

BEFORE THE STATE ELECTRICAL BOARD  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-05-0126-ELE REGARDING:

THE PROPOSED DISCIPLINARY ) Case No. 2223-2005  
ACTION AGAINST THE LICENSE OF )  
DON MORRISON, Licensed Master )  
Electrician, License No. M21. )

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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

The Business Standards Division of the Montana Department of Labor and Industry (BSD) seeks to impose sanctions against Don Morrison’s master electrician’s license number M21 for alleged violations of Mont. Code Ann. §§ 37-1-316(2) (permitting or aiding or abetting a person to violate or circumvent a law relating to licensure), 37-1-316(4) (signing or issuing, in the licensee’s professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement), 37-1-316(16) (assisting in the unlicensed practice of the profession), 37-1-316(18) (engaging in conduct that does not meet generally accepted standards of practice), and Admin. R. Mont. 24.141.403(5) (as responsible electrician of a licensed electrical contractor, allowing any person to perform work unless that person is properly licensed or working with a valid temporary permit).

Hearing Examiner Gregory L. Hanchett held a hearing in this matter on December 14, 2005. Lorraine Schneider, agency legal counsel, represented the BSD. William O. Bronson, Attorney at Law, represented Morrison. Morrison, George Edwards, Kevin Koehmstedt and Lyle Dillman testified under oath. The parties stipulated to the admission of Department’s Exhibits 2 through 7 and Licensee’s Exhibits A through D. Based on the evidence and argument adduced at the hearing, the hearing examiner makes the following findings of fact, conclusions of law, and recommended order.

## II. FINDINGS OF FACT

1. At all times relevant to this proceeding, Morrison held a Montana master electrician license, license number M21. He has been the responsible electrician of record for Rainbow Electric since 1999. Prior to being the responsible electrician of record for Rainbow Electric, Morrison was the responsible electrician of record for Sunset Enterprises.

2. Kevin Koehmstedt worked as a full time employee for Morrison on two separate occasions. Koehmstedt's first stint occurred between February and May 1997 when he worked for and was paid by Sunset Electric. His second stint occurred between July 2002 until February 2005 when he worked for Rainbow Electric. During his employment with Rainbow, Koehmstedt worked on various job sites on behalf of Rainbow engaging in electrical work. Specifically, he would hang gang boxes, affix and shape conduit, pull wires through the conduit, hang lighting fixtures, and rewire fixtures. On occasion, he would be on site without supervision completing such work for Rainbow. At other times, Morrison would be on site supervising him.

3. Koehmstedt did the electrical work described in Finding 2 before he was licensed and at a time when he was not in an approved apprentice or training program as required by Mont. Code Ann. § 37-68-303 and Admin. R. Mont. 24.141.402.<sup>1</sup> Koehmstedt applied for his residential electrician's license on June 16, 2004 and received that license on November 20, 2004.

4. As part of Koehmstedt's application, the State Electrical Board required him to submit proof that he had sufficient hours of practical experience requirements necessary for licensure as a residential electrician. Koehmstedt advised Morrison that he was seeking licensure as a residential electrician and he asked Morrison to provide the board with a letter to demonstrate that requirement. On June 28, 2004, Morrison sent the board a letter (Exhibit 4) stating that Koehmstedt's experience with Rainbow consisted of "a variation [sic] of experiences in the electrical industry, . . . and this employee has had the opportunity to gain a large variation [sic] of experience."

5. George Edwards, the board's administrative specialist, received Morrison's letter and recognized that it was not sufficient to satisfy the requirement

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<sup>1</sup>Mont. Code Ann. § 37-68-303 provides in pertinent part that the licensing requirements of Title 37, Chapter 68 do not prohibit "a person from working as an apprentice in the trade of electrician with an electrician under this chapter and under rules made by the board." Admin. R. Mont. 24.141.402 prescribes the board's rules about the requirements "under which persons may employ and work as apprentice." Koehmstedt met none of the requirements prescribed in that rule and thus was not an "apprentice" exempted from the licensing requirements of Title 37, Chapter 68.

of proof for the experience requirements because it did not contain specific number of hours that Koehmstedt had worked nor did it detail the type of work he had done for Rainbow. Edwards contacted Koehmstedt and advised him of the deficiency. Koehmstedt then spoke to Morrison again and asked him to write a letter detailing the specifics of the type of work Koehmstedt had completed for Rainbow as well as the number of hours of work that Koehmstedt had completed for Rainbow.

