

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE	:	
DISCIPLINARY PROCEEDINGS	:	
AGAINST	:	FINAL DECISION AND ORDER
	:	
HILARY K. BENNETT and RIVER ROCK	:	Case # LS0906082RBC
ELECTROLOGY INSTITUTE, INC.,	:	
RESPONDENTS.	:	

Division of Enforcement Cases ## 05 RBC 008 and 07 RBC 003

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

Hilary K. Bennett
2523 West Folsom Street, Suite A
Eau Claire, WI 54703

River Rock Electrology Institute, Inc.
2523 West Folsom Street, Suite A
Eau Claire, WI 54703

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of Department of Regulation and Licensing (Department). Respondent neither admits nor denies the allegations in this matter, but is willing to settle this matter and agrees to the adoption of the attached Final Decision and Order by the Department Secretary. The Board has reviewed this Stipulation and considers it acceptable. The Department has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Department in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Hilary K. Bennett, (Respondent) is duly certified as an electrology instructor in the state of Wisconsin (license # 106-73). This certificate was first granted on January 12, 2004, and is current through March 31, 2011.
2. Respondent's most recent address on file with the Department is 2523 West Folsom Street, Suite A, Eau Claire, Wisconsin 54703.
3. River Rock Electrology Institute, Inc. (Respondent School) is duly licensed as a school of electrology in the state of Wisconsin (license #106-88). This license was first granted on February 27, 2007, and is current through March 31, 2011.
4. Respondent School's most recent address on file with the Department is 2523 West Folsom Street, Suite A, Eau Claire, Wisconsin 54703.
5. Respondent School was previously located at Suite D, Tainter Street Plaza, 1700 Tainter Street, Menomonie, Wisconsin 54751. When at that location, it was duly licensed as a school of electrology (license # 105-88) from August 19, 2004, through February 26, 2007.

6. Respondent is listed in Department records as the owner of Respondent School since its inception.
7. At the time Respondent School received its original license, its approved course of instruction included theory in a standard classroom setting.
8. On or about February 1, 2005, Respondent and Respondent School advertised the availability of an electrology course of instruction in which a substantial portion of the required theory was provided through distance learning, a/k/a e-learning.
9. On April 6, 2005, Student A signed an enrollment contract with Respondent School for an electrology course of instruction in which a substantial portion of the required theory was available through distance learning.
10. On June 8, 2005, Student B signed an enrollment contract with Respondent School for an electrology course of instruction in which a substantial portion of the required theory was available through distance learning.
11. A memorandum dated June 8, 2005, from Darwin Tichenor (Tichenor), a staff member of the Office of Education and Examinations in the Department, notified all regulated schools about the approval process for schools wishing to provide theory instruction through distance learning.
12. On July 7, 2005, Tichenor notified Respondent and Respondent School by letter that Respondent School's proposal to provide electrology theory instruction through distance learning had been approved by the Department. The standard contract dated June 2006 that Respondent School used to enroll students stated that the total fees incurred for enrollment in the electrology course of instruction with a distance learning component was \$5,500.
13. The catalog dated June 2006 provided to students by Respondent School stated that the total fees incurred for enrollment in the electrology course of instruction with a distance learning component was \$5,500.
14. On October 21, 2006, Respondent, on behalf of Respondent School, signed a Trade Adjustment Assistance Training Contract with the Wisconsin Department of Workforce Development (DWD) that stated the cost of the training provided to Student C was \$6,500.
15. Respondent maintains that she did not prepare the DWD contract and that she did not read the contract and observe the \$6500 price when she signed the document.
16. A review of all student files maintained by Respondent School revealed that at least three students signed standard contracts reflecting a cost of \$5,500 in November and December 2006, after Respondent had stated in the paperwork for DWD that the cost of the training was \$6,500.
17. DWD issued a check to Respondent School for \$6,500 on November 14, 2006.
18. On April 30, 2009, the Respondent refunded \$1,000 dollars (the difference between the cost of the course and the DWD check) to DWD.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.64 (3), and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stats. § 227.44 (5).
2. Wis. Stat. § 440.62 (3) (c) 3 requires a school of electrology to comply with the rules promulgated under § 440.62 (5) (b), Stats.
3. Wis. Stat. § 440.62 (5) (b) requires the Barbering and Cosmetology Examining Board (Board) to promulgate rules prescribing the subjects to be included in courses of instruction and establishing minimum standards for courses of instruction offered by schools licensed by the Department under § 440.62 (3), Stats.
4. Wis. Administrative Code § BC 5.05 sets forth the required syllabus for a course of instruction for an electrologist license.
5. Wis. Administrative Code § BC 5.01 provides that a school or specialty school shall not deviate from the hours listed for

subjects in the appropriate syllabus in chapter BC 5.

