

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING**

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARTINS SCHOOL OF HAIR DESIGN
OF MANITOWOC, LTD., D/B/A MARTINS
COLLEGE OF COSMETOLOGY, and

MARTINS SCHOOL OF HAIR DESIGN
OF OSHKOSH, LTD., D/B/A MARTINS
COLLEGE OF COSMETOLOGY,
Respondents.

FINAL DECISION AND ORDER

Case # LS0412022RBC

Case # LS0412023RBC

Division of Enforcement cases ## 01 RBC 001, 01 RBC 003, 01 RBC 004, 01 RBC 006, 02 REB 001, 02 RBC 010, 02 RBXC011, 02 RBC 013, 02 RBC 014, 03 RBC 001, 03 RBC 002, 03 RBC 003, 04 RBC 002, 04 RBC 005, 04 RBC 006, 04 RBC 007, 04 RBC 008, 04 RBC 009, and 04 RBC 010

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Martin's School of Hair Design of Manitowoc, Ltd.,
d/b/a Martin's College of Cosmetology
525 Westhill Boulevard
Appleton, WI 54914

Martin's School of Hair Design of Oshkosh, Ltd.,
d/b/a Martin's College of Cosmetology
6414 Odana Road
Madison, WI 53717

Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the attached Stipulation. Accordingly, the Department in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Martins School of Hair Design of Manitowoc, Ltd. (Martins Manitowoc), is listed with the Department of Regulation and Licensing (DRL) as the owner of Martins College of Cosmetology in Appleton (hereafter Appleton College), a duly licensed school of barbering and cosmetology in the State of Wisconsin. The school at its current location first received its school of barbering or cosmetology license in the State of Wisconsin (license #87-97) on April 18, 2003. The license expired on June 30, 2005. Appleton College is located at 525 Westhill Boulevard, Appleton, WI 54914.
2. Before April 18, 2003, the Appleton College was licensed under license # 87-75. That license was first granted on April 10, 1992, for the location 2310 West College Avenue, Appleton, WI 54914.
3. Martins School of Hair Design of Oshkosh, Ltd. (Martins Oshkosh), is listed with DRL as the owner of Martins College of Cosmetology in Madison (Madison College), a duly licensed school of barbering and cosmetology in the State of Wisconsin. Madison College first received its school of barbering or cosmetology license in the State of Wisconsin (license #87-91) on May 24, 2000. The license expired on June 30, 2005.
4. Madison College is located at 6414 Odana Road, Madison, WI 53717.
5. As owners of licensed schools of barbering or cosmetology, Martins Manitowoc and Martins Oshkosh were at all times relevant to this action responsible for compliance with Wis. Stat. §§ 440.60 through 440.64 and Wis. Admin. Code chapters RL 60, 61 and 62.
6. From May 2000, and continuing through March 11, 2002, one or more instructors provided practical cosmetology instruction at Appleton College and at Madison College without a barbering or cosmetology instructor license.
7. Student T.F. started classes at Appleton College in September 2000. On November 18, 2000, T.F.'s enrollment was terminated by Appleton College. On November 21, 2000, Appleton College sent T.F. a Financial Withdrawal Form showing a balance due of \$4,226.00. The amount charged T.F. exceeded the amount indicated in the contract between Appleton College and T.F. and also the amount permitted by Wis. Administrative Code § RL 62.07 (Refund Standards).
8. On March 14, 2002, an investigator from the DRL Division of Enforcement (DOE) conducted an unannounced inspection of Appleton College. The investigator found the disinfectant at five workstations to be a dark blue cloudy color with floating debris.
9. On August 15, 2002, an investigator from DOE conducted an unannounced inspection of Madison College. The investigator observed the following:
 - a. There was no posting of current barbering or cosmetology instructor licenses for four (4) instructors.
 - b. Pedicure spas had debris and dirt around the jet screens and mechanisms.
 - c. Some disinfectant containers were dirty and the disinfectant was cloudy with floating debris.
 - d. There was an overflowing waste container in a bathroom.
 - e. There was hair on the theory room floor.

