BEFORE THE MISSOURI STATE BOARD
OF COSMETOLOGY AND BARBER EXAMINERS

In the Matter of the Application of	)
	)
MARCIA JO KELLY,	)
	)
Applicant.	)

ORDER OF THE MISSOURI STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS ISSUING A PROBATIONARY STUDENT COSMETOLOGY LICENSE TO MARCIA JO KELLY

The Missouri State Board of Cosmetology and Barber Examiners (the "Board") hereby issues its **ORDER** granting a **PROBATIONARY STUDENT COSMETOLOGY LICENSE,** License No. 2015022835 to Marcia Jo Kelly ("Kelly" or "Applicant"), pursuant to the provisions of § 324.038, RSMo.[1] As set forth in § 324.038.2, RSMo, Kelly 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 cosmetology 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 Kelly 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:

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

I.

FINDINGS OF FACT

1. The Board is an agency of the state of Missouri created and established pursuant to § 329.015, RSMo, 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 February 9, 2015, Kelly applied for a Missouri student cosmetology license to enroll at the Vandalia Institute of Cosmetology, 1101 East HWY 54, Vandalia, Missouri.

3. On her application, Kelly answered "yes" to the question "Have you been 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 February 9, 2015 application, Kelly provided an explanation of her criminal history. In her explanation, Kelly stated that her nephew died while in her care as his babysitter. Doctors determined that the nephew suffered a "closed head injury." Kelly stated that she was charged with Involuntary Manslaughter and sentenced, through an Alford Plea, to seven years' incarceration. Kelly noted that she has used her time in prison to "improve" herself and that she hopes to attend cosmetology classes to further her improvement.

5. A review of Kelly's Missouri criminal history reveals that on or about January 28, 2013, Kelly pled guilty to the class C felony of Involuntary Manslaughter – 1st Degree, in the Circuit Court of Iron County, Missouri, case 12IR-CR00064-01. The Court sentenced Kelly to 7 years' incarceration.

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 Kelly'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 Kelly's convictions as detailed in paragraph 5 above, the Board has cause to deny or refuse Kelly'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 Kelly'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, Marcia Jo Kelly is granted a cosmetology **student license**, which is hereby placed on **PROBATION** for the period during which she 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, Marcia Jo Kelly 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, Marcia Jo Kelly, 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, 2016.

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 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 15TH DAY OF JULY, 2015.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

Emily R. Carroll

Emily R. Carroll, Executive Director