



Based upon the foregoing, the Board hereby states:

**FINDINGS OF FACT**

1. The Board is an agency of the state of Missouri created and established pursuant to § 329.015, RSMo,<sup>1</sup> 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 (as amended).

2. On or about March 14, 2013, the Board received an application from Kimbrough for a cosmetology instructor license. Kimbrough previously held a cosmetology instructor trainee license.

3. Kimbrough also holds a cosmetology school license, license number 2012027704. The Board issued Kimbrough's school license on August 7, 2012. Kimbrough's school license is, and was at all times herein, current and active. Kimbrough also holds a cosmetology operator license, license number 2012030515. The Board issued Kimbrough's cosmetology operator license on August 29, 2012. Kimbrough's cosmetology operator license is now current and active.

4. Kimbrough owns and operates Ozarks Academy of Cosmetology, LLC ("Ozarks Academy"), a licensed school of cosmetology, located at 1709 Porter Wagoner Blvd., West Plains, Missouri.

5. On or about January 7, 2013, the Board's inspector conducted an inspection at Ozarks Academy. The inspection report documented Kimbrough as the owner of Ozarks

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

Academy and the holder of a temporary instructor license, license number 2012042284.

Kimbrough was present at the time of the inspection.

6. On or about January 16, 2013, the Board received a complaint regarding Kimbrough. The complaint alleged that Ozarks Academy failed to meet the “minimum standards of a professional cosmetology school.” The complaint stated “[n]ever have I seen a training facility do more harm to its students, the community and the cosmetology profession than has been done by Ms. Kimbrough.” The complaint stated that students and staff left the school, prior to completing the program, on bad terms and there was a very high attrition rate. The complaint stated that Kimbrough “has shown a wanton disregard for student safety.” The complainant stated that Kimbrough put her in a position where she “could have seriously injured another student.” During the incident, the complainant was left unsupervised and inadvertently cut off a “chunk” of the other student’s hair and was left unsupervised with a curling iron. The complaint stated that after three months and paying \$3,000, the complainant is unable to do a basic haircut. The complaint stated that Kimbrough failed to hire “minimally competent staff.” The complaint stated that staff left the students with no supervision to go outside and smoke.

7. On or about January 18, 2013, the Board received a complaint alleging that Kimbrough, in her capacity as an instructor trainee at Ozarks Academy, clocked in extra hours on time cards for her instructor training during hours when Ozarks Academy was not operating as scheduled with the Board and when there was no licensed instructor present. The complaint stated that though the school opened on September 4, 2012, by the end of October 2012, Kimbrough stated she had completed her 600 hours of instructor training and would now be an instructor. At the time, the scheduled hours for Ozarks Academy were Tuesday through Saturday, 8:30 a.m. to 5:30 p.m. The complaint stated that Kimbrough was coming in early, late

and on weekends when there was no instructor present. The complaint stated she was violating the statutes and falsifying records. The complaint also stated that on Kimbrough's student contract, she stated she was an instructor. The complaint was signed by a licensed instructor and former student.

8. On or about January 30, 2013, the Board sent Kimbrough a copy of both complaints and invited Kimbrough to the Board's March 17, 2013 meeting. The letter instructed Kimbrough to bring a detailed response to the complaint, attendance records for her and all students and time records for all licensed instructors employed by Ozarks Academy.

9. In response to the complaint, Kimbrough appeared before the Board on March 17, 2013 meeting. Kimbrough provided a written statement that she "closed [Ozarks Academy] on March 1, 2013." Kimbrough also provided copies of time cards for herself from September through December 2012. The time cards demonstrated that Kimbrough did work over 72 hours in a week and during times of non-operation of the school. Additionally, Kimbrough provided the Board nothing regarding the closure of the school other than her one line statement above. Kimbrough provided no records for students or licensed instructors.

## II.

### CONCLUSIONS OF LAW

10. Section 329.040.1, RSMo, states:

Any person of good moral character may make application to the board for a license to own a school of cosmetology on a form provide upon request by the board. Every school of cosmetology in which any of the classified occupations of cosmetology are taught shall be required to obtain a license from the board prior to opening. The license shall be issued upon approval of the application by the board, the payment of the required fees, and the applicant meets other requirements provided in this chapter. The license shall be kept posted in plain view within the school at all times.