- f. A student put her fingers directly into a hair product and then applied the product to a client's hair.

10. After the August 15, 2002, inspection, DOE staff reviewed contracts utilized by Appleton College and Madison College. The contracts reviewed were offered to students in 2000 and in 2004 and certain portions did not conform to standards contained in Wis. Admin. Code § RL 62.02 (Required contents for student contracts with schools and specialty schools). The portions that did not conform dealt with kits and fees, refunds in case enrollment is procured through misrepresentation and the percentage of tuition that will be paid relative to the amount of time attended.

11. After the August 15, 2002, inspection, DOE staff reviewed the common school catalog in force from March 2000 to the present for both Appleton College and Madison College. The catalog reviewed contained a section that did not conform to standards contained in Wis. Admin. Code § RL 62.01 (Required contents for school and specialty school catalog). The section that did not conform dealt with refunds in case of enrollment procured through misrepresentation.

12. Appleton College filed a \$25,000.00 surety bond in June 2000, reflecting an anticipated enrollment of 0-50 students in the coming year. A review of the Appleton College student roster revealed 84 students enrolled from January 2000 through December 2000. Based on the number of students enrolled, Appleton College should have increased the amount of surety bond to \$40,000.00 within 30 days after exceeding enrollment of 50 students, as required by Wis. Admin. Code § RL 61.06(2).

13. Madison College filed a \$25,000.00 surety bond when it opened in May 2000, reflecting an anticipated enrollment of 0-50 students. A review of the Madison College student roster revealed 124 students enrolled from January 2001 through December 2001. Based on the number of students enrolled, Madison College should have increased the amount of surety bond to \$50,000.00 within 30 days after exceeding enrollment of 50 students, as required by Wis. Admin. Code § RL 61.06(2).

14. On April 11, 2003, Appleton College increased its surety bond from \$25,000.00 to \$40,000.00, reflecting an anticipated enrollment of 51-100 students. A review of the Appleton College student roster revealed 151 students enrolled from January 2003 through December 2003. Based on the number of students enrolled, Appleton College should have increased the amount of the surety bond to \$50,000.00 within 30 days after exceeding an enrollment of 100 students, as required by Wis. Admin. Code § RL 61.06(2).

15. In April 2004, the United States Department of Education, Federal Student Aid, Chicago Case Management team informed DRL that their audit of Madison College disclosed that Madison College had failed to make refunds to students in a timely manner.

16. In the spring of 2004, a student with a communicable skin disease (scabies) provided services to clients at Appleton College.

17. In the spring of 2004, a student with a communicable skin disease (ringworm) provided services to clients at Appleton College.

18. Respondents deny the facts stated above, but desire to settle these matters as expeditiously as possible. It is agreed that the facts and issues in this action have not been litigated and there has been no determination on the merits regarding the facts alleged in this case. It is also agreed that neither the

