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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
I'MUNIQUES HAIR SALON &	:	LS0602223BAC
FULL SERVICE SPA and	:	
TANGELA R. BRADFORD,	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 03BAC107

The State of Wisconsin, Barbering and Cosmetology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes 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, Barbering and 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 this 13th day of September, 2006.

Jeannie M. Bush
Member of the Board
Barbering and Cosmetology
Examining Board

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST:

I'MUNIQUES HAIR SALON &
FULL SERVICE SPA,
and

TANGELA R. BRADFORD,
RESPONDENTS.

PROPOSED FINAL
DECISION AND ORDER

Case No. LS0602223BAC

Division of Enforcement Case No. 03 BAC 107

PARTIES

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

Daphne F. Eiland
3526 W. Capitol Drive
Milwaukee, WI 53216.

Tangela R. Bradford
7935 W. Beckett Avenue
Milwaukee, Wisconsin 53218

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

PROCEDURAL HISTORY

A complaint in the above-captioned matter was filed on February 22, 2006. Respondent Eiland's answer is dated February 28, 2006. A hearing was held on May 10, 2006.¹¹ The Division of Enforcement appeared at the hearing by attorney Angela Arrington, P.O. Box 8935 Madison, WI 53708-8935. Daphne F. Eiland appeared in person and by her attorney, Scott P. Phillips, Suite 605, 633 W. Wisconsin Avenue, Milwaukee WI 53203. Respondent Tangela R. Bradford did not file an answer and did not appear in person or by a representative.

FINDINGS OF FACT

1. Daphne F. Eiland, (Ms. Eiland) whose address is 10434 West Tower Avenue, Milwaukee, Wisconsin holds license #080-030858 for a barbering and cosmetology establishment operated under the name I'Muniques Hair Salon & Full Service Spa ("I'Muniques") located at 3526 W. Capitol Drive, Milwaukee, Wisconsin 53216. This license was granted on December 20, 2002.

2.2. Tangela R. Bradford, (Ms. Bradford) whose address is 7935 W. Beckett Avenue, Milwaukee, Wisconsin 53216 and whose birth date is May 5, 1970, is licensed as a barbering and cosmetology manager in the State of Wisconsin, holding license number #081-027727. Ms. Bradford's license was first granted on January 12, 1999. Although Ms. Eiland employed other persons as managers at I'Muniques, at all times relevant to this matter, Ms. Bradford was the manager of record of I'Muniques.

2.3. Ms. Bradford was served with the notice of hearing and complaint in this matter on February 23, 2006 by certified mail delivery.

2.4. Ms. Eiland (I'Muniques) was served with the notice of hearing and complaint in this matter on February 23, 2006 by certified mail delivery.

5.5. Marshall C. Duke holds an apprentice permit to practice barbering and cosmetology #600 77937. Duke's permit expired on January 16, 2005, but was extended, effective December 15, 2005, until January 15, 2007. During the period January 17, 2005, through December 15, 2005, Marshall C. Duke did not have a valid apprentice permit to practice barbering and cosmetology at I'Muniques.

5.6. Tommie L. Muskgrow holds an apprentice permit to practice barbering and cosmetology #600 77962. Muskgrow's permit expired on January 16, 2005, but was extended, effective December 15, 2005, until January 15, 2007. During the period January 17, 2005, through December 15, 2005, Tommie L. Muskgrow did not have a valid apprentice permit to practice barbering and cosmetology at I'Muniques.

5.7. Derrick S. Chatman Welch holds an apprentice permit to practice barbering and cosmetology #600 77175. During the period beginning on about October 15, 2003, through December 15, 2005, Derrick S. Chatman Welch did not have a valid apprentice permit to practice barbering and cosmetology at I'Muniques.

3.8. From about October 15, 2003, through August 2005, Ms. Eiland employed Marshall C. Duke, Tommie L. Muskgrow and Derrick S. Chatman Welch to provide barbering and cosmetology services at I'Muniques.

3.9. During the period January 16, 2005, through August 2005, both Ms. Eiland and Ms. Bradford knew or should have known that Marshall C. Duke and Tommie L. Muskgrow provided barbering and cosmetology services without having valid apprentice permits to practice barbering and cosmetology at I'Muniques.

