

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

**Bureau of Commercial Services,
Petitioner**

v

**X-Ceptional Hair & Nail
Mary Glanton, Owner,
Respondent**

Docket No. 2002-735

Agency No. 27-02-0093-00

Agency: Bureau of Commercial Services

Case Type: Sanction

**Issued and entered
this 19th day of July, 2002
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Lisa Funkhouser, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, X-Ceptional Hair & Nail, nor an attorney on behalf of Respondent, appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated May 8, 2002, scheduling a hearing for June 17, 2002. The Notice of Hearing was mailed to the parties' last known addresses. Further, the Notice of Hearing informed the parties that if either party failed to appear at the scheduled hearing, a default may be entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA).

The Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et. seq.* (Code).

At the hearing, Petitioner's counsel requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the APA and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

(1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by... default... .

The Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint dated January 31, 2002, are deemed true.

ISSUES AND APPLICABLE LAW

The specific issues in this case are whether Respondent violated the following sections of the Code and rules promulgated under the Code: Sections 601(1); 604 (c), (h); 1203b; 1204(6); 1999 MR11, R 338.2171(1)(f); 1999 MR11; R 338.2173(3); and 1999 MR11, R 338.2179a (1), (2), (3), and (4). These Code sections and rules state in pertinent part:

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under

this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

* * *

(c) Violates a rule of conduct of an occupation.

* * *

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

Sec. 1203b. A person shall not conduct or operate a cosmetology establishment or school of cosmetology without a school or establishment license issued under this article.

Sec. 1204.

* * *

(6) The license of the establishment and of each individual working in the establishment shall be displayed in a prominent place which is visible to the public at all times. The license of an individual working in the establishment may be posted at the individual's work station.

Rule 71. (1) An owner of an establishment or school shall ensure that the establishment or school has all of the following:

* * *

(f) Covered waste containers that are large enough to contain 1 day's accumulation of waste material.

Rule 73.

* * *

(3) The licensee or owner of an establishment or school shall keep sinks, tubs, spas, showers, baths, and shampoo bowls clean and sanitary at all times and shall thoroughly cleanse and sanitize sinks, tubs, spas, showers, baths, and shampoo bowls immediately after each use.

Rule 79a. (1) The licensee or owner of an establishment or school shall sanitize equipment, tools, implements and supplies that will not be damaged by immersion in water using all of the following steps:

- (a) Thoroughly washing in a detergent solution.
 - (b) Rinsing in clean water.
 - (c) Completely immersing in a wet sanitizer for the period of time recommended by the manufacturer of the disinfectant used.
 - (d) Rinsing in clean water and allowing to air dry.
- (2) The licensee or owner of an establishment or school shall sanitize other equipment, tools, implements, and supplies by wiping with a disinfectant solution.
- (3) The licensee or owner of an establishment or school shall sanitize sharp-edged tools, including the blades of electrical clippers, by wiping with a 70% alcohol solution after each use.
- (4) The licensee or owner of an establishment or school shall ensure that, after sanitization, the equipment, tools, implements, and supplies are put in a dry sanitizer, closed cabinet or drawer, or covered container.

FINDINGS OF FACT

Based upon the record, I make the following findings of fact:

1. On December 20, 2001 Respondent's establishment was inspected by one of Petitioner's inspectors.

2. The inspection established the following facts:
 - a. Respondent operated a cosmetology establishment without a license.
 - b. Respondent engaged in the practice of an occupation requiring a license without possessing one.
 - c. The licenses of individuals working for Respondent were not displayed in a prominent place, visible to the public.
 - d. Respondent failed to ensure its establishment had covered waste containers.
 - e. Respondent failed to keep sinks, tubs and shampoo bowls clean and sanitary.
 - f. Respondent failed to sanitize equipment, tools, implements and supplies by washing in a detergent solution, rinsing in clean water, immersing in a wet sanitizer and rinsing in clean water.
 - g. Respondent failed to sanitize other equipment, tools, implements and supplies by wiping with a disinfectant solution.
 - h. Respondent failed to sanitize sharp edged tools by wiping with an alcohol solution after each use.
 - i. After sanitization, Respondent failed to ensure that equipment, tools, implements and supplies were put in a dry sanitizer, closed cabinet or

covered container.

3. Respondent violated a rule of conduct governing cosmetology establishments.
4. Respondent violated a provision of the Code or a rule promulgated under the Code for which a penalty is not otherwise provided.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice § 60.48, page 230 (2d ed. 1994). The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248; 406 NW2d 825 (1987). Based upon the facts described herein, the Petitioner has proven, by a preponderance of the evidence, that the Respondent violated the following sections of the Code and the rules promulgated thereunder as alleged in the Complaint: 601(1); 604(c), (h); 1203b; 1204(6); Rule 338.2171(1)(f); Rule 338.2173(3); and Rule 338.2179a (1), (2), (3), and (4).

RECOMMENDATIONS

I concur in the recommendations of Petitioner's counsel that the establishment license for X-Ceptional Hair & Nail be revoked and that a civil penalty in the amount of \$1,000.00 be imposed on X-Ceptional Hair & Nail.

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James L. Karpen
Administrative Law Judge

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF COSMETOLOGY

In the matter of :

X-CEPTIONAL HAIR & NAIL
MARY GLANTON, OWNER
Cosmetology Establishment
License No. 27-06-116611 (Lapsed)

Docket No. 2002-735
Complaint No. 27-02-0093-00

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Cosmetology, hereafter the "Board", on October 14, 2002; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of James L. Karpen, Administrative Law Judge, dated June 19, 2002;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and X-Ceptional Hair & Nail, by its owner Mary Glanton, License No. 27-06-116611, hereafter "Respondent", having been found in violation of Sections 601(1); 604©; 604(h); 1203b; 1204(6) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.601(1); MCL 339.604(c); MCL 339.604(h); MCL 339.1203b; MCL 339.1204(6), and Rules 71(1)(f); 73(3); 79a(1)(2)(3) & (4) of the State Board of Cosmetology General Rules, *promulgated hereunder*, being 1999 MR 11, R 338.2171(1)(f); 1999 MR 11, R 338.2173(3); 1999 MR 11, R 338.79a(1)(2)(3) & (4) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:

1. Respondent shall pay a FINE in the amount of Ten Thousand Dollars and 00/100 Cents (\$10,000.00), said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the date of mailing of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 27-02-0093-00 clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the Department of Consumer & Industry Services, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.
2. No application for licensure or relicensure shall be considered until the fine is paid-in-full. Failure of Respondent to comply with any term of this Final Order shall result in a denial of future applications for licensure until such time as all of the terms of this Final Order have been met.