11. State regulation 20 CSR 2085-8.020(1), states:
- (1) All instructor trainees shall be enrolled in a course of study of no less than three (3) hours per day and no more than twelve (12) hours per day, with a weekly total that is not less than fifteen (15) hours and no more than seventy-two (72) hours per week.
12. State regulation 20 CSR 2085-12.010, states, in pertinent part:
- ...
- (5) License changes.
- ...
- (D) Termination of Operations. Any school voluntarily terminating its operation shall inform the board in writing prior to the anticipated closing date and in addition, properly terminated its students as set forth in section (9) of this rule, return all unused materials supplied by the board and supply the board with an address and telephone number where an authorized representative of the school can be contacted for additional information after the closing of the school.
- ...
- (10) Every holder of a license to operate a school shall be responsible for providing continuous and adequate supervision of the school's students by licensed instructors at all times during regular school hours.
13. State regulation 20 CSR 2085-12.040(4), states, in pertinent part:
- (4) Training and Calculation of Hours. This rule clarifies the hour requirements as authorized in section 329.040, RSMo.
- (A) Minimum-Maximum Hours Accepted.
- ...
- (2) All students and instructor trainees shall be enrolled in a course of study of no less than three (3) hours per day and no more than twelve (12) hours per day with a weekly total

that is no less than fifteen (15) hours and no more than seventy-two (72) hours.

14. 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 the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

15. The Board has cause to deny or refuse Kimbrough's application for a cosmetology instructor 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:

...

- (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;
- (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;
- (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any professional licensed or regulated by this chapter;
- (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
- (7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

...

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

(13) Violation of any professional trust or confidence[.]

16. As a result of Licensee working over 72 hours a week and not under the supervision of an instructor, failing to provide statutorily required supervision for students and failing to properly notify the Board of, and appropriately document, the closing of Ozarks Academy, as described above in paragraphs 3 through 9, Licensee violated chapter 329, RSMo, and lawful regulations adopted pursuant to chapter 329, RSMo, as described above in paragraphs 10 through 13, the Board has cause to deny or refuse Kimbrough's application for a cosmetology instructor license pursuant to § 329.140.1, RSMo, and § 329.140.2(3), (4), (5), (6), (7), (10) and (13), RSMo.

17. As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1, 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.

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

III.

**ORDER**

Based on the foregoing, Kimbrough is granted a cosmetology instructor license, which is hereby placed on **PROBATION** for a period of three (3) years from the effective date of this Order, subject to the terms and conditions set forth below.

IV.

**TERMS AND CONDITIONS**

During the aforementioned probation, Kimbrough shall be entitled to a cosmetology instructor license subject to the following terms and conditions:

- A. During the disciplinary period, Kimbrough shall comply with all provisions of Chapter 329, RSMo (as amended), 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, Kimbrough shall keep the Board informed of her current work telephone number. Kimbrough shall notify the Board in writing within ten days (10) of any change in this information.
- C. During the probationary period, Kimbrough shall timely renew her license(s) granted hereby and shall timely pay all fees required for licensure and comply with all other Board requirements necessary to maintain said licenses in a current and active state.
- D. During the probationary period, Kimbrough shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- E. During the disciplinary period, Kimbrough shall appear in person for interviews with the Board or its designee upon request.
- F. Kimbrough 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 July 1, 2013.
- G. If, at any time during the probationary period, Kimbrough changes her address from the state of Missouri, or ceases to maintain her licenses 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.

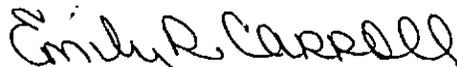
- H. The Board retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Board. No order shall be 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 (as amended).
- I. 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 1335, Jefferson City, Missouri 65102.
- J. Any failure by Kimbrough to comply with any condition of discipline set forth herein constitutes a violation of this Order.

This Order does not bind the Board or restrict the remedies available to it concerning any violation by Respondent of the terms and conditions of this Order, Chapters 324 and 329, RSMo, or the regulations promulgated thereunder.

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 10 DAY OF APRIL, 2013.

MISSOURI STATE BOARD OF COSMETOLOGY  
AND BARBER EXAMINERS



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Emily R. Carroll, Executive Director