3.10. During the period October 15, 2003, through August 2005, both Ms. Eiland and Ms. Bradford knew or should have known that Derrick S. Chatman Welch provided barbering and cosmetology services without having a valid apprentice permit to practice barbering and cosmetology at I'Muniques.

5.11. On May 24, 2005, Donna Spencer had completed education and training for a barbering and cosmetology license in Illinois and intended to take the licensing examination in Wisconsin. During the period May 17, 2005 through May 24, 2005, Donna Spencer did not hold a license or permit to provide barbering or cosmetology services in Wisconsin.

5.12. On May 24, 2005, Michelle Krisher, an investigator for the Department of Regulation and Licensing, conducted an inspection of I'Muniques salon.

5.13. Donna Spencer was employed by Ms. Eiland at I'Muniques commencing on about May 17, 2005 and was the only employee in the salon at the time that the Department of Regulation and Licensing conducted an inspection on May 24, 2005.

5.14. During the period May 17, 2005 to May 24, 2005, while an employee of Ms. Eiland, Donna Spencer provided barbering and cosmetology services at I'Muniques without a license or permit.

3.15. During the period May 17, 2005 to May 24, 2005, both Ms. Eiland and Ms. Bradford knew or should have known that Donna Spencer was providing barbering and cosmetology services without having a license or permit to practice barbering and cosmetology at I'Muniques.

CONCLUSIONS OF LAW

A. The Barbering and Cosmetology Examining Board has subject matter jurisdiction to act in this matter pursuant to Wis. Stat. § 454.15 and has personal jurisdiction over the respondents.

B. Daphne F. Eiland holds license #080-030858 for a barbering and cosmetology establishment operated under the name I'Muniques Hair Salon & Full Service Spa and is properly a respondent in this matter.

C. Respondent Tangela R. Bradford did not appear at the hearing and is in default as described in Wis. Adm. Code § RL 2.14.

D. During the period January 16, 2005, through August 2005, Marshall C. Duke and Tommie L. Muskgrow violated Wis. Stat. § 454.04 (1)(a) by providing barbering and cosmetology services at I'Muniques without having valid apprentice permits to practice barbering and cosmetology.

E. During the period October 2003, through August 2005, Derrick S. Chatman Welch violated Wis. Stat. § 454.04 (1)(a) by providing barbering and cosmetology services at I'Muniques without having a valid apprentice permit to practice barbering and cosmetology.

F. During the period May 17, 2005 through May 24, 2005, Donna Spencer violated Wis. Stat. § 454.04(1)(a) by providing barbering and cosmetology services at I'Muniques without having a license or permit to practice barbering and cosmetology.

G. Respondent Daphne F. Eiland violated Wis. Stat. § 454.04(1)(a) and Wis. Admin. Code §§ BC 2.04(1) by employing apprentices Marshall C. Duke, Tommie L. Muskgrow and Derrick S. Chatman Welch to provide barbering and cosmetology services at I'Muniques when they had expired apprenticeship permits and Ms. Eiland thereby assisted and participated in the unauthorized practice of barbering and cosmetology.

H. Respondent Daphne F. Eiland violated Wis. Stat. § 454.04(1)(a) and Wis. Admin. Code §§ BC 2.04(1) by employing Donna Spencer to provide barbering and cosmetology services at I'Muniques when Ms. Spencer did not have a license or permit to practice barbering and cosmetology and Ms. Eiland thereby assisted and participated in the unauthorized practice of barbering and cosmetology.

I. Respondent Daphne F. Eiland is responsible under Wis. Adm. Code § BC 2.06(intro) for violations by Donna Spencer and apprentices Marshall C. Duke, Tommie L. Muskgrow, Derrick S. Chatman Welch.

J. Respondent Tangela R. Bradford violated Wis. Stat. § 454.04(1)(a) and Wis. Admin. Code §§ BC 2.04(1) by permitting apprentices Marshall C. Duke, Tommie L. Muskgrow and Derrick S. Chatman Welch to provide barbering and cosmetology services when they had expired apprenticeship permits and Ms. Bradford thereby assisted and participated in the unauthorized practice of barbering and cosmetology.