Stipulation nor the Final Decision and Order shall be construed as an admission by Respondents that any issue or fact in this case is true or admitted, the same being expressly denied by Respondents. Furthermore, neither the Stipulation nor the Final Decision and Order is intended to be used by any person or entity not a party to this matter in any subsequent claim or cause of action for the purpose of res judicata, collateral estoppel, issue preclusion or claim preclusion, nor is it the intention of these parties that the Stipulation and Final Decision and Order be used or admitted into evidence in any subsequent litigation involving any person or entity not a party to this action.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing (DRL) has jurisdiction in this matter pursuant to Wis. Stat. § 440.64 (3).
2. DRL has the authority to resolve this disciplinary proceeding by Stipulation without an evidentiary hearing pursuant to Wis. Stat. § 227.44 (5).
3. The Respondents, by virtue of the items cited in paragraph 6 above, violated Wis. Stat. §§ 440.63 (1) and 440.64 (3) (b) 3. and Wis. Admin. Code §§ RL 62.11 (1) (e) and (g).
4. Respondent Appleton College, by virtue of the actions cited in paragraph 7 above, violated Wis. Stat. § 440.64 (3) (b) 3. and Wis. Admin. Code §§ RL 62.07 (2) and RL 62.11 (1) (g) and (k).
5. The Respondents, by virtue of the item cited in paragraphs 8 and 9.c. above, violated Wis. Stat. § 440.64 (3) (b) 3. and Wis. Admin. Code §§ RL 62.11 (1) (g) and BC 4.02 (5).
6. The Respondents, by virtue of the items cited in paragraph 10 above, violated Wis. Stat. § 440.64 (3) (b) 3. and Wis. Admin. Code §§ RL 62.01 (8), RL 62.11 (1) (g), and RL 62.11 (1) (i).
7. The Respondents, by virtue of the items cited in paragraph 11 above, violated Wis. Stat. § 440.64 (3) (b) 3. and Wis. Admin. Code §§ RL 62.02 (8), RL 62.07 (2), RL 62.11 (1) (g) and RL 62.11 (1) (k).
8. The Respondents, by virtue of the items cited in paragraphs 12 through 14 above, violated Wis. Admin. Code §§ RL 61.06 (2) and RL 62.11 (1) (g).
9. Respondent Appleton College, by virtue of the items cited in paragraphs 16 and 17 above, violated Wis. Admin. Code §§ RL 62.11 (1) (g) and (j) and BC 2.02 (4).
10. Respondent Madison College, by virtue of the inaction cited in paragraph 9.a. above, violated Wis. Stat. § 440.64 (3) (b) 3. and Wis. Admin. Code §§ RL 62.11 (1) (g) and BC 2.07 (2).
11. Respondent Madison College, by virtue of the conditions cited in paragraph 9.b. above, violated Wis. Stat. § 440.64 (3) (b) 3 and Wis. Admin. Code §§ RL 62.11 (1) (g) and BC 4.01 (1) and (7).
12. Respondent Madison College, by virtue of the conditions cited in paragraphs 9.d. and 9.e. above, violated Wis. Stat. § 440.64 (3) (b) 3 and Wis. Admin. Code §§ RL 62.11 (1) (g), BC 3.01 (4) and BC 4.01 (1).

13. Respondent Madison College, by virtue of the actions cited in paragraph 9.f. above, violated Wis. Stat. § 440.64 (3) (b) 3 and Wis. Admin. Code §§ RL 62.11 (1) (g) and BC 4.01 (4).

14. Respondent Madison College, by virtue of the items cited in paragraph 15 above, violated Wis. Admin. Code §§ RL 62.07 (5) and RL 62.11 (1) (g).

ORDER

NOW, THEREFORE, IT IS ORDERED that the stipulation of the parties is approved.

IT IS FURTHER ORDERED that the Respondents be REPRIMANDED.

IT IS FURTHER ORDERED that the Respondents shall pay ten thousand eight hundred fifty dollars (\$10,850.00) in forfeitures and fourteen thousand one hundred fifty dollars (\$14,150) in partial costs, for a total of twenty-five thousand dollars (\$25,000.00) of forfeitures and partial costs in these matters. Payment shall be made to the Department of Regulation and Licensing on or before April 15, 2006, and shall be sent to the Department Monitor.

IT IS ALSO ORDERED that the following DOE informal complaints be closed: 01 RBC 001, 01 RBC 003, 01 RBC 004, 01 RBC 006, 02 REB 001, 02 RBC 010, 02 RBC 011, 02 RBC 013, 02 RBC 014, 03 RBC 001, 03 RBC 002, 03 RBC 003, 04 RBC 002, 04 RBC 005, 04 RBC 006, 04 RBC 007, 04 RBC 008, 04 RBC 009, and 04 RBC 010.

The Department Monitor is the individual designated by the Department as its agent to coordinate compliance with the terms of this Order. The Department Monitor may be reached as follows:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P. O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 261-7904

The rights of a party aggrieved by this Final Decision and Order to petition the Wisconsin Department of Regulation and Licensing for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

This Order shall become effective on the date of its signing.

By: Celia M. Jackson
Secretary

2/17/06
Date