees.

In light of the facts of this case and the factors set forth in *Aldrich*, I find a reprimand of Respondent and a suspension of Respondent's right to renew her license are warranted.

Costs

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. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against the Respondent: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a program revenue agency, funded by other licensees; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008). It is within the Board's discretion as to which of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

It is appropriate for Respondent to pay the full costs of the investigation and prosecution of these proceedings. She defaulted, and the factual allegations identified in this decision were deemed admitted. She also failed to cooperate with the Board and failed to file an Answer to the Complaint or otherwise provide any argument regarding the allegations brought against her credential. As such, there is no reason of record why Respondent should not bear assessment of full costs in this matter. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. It would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that Respondent Latreece A. Tolley is REPRIMANDED.

IT IS FURTHER ORDERED that Latreece A. Tolley's right to renew her manicurist license (license no. 11703-85), be SUSPENDED until she has cooperated with the Board's investigation by providing the information that the Board requested.

IT IS FURTHER ORDERED that Respondent Latreece A. Tolley pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18.

After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dspsmonitoring.wi.gov/>

IT IS FURTHER ORDERED that the terms of the Order are effective on the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin, on December 20, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: Andrea Brauer
Andrea E. Brauer
Administrative Law Judge