K. Respondent Tangela R. Bradford violated Wis. Stat. § 454.04(1)(a) and Wis. Admin. Code §§ BC 2.04(1) by permitting Donna Spencer to provide barbering and cosmetology services at I'Muniques when Ms. Spencer did not have a license or permit to practice barbering and cosmetology and Ms. Bradford thereby assisted and participated in the unauthorized practice of barbering and cosmetology.

L. As the manager of record for I'Muniques, Tangela R. Bradford had direct responsibility over the operations of I'Muniques under Wis. Adm. Code § BC 2.06 (5) and is responsible for violations by Donna Spencer and apprentices Marshall C. Duke, Tommie L. Muskgrow, Derrick S. Chatman Welch under Wis. Adm. Code § BC 2.07(1)

M. Evidence in the record is insufficient to establish by a preponderance of the evidence that respondents violated Wis. Adm. Code § BC 2.05(2) by failing to post a cost-of-services sign.

ORDER

NOW, THEREFORE, IT IS ORDERED, that Respondent Daphne F. Eiland shall pay to the Department of Regulation and Licensing a forfeiture of ONE THOUSAND DOLLARS (\$1,000.00).

IT IS FURTHER ORDERED, that Respondent Tangela R. Bradford shall pay to the Department of Regulation and Licensing a forfeiture of ONE THOUSAND DOLLARS (\$1,000.00).

IT IS FURTHER ORDERED, that Respondent Daphne F. Eiland shall pay costs in this matter in the amount of FIVE HUNDRED DOLLARS (\$500.00).

IT IS FURTHER ORDERED, that payments shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to:

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

IT IS FURTHER ORDERED, that in the event that Daphne F. Eiland fails to timely submit payment of the forfeiture and costs as set forth above, the establishment license for I'Muniques Hair Salon & Full Service Spa #080 030858 shall be suspended without further hearing and without further order of the Barbering and Cosmetology Examining Board. The suspension shall continue until the full amount of said costs has been paid to the Department of Regulation and Licensing. Failure to pay the costs and forfeiture is a violation of this order.

IT IS FURTHER ORDERED, that in the event that Tangela R. Bradford fails to timely submit payment of the forfeiture as set forth above, Tangela R. Bradford's barbering and cosmetology manager's license #081 0027727 shall be suspended without further hearing and without further order of the Barbering and Cosmetology Examining Board. The suspension shall continue until the full amount of said forfeiture has been paid to the Department of Regulation and Licensing. Failure to pay the forfeiture is a violation of this order.

IT IS FURTHER ORDERED that this decision shall be effective on the date on which it is signed by a designee of the Barbering and Cosmetology Examining Board.

OPINION

Selected sections of the Wisconsin Statutes and Wisconsin Administrative Code relevant to this matter appear at the end of this decision.

The practice of barbering and cosmetology is a profession regulated by the state to protect the public health safety and

welfare.^[2] State licensing requirements for the practice of barbering and cosmetology are based on a determination that the public health and safety require protection from "incompetent practitioners."^[3] Consumers of barbering or cosmetology services at an establishment have a reasonable expectation that practitioners they pay for services meet at least the minimum standards of competence for the profession as indicated by a current license or permit. Consumers have a right to be informed of the cost of services before the services are provided. Consistent with these consumer rights and expectations, Wisconsin law requires that persons who engage in barbering or cosmetology must practice in a licensed establishment or a school and hold a current license as a barber or cosmetologist, manager, have a temporary permit or be an apprentice or a student. Rules of the Barbering and Cosmetology Examining Board require that licenses for the practitioners in an establishment and price information be posted. Wis. Stat. § 454.06(7), Wis. Adm. Code §§ 2.05, 2.07(2). Wisconsin law states specifically that the establishment owner and manager are responsible for compliance with laws regulating barbering and cosmetology practice. Wis. Adm. Code §§ BC 2.06, 2.07.

The complaint in this matter charges that I'Muniques (Ms. Eiland) and Ms. Bradford violated the law governing the practice of barbering and cosmetology by permitting apprentices to practice with expired permits, by authorizing an unlicensed employee to provide services to clients and by failing to post a price list of customer services. The caption for the matter identifies I'Muniques Hair Salon & Full Service Spa as a respondent. However, Daphne F. Eiland holds the license #080-030858 for the barbering and cosmetology establishment operated under the name I'Muniques Hair Salon & Full Service Spa. Ms. Eiland was served with a notice of hearing and is properly a respondent in this matter.

