

**BEFORE THE MISSOURI STATE BOARD
OF COSMETOLOGY AND BARBER EXAMINERS**

In the Matter of the Application of)
)
KRISTI M. BERRY,)
)
Applicant.)

**ORDER OF THE MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS ISSUING A PROBATIONARY
COSMETOLOGY STUDENT LICENSE TO KRISTI M. BERRY**

The Missouri State Board of Cosmetology and Barber Examiners (the "Board") hereby issues its **ORDER** granting a **PROBATIONARY COSMETOLOGY STUDENT LICENSE**, License No. 2016029144 to Kristi M. Berry ("Berry" or "Applicant"), pursuant to the provisions of § 324.038, RSMo. As set forth in § 324.038.2, RSMo, Berry may submit a written request to the Administrative Hearing Commission seeking a hearing and review of the Board's decision to issue a probated student license. Such written request must be filed with the Administrative Hearing Commission within 30 days of delivery or mailing of this Order of the Board. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman State Office Building, Room 640, Jefferson City, MO 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should Berry file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless and/or until such time as the Administrative Hearing Commission issues an Order to the contrary.

Based upon the foregoing, the Board hereby states:

I.

FINDINGS OF FACT

1. The Board is an agency of the state of Missouri created and established pursuant to § 329.015, RSMo,¹ for the purpose of licensing all persons engaged in the practice of barbering and cosmetology in this state. The Board has control and supervision of the licensed occupations and enforcement of the terms and provisions of Chapters 328 and 329, RSMo.

2. On or about August 2, 2016, Berry applied for a cosmetology student license to enroll at Vandalia Institute of Cosmetology, 1101 East Highway 54, Vandalia, Missouri.

3. On her application, Berry answered “yes” to the question “Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state or of the United States, whether or not sentence was imposed?”

4. With her application, Berry provided a statement regarding her criminal background. She stated that in 1993 she was introduced to crack.” She stated that she committed her first felony in 1994, burglary. She stated in 2003 she was convicted of stealing a car and burglary. She stated that from 2009-2011 she received 5 misdemeanor stealing cases and from 2011-2014, she was convicted of 7 instances of felony stealing from Walmart. She stated she was trying to get money to support her habit.

5. A review of Berry’s criminal history reveals that:

- a. On or about June 21, 1993, Berry pled guilty to the class C felony of Burglary – 2nd Degree in the Circuit Court of Pettis County, Missouri, case number 18R069300605. The Court suspended the imposition of sentence and placed Berry on five years’ probation with special terms and conditions related to

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

alcoholic beverages. The Court also ordered restitution. On or about March 16, 1994, the Court took up a probation violation motion and issued an order, suspending the execution of sentence, five years' incarceration, and ordering Berry to attend a treatment facility at the Booneville Correctional Center for possible probation after 120 days. On or about October 7, 1996, the Court revoked her probation and executed the five years' incarceration sentence.

- b. On or about July 23, 2003, Berry pled guilty to the class A misdemeanor of Tampering with Motor Vehicle, Airplane, Motor Board, Etc., -- 2nd Degree, in the Circuit Court of Jackson County, Missouri, case number 16CR03003990-01. The Court sentenced Berry to seven days' in jail.
- c. On or about August 18, 2003, Berry pled guilty to the class B felony of Burglary -- 1st Degree and the class C felony of Stealing a Motor Vehicle in the Circuit Court of Pettis County, Missouri, case number 03CR316517. The Court sentenced Berry to five years' incarceration on each count.
- d. On or about April 16, 2010, Berry pled guilty to the class A misdemeanor of Theft/Stealing (value less than \$500) in the Circuit Court of Callaway County, Missouri, case number 09CW-CR01681. The Court sentenced Berry to 35 days in jail to run concurrently with case number 10CW-CR00030.
- e. On or about April 16, 2010, Berry pled guilty to two counts of the class A misdemeanor of Theft/Stealing (value less than \$500) and one count of the class A misdemeanor of Unlawful Use of Drug Paraphernalia in the Circuit Court of Callaway County, Missouri, case number 10CW-CR00030. The Court sentenced Berry to 45 days in jail and 60 days in jail on the two Theft counts, to be served

concurrently, and 10 days in jail on the Drug Paraphernalia charge, also to be served concurrently.

- f. On or about April 16, 2010, Berry pled guilty to the class A misdemeanor of Theft/Stealing (value less than \$500) in the Circuit Court of Callaway County, Missouri, case number 10CW-CR00178. The Court sentenced Berry to 30 days in jail to be served concurrently with case number 10CW-CR00030.
- g. On or about January 10, 2011, Berry pled guilty to the class D felony of Stealing Related Offense -- 3rd Offense in the Circuit Court of Callaway County, Missouri, case number 10CW-CR00973-01. The Court sentenced Berry to four years' incarceration but suspended the execution of sentence and placed Berry on five years' supervised probation. On July 12, 2011, the Court revoked Berry's probation and executed her incarceration sentence. On September 10, 2012, the Court again suspended the execution of the incarceration sentence and returned Berry to probation. The Court revoked Berry's probation on July 14, 2014 and executed the four year incarceration sentence.
- h. On or about January 10, 2011, Berry pled guilty to the class D felony of Stealing Related Offense – 3rd Offense in the Circuit Court of Callaway County, Missouri, case number 10CW-CR01040-01. The Court sentenced Berry to four years' incarceration but suspended the execution of sentence and placed Berry on five years' supervised probation. On July 12, 2011, the Court revoked Berry's probation and executed her incarceration sentence. On September 10, 2012, the Court again suspended the execution of the incarceration sentence and returned

Berry to probation. The Court revoked Berry's probation on July 14, 2014 and executed the four year incarceration sentence.