6. Morrison complied with Koehmstedt's wishes by providing a second letter to the Board on July 13, 2004 (Exhibit 4). Koehmstedt prepared the letter and placed it in front of Morrison for his signature. Morrison signed it, apparently without reading it. The new letter recited that during Koehmstedt's stint with Sunrise Electrical, he had worked 636.5 hours. The letter went on to state that during Koehmstedt's employment with Rainbow, he completed 3,606.75 hours of work. The letter finished by noting that the total of all his hours, 4,243.25, had been undertaken in duties consisting of "many facets of the electrical industry including assisting in commercial, residential and maintenance" and that Koehmstedt's experience in the electrical field "warrants his application for residential electrician license."

7. Because he did not draft and did not read the July 13, 2004 letter, Morrison did not really know the contents of the letter.

8. Morrison has been in business since 1951 and is presently in the process of winding up his business. Although he has pulled a couple of permits in the last year or so, it is clear that for all intents and purposes he is not actively engaged in electrical contracting at this point. Instead, his primary reason for continuing in the business is to inventory and dispose of his 51 plus years of accumulated electrical parts. Morrison will have completely shut down his electrical business within one year.

9. There is no evidence that Morrison has had any action taken against his license prior to this case.

### III. CONCLUSIONS OF LAW<sup>2</sup>

1. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

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<sup>2</sup>Statements of fact in the conclusions of laws are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

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(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law related to licensure or certification;

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(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

\* \* \*

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

\* \* \*

(18) conduct that does not meet the generally accepted standards of practice.

2. Mont. Code Ann. § 37-68-301 prohibits a person from engaging in or working as an electrical contractor, residential electrician, journeyman electrician or master electrician unless licensed to do so.

3. Mont. Code Ann. § 37-1-320 provides that a licensee may be found to have violated a provision of Mont. Code Ann. § 37-1-316 "without proof that a licensee acted purposefully, knowingly, or negligently."

4. Admin. R. Mont. 24.141.403(5) prohibits the responsible electrician of a licensed electrical contractor from allowing any person to perform work unless that person is properly licensed or working with a valid temporary permit.

5. The Department bears the burden of proof in this matter to show by the preponderance of the evidence that Morrison engaged in unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

6. Morrison permitted Kohemstedt to engage in electrical work on behalf of Rainbow at a time when Kohemstedt was neither licensed nor in an approved apprentice program. This conduct violated Mont. Code Ann. § 37-1-316(2), (16), (18) and Admin. R. Mont. 24.141.403(5).

7. The evidence does not establish that Morrison knew or reasonably should have known of the misleading statement in the letter drafted by Kohemstedt

and given to Morrison to sign. BSD did not prove by a preponderance of the evidence that Morrison violated Mont. Code Ann. § 37-1-316(4).

8. Upon a finding of unprofessional conduct, the board may impose any sanction provided by Title 37, Chapter 1. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may impose conditions of probation and a fine not to exceed \$1,000.00.

9. The Department advocated imposition of both probation and a fine. Imposition of a one year period of probation is appropriate in order to ensure that Morrison does not deviate from the statutorily imposed professional requirements of electricians while he is wrapping up his business. However, it is plainly evident that the licensee is no longer engaged in an active electrical business and imposition of a fine would impose a burden upon the licensee that is unnecessary in light of his previously unblemished record and would not serve to protect the public. Moreover, imposing a fine on a licensee who is going out of business and retiring will serve no deterrent effect.

#### **IV. RECOMMENDED ORDER**

Based on the foregoing, the hearing examiner recommends that the Montana State Electrical Board impose a one year period of probation on Morrison's Montana Master Electrician's License No. M21, with the terms that Morrison obey all provisions of Title 37, Chapters 1 and 68, and Title 24, Chapter 141 of the Administrative Rules of Montana during that time period.

DATED this 20th day of January, 2006.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT  
GREGORY L. HANCHETT  
Hearing Examiner

#### **NOTICE**

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.