Findings related to the length of practice by apprentices at I'Muniques are based on testimony of Ms. Eiland and documents in the record. Ms. Eiland testified that Marshall C. Duke, Tommie L. Muskrow and Derrick S. Chatman Welch were employed as apprentices to provide barbering and cosmetology services at I'Muniques Salon and Spa through August 2006. (T: 71, 72, 111-113; State's Exhibits 1, 2, 4-7). The apprentice contracts identify the apprenticeship term as beginning on October 15, 2003. (State's Exhibit 4, pp. 4-6). Permits for apprentices are granted initially for 3 years. Wis. Adm. Code § BC 6.01(2). The initial apprentice permits granted to Marshall C. Duke and Tommie L. Muskrow expired on January 16, 2005. (T: 60, State's Exhibit 2, 6; Respondent's Exhibit 2). Any work as a barber or cosmetologist that Duke or Muskrow performed at I'Muniques from January 17, 2005 through August 2005 was performed without a valid and current apprentice permit and in violation of Wis. Stat. § 454.04(1)(a).

The hearing included testimony from Judy Mender, a Department of Regulation and Licensing employee who receives and processes apprentice permit applications, issues apprentice permits, transfers apprentice permits from one employer to another, and maintains apprenticeship files. (T: 57). Mender testified that the process for issuing an apprentice permit starts at the Department of Workforce Development, where a contract is developed that includes the apprentice and a training manager. The signed contract is sent to the Department of Regulation and Licensing with a fee. The Department of Regulation and Licensing then reviews the application to determine whether the establishment and manager hold a current license and, in the case of a transfer, that the apprentice has training time remaining. (T: 62).

On about October 3, 2003, Derrick S. Chatman Welch (Welch) and Tangela Bradford, then the manager at I'Muniques, signed an application to transfer Welch's apprentice permit from Hairmaster Beauty Salon to I'Muniques. The application was apparently received by the Department of Workforce Development on October 7, 2003. Subsequently the application was forwarded with a \$10 fee to the Department of Regulation and Licensing where it was received on October 22, 2003. (State's Exhibit 7, p. 4). Welch obtained an Apprentice Contract (indenture) for employment as an apprentice at I'Muniques Salon and Spa from the Department of Workforce Development in October 2003. (State's Exhibit 4, p. 4). However, on November 10, 2003, instead of approving the transfer, the Department of Regulation and Licensing sent Welch a notice, requesting additional information including the reason for his request for a training extension. (State's Exhibit 7, p. 2). Welch did not respond to the request. (T: 61). His transfer application was not granted and he was not then permitted to continue his apprenticeship at the I'Muniques establishment. Apparently, not understanding the permit transfer process and misinterpreting the effect of the Apprentice Contract, Welch, Eiland and Bradford proceeded as if an apprentice permit had been granted to Welch to work at I'Muniques. Any work as a barber or cosmetologist that Welch performed I'Muniques from October 2003, until August 2005 was performed without a valid and current apprentice permit and in violation of Wis. Stat. § 454.04(1)(a).

The charges relating to unlicensed practice are also supported by evidence from an investigation conducted by the Department of Regulation and Licensing. A Department investigator, Michelle Krisher, inspected I'Muniques on May 24, 2005. The salon staff present at I'Muniques when Krisher arrived consisted of Donna Spencer, only, who was sitting at a work station reading a book. (T: 31). Donna Spencer, who was not licensed at the time of the visit, told Krisher that she was in the process of transferring her Illinois apprenticeship permit to Wisconsin and that she had been working at the salon within the past week. Krisher observed that initial, but not current, apprentice permits were posted for Marshall Duke and Tommie Muskrow. Welch also worked as an apprentice at the salon. No permit was posted for Welch.