- i. On or about September 10, 2012, Berry pled guilty to the class D felony of Stealing Related Offense – 3rd Offense in the Circuit Court of Callaway County, Missouri, case number 12CW-CR00744-01. The Court sentenced Berry to four years' incarceration but suspended the execution of sentence and placed Berry on five years' probation. The Court revoked Berry's probation on July 14, 2014 and executed the four year incarceration sentence.
- j. On or about November 13, 2012, Berry pled guilty to the class D felony of Stealing Related Offense – 3rd Offense and one count of the class C misdemeanor of Assault- 3rd Degree in the Circuit Court of Callaway County, Missouri, case number 12CW-CR01199-01. The Court sentenced Berry to four years' incarceration but suspended the execution of sentence and placed Berry on five years' probation on the Stealing charge and 10 days in jail on the Assault charge. The Court revoked Berry's probation on July 14, 2014 and executed the four year incarceration sentence.
- k. On or about December 3, 2012, Berry pled guilty to the class C felony of Theft/Stealing (value between \$500 and \$25,000) in the Circuit Court of Boone County, Missouri, case number 12BA-CR03189-01. The Court sentenced Berry to four years' incarceration and a long term treatment program. On September 26, 2013, the Court granted Berry's release, suspended the execution of sentence, and placed on five years' supervised probation. On July 14, 2014, the court revoked Berry's probation and executed the four year incarceration sentence.

- l. On or about December 13, 2012, Berry pled guilty to the class D felony of Stealing Related Offense – 3rd Offense in the Circuit Court of Audrain County, Missouri, case number 12AU-CR00461-01. The Court sentenced Berry to four years' incarceration in Missouri Department of Corrections. On or about October 1, 2013, the Court suspended the execution of sentence and released Berry on five years' supervised probation.
- m. On or about May 12, 2014, Berry pled guilty to the class D felony of Stealing Related Offense – 3rd Offense in the Circuit Court of Callaway County, Missouri, case number 14CW-CR00082-01. The Court sentenced Berry to five years' incarceration in Missouri Department of Corrections.

II.

CONCLUSIONS OF LAW

6. The Board has authority to deny or refuse a license application pursuant to § 329.140.1, RSMo, which provides:

The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

7. The Board has cause to deny or refuse Berry's application for a cosmetology student license pursuant to § 329.140.2, RSMo, which provides:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

8. As a result of Berry's actions as set forth in paragraphs 2 through 5 above, the Board has cause to deny or refuse Berry's application for a cosmetology student license pursuant to § 329.140.1, RSMo, and § 329.140.2(2), RSMo.

9. As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation, pursuant to § 324.038, RSMo, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

10. The Board issues this Order in lieu of denial of Berry's application for a cosmetology student license. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

11. Based on the foregoing, Kristi M. Berry is granted a cosmetology **student license**, which is hereby placed on **PROBATION** for the period during which he is enrolled in cosmetology school and receiving training hours, not to exceed five (5) years from the effective date of this Order. During the aforementioned probation, Kristi M. Berry shall be entitled to enroll as a cosmetology student subject to the following terms and conditions.

IV.

TERMS AND CONDITIONS

12. During the aforementioned probation, Kristi M. Berry, shall be entitled to enroll as a cosmetology student subject to the following terms and conditions:

- A. During the disciplinary period, Applicant shall comply with all provisions of Chapter 329, RSMo, all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. During the disciplinary period, Applicant shall keep the Board informed of Applicant's current work and home telephone numbers. Applicant shall notify the Board in writing within ten days (10) of any change in this information.
- C. During the probationary period, Applicant shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- D. During the disciplinary period, Applicant shall appear in person for interviews with the Board or its designee upon request.
- E. Applicant shall submit written reports to the Board on or before January 1 and July 1 during each year of the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Order. The first such report shall be received by the Board on or before January 1, 2017.
- F. If, at any time during the probationary period, Applicant changes Applicant's address from the state of Missouri, or ceases to maintain Applicant's cosmetology student license current or active under the provisions of Chapter 329, RSMo, or fails to keep the Board advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- G. The Board retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Board. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board as provided by Chapter 536, RSMo.
- H. Unless otherwise specified by the Board, all reports, documentation, notices, or other materials required to be submitted to the Board shall be forwarded to: Missouri State

Board of Cosmetology and Barber Examiners, P.O. Box 1062, Jefferson City, Missouri 65102.

- I. Any failure by Applicant to comply with any condition of discipline set forth herein constitutes a violation of this Order.

13. This Order does not bind the Board or restrict the remedies available to it concerning any violation by Applicant of the terms and conditions of this Order, Chapter 329, RSMo, or the regulations promulgated thereunder.

14. The Board will maintain this Order as an open, public record of the Board as provided in Chapters 329, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 11th DAY OF AUGUST, 2016.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

Emily R. Carroll

Emily R. Carroll, Executive Director