6. At the time the Board adopted Wis. Administrative Code chapter BC 5 in 1989, its intent was that theory instruction would be provided by an instructor in a classroom in which students were physically present for the number of hours required by the syllabus. Student attendance at the required number of hours would be certified by the school at the time the student completed the course of instruction.
7. Wis. Stat. § 440.64 (1) requires the Department to review courses of instruction at schools and specialty schools for compliance with minimum standards required by the Board.
8. The Department did not conclude its review of the proposed distance learning component of Respondent School's program and issue a finding of compliance with minimum standards until July 7, 2005.
9. By advertising and offering and theory instruction by distance learning to Wisconsin students prior to receiving approval from the Department on July 7, 2005, Respondent School deviated from the syllabus required by Wis. Administrative Code § 5.05, thus violating Wis. Administrative Code § BC 5.01.
10. Wis. Administrative Code § RL 62.04 (1) (g) states that the making of any false or deceptive statement or representation which has the capacity or tendency to deceive or mislead any prospective student, student, any third party sponsoring the student, or the public regarding the amount of the prospective student's or student's financial obligation to the school is a deceptive sales practice.
11. Wis. Administrative Code § RL 62.11 (1) (o) states that no owner, director, officer, shareholder or managing employee of any school or specialty school may permit or engage in deceptive sales practices.
12. By failing to read the DWD contract, notice the erroneous price inserted, and inform DWD that the cost for the course of instruction was actually \$5,500, Respondent engaged in a negligent misrepresentation of Student C's financial obligation to the school.
13. By engaging in deceptive sales practices, Respondent and Respondent School have violated Wis. Administrative Code § RL 62.11 (1) (o).
14. Wis. Stat. § 440.64 (3) (b) provides that the Department may reprimand a licensee or certified instructor or deny, limit, suspend or revoke a license or certificate issued under subchapter V of chapter 440, Stats., if the Department finds that the applicant, licensee or certified instructor had violated subchapter V of chapter 440, Stats., or any rule promulgated under that subchapter.
15. Wis. Administrative Code § RL 62.11 (2) provides that the Department may limit, suspend or revoke the license of any school or specialty school whose owner, director, officer, shareholder or managing employee permits or participates in any conduct prohibited by Wis. Administrative Code § RL 62.11 (1).
16. By engaging in deceptive sales practices, Respondent and Respondent School have violated Wis. Administrative Code § RL 62.11 (1) (o) and have subjected themselves to discipline under Wis. Stat. § 440.64 (3) (b) and Wis. Administrative Code § RL 62.11 (2).
17. Wis. Administrative Code § RL 65.12 (1) (e) states that the Department may take disciplinary action against any person holding an instructor's certificate who has violated chapter 440 or 454, Stats., Wis. Administrative Code chs. RL 60 to 62, Wis. Administrative Code ch. RL 65, or Wis. Administrative Code chapters BC 1 to 9.
18. By engaging in deceptive sales practices, Respondent has violated provisions of Wis. Administrative Code ch. RL 62 and is subject to discipline under Wis. Administrative Code § 65.12 (1) (e).
19. Wis. Administrative Code § RL 65.12 (1) (i) states that the Department may take disciplinary action against any person holding an instructor's certificate who has engaged in unprofessional conduct.
20. By engaging in deceptive sales practices, Respondent has engaged in unprofessional conduct and is subject to discipline under Wis. Administrative Code § 65.12 (1) (i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The certificate of Hilary K. Bennett to practice as an electrology instructor in the state of Wisconsin is hereby **SUSPENDED** for thirty (30) days beginning September 1, 2009 and continuing through October 1, 2009.
2. The license of River Rock Electrology Institute, Inc., as an electrology school in the state of Wisconsin is hereby **REPRIMANDED**.
3. Respondent and Respondent School shall pay a forfeiture of **ONE THOUSAND DOLLARS** (\$1,000), and costs in the amount of **THREE THOUSAND DOLLARS** (\$3,000), for a total of **FOUR THOUSAND DOLLARS** (\$4,000). Payment shall be submitted on the following payment schedule:

Date	Amount
July 1, 2009	\$500.00
October 1, 2009	\$500.00
January 1, 2010	\$500.00
April 1, 2010	\$500.00
July 1, 2010	\$500.00
October 1, 2010	\$500.00
January 1, 2011	\$500.00
April 1, 2011	\$500.00

The full amount of the forfeiture and costs may be paid at any time prior to each due date for payment.

Payment shall be made by ***certified check or money order***, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
Post Office Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817

4. **Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's electrology instructor certificate and Respondent School's license. The Department in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent and Respondent School fail to submit timely any payment of the forfeiture as set forth above, or fails to pay costs as ordered, Respondent's instructor certificate (#106-73) and Respondent School's license (#106-88) SHALL BE SUSPENDED, without further notice or hearing until Respondent has complied with the terms of this Order.**
5. This Order is effective on the date of its signing

By: Celia M. Jackson, Secretary

6/8/09