Krisher issued a "Notice of Compliance" for the I'Muniques salon on May 24, 2005 listing four items to correct as:

1. *Post current licenses for salon & Tangela Bradford*
2. *Donna Spencer cannot provide services until obtaining a temporary permit or practitioner license MJK will confer with Hafeezah for her response to the issue*
3. *Post a list showing cost of services*
4. *Post apprentice permit for Kojak*

Daphne Eiland responded to the four items on May 27, 2005 by writing on the "Notice of Compliance" form in the section under the heading: "NOTICE OF COMPLIANCE – ACTION TAKEN TO CORRECT VIOLATIONS:"

1. 5/24/05 posted current licensed enclosed copy
2. Donna Spencer has received apprenticeship contract & will post certificate of apprenticeship. Copy enclosed – 5-25-05 also copy of classes.
3. posted cost for service (Price list)
4. Waiting for A new copy – posted enclosed copy

A copy of the price list that Ms. Eiland referred to in her response is State's Exhibit 1, pp. 5 and 6, titled "DONNA'S PRICE LIST."

Following a telephone conversation with Ms. Eiland, investigator Krisher faxed a letter to Ms. Eiland on August 17, 2005, notifying her that Welch had not responded to a request for information in connection with a request to transfer his apprenticeship to Ms. Eiland at I'Muniques and that Welch did not have a current apprenticeship permit to work at I'Muniques. Krisher attached a form to assist Derrick Welch in providing information originally requested on November 10, 2003. Ms. Krisher advised Ms. Eiland that the apprentice permits for Tommie Muskgrow and Marshall Duke had expired on January 16, 2005 and included forms for Muskgrow and Duke to complete to receive extensions of their apprentice permits.

Evidence in the record is insufficient to establish by a preponderance of the evidence that respondents failed to post the cost of services or a sign in compliance with Wis. Adm. Code § BC 2.05(2). Ms. Eiland submitted a price list for services of Donna Spencer, titled "DONNA'S PRICE LIST." (State's Exhibit 1, pp. 4 and 5). She testified that this price list was posted on May 24, 2005, during the time of the Department of Regulation and Licensing inspection. (T: 115, 116). Michelle Krisher testified that there was a price list posted in the back of the salon for the barbers, but not in the front. (T: 18, 36).

The preponderance of the evidence contradicts respondent Eiland's contention at the hearing that Donna Spencer was working as a secretary and did not engage in unlicensed practice. Ms. Krisher testified that she questioned Ms. Eiland about Donna Spencer: "She had stated Ms. Spencer had been working at the salon for a week doing services and that she was going to be taking an exam, the Wisconsin exam to get her license." (T: 17) Krisher also testified that Spencer admitted she had been working at the salon. (T: 16) Respondent objected to Spencer's admission on hearsay grounds. Spencer was the only employee in the salon on May 24, 2005. (T: 14). She was sitting at a workstation in the salon. (T: 31). Her price list "DONNA'S PRICE LIST" (State's Exhibit 1) was posted in the salon. (T: 115, 116). Spencer's statement is not hearsay because it is an admission by party opponent under Wis. Stat. § 908.01(4). Even if the Spencer admission were hearsay, the admission to Krisher that she worked in the salon is admissible because it is corroborated by other circumstantial evidence. Hearsay is generally admissible in administrative proceedings. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, 278 Wis. 2d 111.

Respondent Eiland argued that violations were due, at least in part, to delay by the Department. This contention was not proven. Ms. Eiland did not offer evidence to prove a delay, such as application documents showing that she submitted timely applications for extension of the apprentice permits. Ms. Eiland's own testimony fluctuated as to the date of filing apprentice permit applications. (T: 105-107). Evidence in the record establishes that the Department of Regulation and Licensing was diligent. For example, in her telephone call and letter of August 17, 2005, Ms. Krisher notified Ms. Eiland of the lapsed permits, described the procedure for obtaining an extension and provided application forms. (State's Exhibit 2).

Ms. Eiland's contention that she was conscientious and did what she could to comply with the requirements for a salon is also unpersuasive. Welch worked as an apprentice for more than two years without a valid permit. An establishment owner and manager and indentured apprentices are reminded and should be aware of the date that a permit expires by the date printed on the apprentice permit. (T: 20, 28; 29, 65; State's Exhibit 1, p. 4). The law requires the permit to be posted. Wis. Stat. § 454.06(7), Wis. Adm. Code § BC 2.07. When the Department's investigator inspected I'Muniques, current licenses and permits for the employees and apprentices at I'Muniques were not posted. One reason the respondents were unaware of the expiration of the apprentice permits was evidently their own failure to comply with the posting requirement.

