

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BOARD OF COSMETOLOGY**

**DEPARTMENT OF LABOR &
ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES**

**Docket No. 2003-1134
Complaint No. 85333**

Complainant,

v

**BORICS #75242
MINNESOTA REGIS CORP., OWNER
Cosmetology Establishment
License No. 27-06-118151**

Respondent.

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Cosmetology, hereafter the "Board", on October 11, 2004; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Dennis M. Matulewicz, Administrative Law Judge, dated June 22, 2004;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Borics #75242, Minnesota Regis Corp., Owner, Licensed Cosmetology Establishment, License No. 27-06-118151, hereafter "Respondent", having been found in violation of Section 604(c); of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(c) and Rules 28; 71(1); 71(3); 79(2)(c) of the Michigan State Board of Cosmetology General Rules, *promulgated hereunder*, being 1999 MR 11, R 338.2171(1); 1999 MR 11, R 338.2171(3) and 1999 MR 11, 338.2179(2)(c) 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 Four Thousand Hundred Dollars and 00/100 Cents (\$4,000.00), a higher fine than recommended by the Administrative Law Judge, in accordance with the Board's recommended minimum sanctions for the nature and**

number of violations committed, said fine shall be paid to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 85333 clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the Department of Labor & Economic Growth, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.

2. Respondent's failure to comply with each and every condition of this Final Order shall result in the **SUSPENSION** of Respondent Borics #75242, Minnesota Regis Corp., Owner, Licensed Cosmetology Establishment, License No. 27-06-118151, and any and all other Article 12 license(s) or registration(s) of the Respondent Minnesota Regis Corp., Owner, and in **DENIAL** of all subsequent applications for establishment licensure, relicensure, reinstatement, or registration renewal, until full compliance with each and every condition imposed by this Final Order

This Final Order shall not be construed as limiting the Department of Labor & Economic Growth, any other agency of the State of Michigan, or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

Failure to comply with the provisions of this Final order is itself a violation of the Code pursuant to Section 604(k) and may result in further disciplinary action.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this ____ day of _____, 2004.

BY: _____
Cynthia A. Stramecky, Chairperson

Date mailed: _____

Proof of Compliance shall be filed with:

Department of Labor & Economic Growth
Bureau of Commercial Services
Enforcement Division
Office Of Administrative Services
P.O. Box 30018 Lansing, MI 48909

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF HEARINGS**

In the matter of:

Docket No. 2003-1134

**Bureau of Commercial Services,
Petitioner**

Agency No. 85333

v

**Agency: Bureau of Commercial
Services**

**BoRics #75242,
Minnesota Regis Corp., Owner
Respondent**

Case Type: Sanction

**Issued and entered
this 22nd day of June, 2004
by Dennis M. Matulewicz
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY:

The Department of Labor and Economic Growth, Bureau of Commercial Services (BCS), Petitioner herein, filed a Formal Complaint against Respondent, BoRics, a licensed cosmetology establishment. In its Complaint, BCS alleged that Respondent violated provisions of the Occupational Code, 1980 PA 299, MCL 339.101, et seq, hereinafter, the "Code" and/or certain applicable Administrative Rules. Accordingly, BCS asks that sanctions be imposed upon Respondent for the purported violations.

Pursuant to MCL 339.511, a hearing was scheduled to address the issues raised in the Complaint. The hearing was conducted on June 17, 2004. Terrence Quinn, Attorney at Law, appeared on behalf of Petitioner and Kim Laxton appeared on behalf of Respondent. **Dennis M Matulewicz** presided as Administrative Law Judge

(ALJ).

WITNESSES:

For Petitioner:

Tom Colburn

For Respondent:

Kim Laxton-Area Supervisor

Jean Bell Regional Manager

ISSUES and APPLICABLE LAW:

Whether Respondent, a licensed cosmetology establishment violated the following provisions of the Occupational Code and/or Administrative Rules:

MCL 339.604(c)

1999 MR 11 R 338.2173(1) & (3)

1999 MR 11 R 338.2179 (2) (c)

The cited statutes and rules provide as follows:

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.

Rule 73. (1) The licensee or owner of an establishment or school shall keep the establishment or school clean, safe, and sanitary at all times, disposing of temporary waste materials, including, but not limited to, hair clippings, paper, and tissues, after servicing a patron.

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 79. (2) The licensee or owner of an establishment or school shall ensure all of the following:

(c) Soiled towels and linens are stored in a covered container until laundered.

FINDINGS OF FACT:

Bo Rics, Respondent herein, is a licensed cosmetology establishment under the Occupational Code, 1980 PA 299, as amended. On or about December 10, 2002 an inspection was conducted by the Department and the following violations were cited. Respondent failed to ensure the establishment was clean, safe and sanitary at all times with hair clippings disposed of after servicing patrons. Respondent also failed to keep shampoo bowls clean and sanitary at all times. Respondent failed to ensure that soiled towels were stored in a covered container until laundered. Respondent violated a rule of conduct in practicing an occupation.

At the hearing the Respondent admitted to the four citations in the complaint. Respondent stated that they were in the process of Regis purchasing this establishment in December of 2002 and that this period of transition resulted in change which caused long term employees anxiety which resulted in the violations. As soon as Ms. Laxton, Area Supervisor ,was informed of the violations she had a meeting with the employees and the violations were corrected. The ALJ feels that these mitigating circumstances should be considered by the Board.

CONCLUSIONS OF LAW:

Pursuant to MCL 339.601, a person may not engage in the practice of an occupation regulated under 1980 PA 299 (Occupational Code) unless the person possesses a license or registration issued by the Department for the occupation. One of the occupations that requires a license is a cosmetology establishment.

A cosmetology establishment is required to comply with the Occupational Code as well as applicable Administrative Rules. If the cosmetology establishment violates the Act or rules, penalties may be imposed by the Board. If the cosmetology establishment denies violating the applicable rules and regulations, a hearing is scheduled before an Administrative Law Judge. (ALJ). The ALJ is responsible for evaluating the testimony and evidence and for determining whether there was a violation of any of the applicable rules and regulations. In that hearing, the burden of proof is upon BCS to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions against the Respondent. 1990 AACS R 339.1763.

BCS alleges that Respondent violated those provisions of the Occupational Code and/or administrative rules set forth in the Issues and Applicable Law section of this Opinion. Respondent admitted violating the regulations at the hearing. Respondent explained that the violations occurred because they were in the process of being purchased by Regis and this caused their long time employees anxiety. Once informed of the violations the Respondent corrected these violations immediately and met with the employees so that they would not occur again.

RECOMMENDED SANCTIONS:

Based upon the preponderance of the evidence, the ALJ finds that

Respondent violated the Occupational Code as described herein. Accordingly, the ALJ recommends that:

1. Respondent pay a civil fine in the amount of \$500.00.

DENNIS M. MATULEWICZ
ADMINISTRATIVE LAW JUDGE