Testimony regarding the termination of Bradford's employment at I'Muniques, the closing of the establishment, and failure to notify Department of Regulation and Licensing of these events is included in the record. Ms. Eiland testified that she hired Tangela Bradford to be the manager at I'Muniques "around June of '03." (T: 73). Ms. Bradford's employment by Ms. Eiland apparently terminated prior to August 2005, when the salon closed temporarily. Ms. Eiland was asked to identify the current manager of her establishment. She identified the person by her first name. "I'm not sure of the last name. I have to get it." (T: 102) Respondent Daphne Eiland was not charged with violating Wis. Adm. Code § BC 2.06 (5) by failing to notify the Department of Regulation and Licensing of a change in manager and no conclusion of law finding a violation is proposed. However, the record establishes that respondent Daphne Eiland was either negligent in notifying the Department of Regulation and Licensing of Ms. Bradford's departure or did not notify the department. Ms. Eiland's casual approach to managing the credentials of her employees is included in the factors that warrant forfeiture in this matter.

Tangela R. Bradford is a respondent in this matter and was served by mail with a notice of hearing and complaint but did not appear at the hearing or file an answer or other pleading. The prehearing record reflects that the administrative law judge contacted Ms. Bradford by telephone on March 29, 2006 and advised her that this matter is serious and that she may wish to retain an attorney to represent her. Ms. Bradford was charged with, and is responsible for, the violations identified in

this matter to the same extent as Ms. Eiland. Wis. Adm. Code § BC 2.07. Findings, conclusions and order in this order relating to Ms. Bradford are made under the authority of Wis. Adm. Code § RL 2.14 permitting findings and an order on the basis of the complaint and other evidence if the respondent fails to appear at the hearing.

FORFEITURES AND COSTS

The objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485, 164 N.W.2d 235 (1969). The order in this matter for forfeiture is imposed under authority of Wis. Stat. §§ 454.15 and 440.22. The forfeitures are intended to meet the objectives of professional discipline and to maintain consistency with actions taken by the Barbering and Cosmetology Examining Board in past cases, including *In the Matter of Disciplinary Proceedings Against Natalya Bendt, Kids Cut, Respondents*, Case No. LS 0506062BAC, June 6, 2005; *In the Matter of Disciplinary Proceedings Against Maria T. Feser, Antonio Fred, and Teres Cupido Beauty Salon LLC, Respondents*, Case No. LS0512053BAC, December 5, 2005; and *In the Matter of Disciplinary Proceedings Against Agustin A. Garnica, La Tijera, Respondents*, Case No. LS0512055BAC, December 5, 2005.

Costs of this proceeding may be imposed under Wis. Stat. § 440.22. Partial costs are assessed against respondent Eiland in fairness to other members of the profession and the parties. The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding. Costs are not ordered against Ms. Bradford because she did not contest the allegations.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. *In the Matter of Disciplinary Proceedings against M. Joanne Wolf*, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); *In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III*, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Respectfully submitted this _____ day of July, 2006.

William Dusso
Administrative Law Judge
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 52708

Wisconsin Statutes and Rules Involved

Wis. Stat. § 454.04(1)(a):

(1)(a) Except as permitted under pars. (b) and (d), no person may engage in barbering or cosmetology unless the person has received training in the areas of service provided and holds a current barber or cosmetologist license, manager license or temporary permit issued by the examining board or is an apprentice under s. 454.10 or a student in a barbering or cosmetology course of instruction.

Wis. Stat. § 454.10:

454.10 Apprenticeship. (1) All apprentices shall be indentured and shall be governed by s. 106.01, the apprenticeship rules of the department of workforce development and the rules of the examining board.

(2) Apprentices shall receive at least 3,712 hours of practical training and at least 288 training hours of instruction in theory in a school of barbering or cosmetology in order to complete the apprenticeship program and be eligible to take the examination for a barber or cosmetologist license. Apprentices shall receive training for a total of at least 32 hours per week. The training shall be completed in not less than 2 years and not more than 4 years.

(3) No apprentice may practice barbering or cosmetology except under the supervision of a licensed manager. . . .

Wis. Adm. Code § BC 2.04(1):

(1) Licensees may not assist or participate in the unauthorized or unlicensed practice of barbering and cosmetology, aesthetics, electrology or manicuring.

Wis. Adm. Code § BC 2.05(2):

(2) An establishment shall either post a list of cost of services in a conspicuous place or display a sign which states: "All establishment patrons have the right to be informed of the cost of services before the services are provided."

Wis. Adm. Code § BC 2.06:

BC 2.06 Responsibilities of owners. The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and chs. BC 2, 3 and 4. The owner shall: . . .

(3) Ensure the provision of supervision and training of apprentices,. . . .

(4) Maintain and provide appropriate records for apprentices, temporary permit holders, training permit holders, and practitioners, including employment records, to enable apprentices or practitioners to meet the requirements of s. 454.06(3)(b), 440.63(3)(a)1. or 454.10(2), Stats., for credentialing as a practitioner, manager or instructor.

(5) In the case of an owner of a barbering and cosmetology establishment, employ a manager who shall have direct authority over the operations of the establishment. If the manager of an establishment leaves employment or becomes otherwise unavailable, an owner may continue to operate the establishment for no more than 90 days without a manager. The owner shall notify the board that the manager is no longer employed or has become otherwise unavailable within 10 days following the manager's last day of employment.

Wis. Adm. Code § BC 2.07:

(1) The licensed manager of a barbering and cosmetology establishment shall be responsible for the daily operations of an establishment and ensure that the establishment is in compliance with ch. 454, Stats., and chs. BC 3 and 4. . . .

(1g) The manager shall train and supervise an apprentice in accordance with s. BC 6.04(1), and shall supervise temporary permit holders and training permit holders. Supervision and training

shall be conducted by a currently licensed manager or practitioner with sufficient education, training and experience to provide the supervision and training.

(1r) The manager shall maintain and provide appropriate records for apprentices, temporary permit holders, training permit holders, and practitioners, including employment records, to enable apprentices or practitioners to meet the requirements of s. 454.06(3)(b), 440.63(3)(a)2., or 454.10(2), Stats., for credentialing as a practitioner, manager or instructor.

(2) The manager shall post all required licenses, permits and notices.

Wis. Adm. Code § BC 6.01(1) through (8):

6.01 Applications and permits. (1) The owner of an establishment seeking to train an apprentice shall contact the department of workforce development or the department for an application.

(2) An initial apprenticeship permit shall be issued for a period of 3 years. The permit shall be renewable for one additional one year period upon all of the following:

(a) The payment of the renewal fee specified in s. 440.08(2)(b), Stats.

(b) Certification to the board from the department of workforce development of acceptable progress by the apprentice in theory instruction and practical training.

(4) An apprentice shall not engage in any barbering and cosmetology work or attend school until a permit has been issued.

(5) Each apprentice shall enter an apprenticeship contract with an establishment owner or his or her designated agent who shall employ and make arrangements for training of the apprentice in accordance with ch. 454, Stats., and the rules of the board.

(6) The owner or his or her designated agent shall provide the apprentice with the equipment necessary to learn all phases of practical barbering and cosmetology as listed in s. BC 6.04 and keep records of all apprentice practical work hours.

(7) An apprentice seeking to transfer his or her apprenticeship contract to another establishment owner shall contact the department of workforce development or the department for transfer procedures. An apprentice shall not transfer without prior approval of the board.

(8) Cancellation of an apprenticeship contract by the department of workforce development shall result in an automatic suspension of an apprenticeship permit.

Wis. Adm. Code § BC 6.04(1):

(1) The establishment owner to whom an apprentice is indentured shall employ a licensed manager to be responsible to supervise the training of the apprentice. Apprentices shall not work without the supervision of a licensed manager.

^[1] References to the record are noted as follows: Pages of the transcript for May 10, 2006 are identified as “(T: page).” Exhibits are “State’s Exhibit #,” offered by the Division of Enforcement and “Respondent’s Exhibit #,” offered by respondent Eiland.

^[2] *Strigenz v. Department of Regulation*, 103 Wis. 2d 281, 286 (1981); *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 188 (1984)

^[3] *Laufenberg v. Cosmetology Examining Board*, 87 Wis. 2d 175, 184, 274 N.W.2d 618 (1979)