

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, 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. Licensee is a licensed as a cosmetologist, license number 2005015663. Licensee's cosmetology operator license was not at all times current and active. Licensee's operator license is now current and active as of March 14, 2012.

3. On or about April 2, 2012, Licensee filed an Application for Establishment Registration with the Board seeking licensure as a rental, commercial cosmetology establishment under the name of MODA, Ivy Miller, owner, to be located at 317 South Ave, Springfield, Missouri 65806. The Board received the initial application on April 2, 2012. The Board rejected the application because it did not have all the required documents.

4. On or about December 29, 2011, the Board inspected MODA. The Board inspector discovered the following licensure issues, Licensee was present and offering cosmetology services without an establishment license in violation of 20 CSR 2085-10.010, 20 CSR 2085-10.060, and § 329.030, RSMo and Licensee's cosmetology operator license was not current due to non-renewal in violation of 20 CSR 2085-7.050. On or about January 23, 2012, the Board sent a violation notice to Licensee at MODA.

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

5. On or about January 26, 2012, the Board inspected MODA. The Board inspector discovered the following licensure issues: Licensee was present and offering cosmetology services without an establishment license in violation of 20 CSR 2085-10.010, 20 CSR 2085-10.060, and § 329.030, RSMo and Licensee's cosmetology operator license was not current due to non-renewal in violation of 20 CSR 2085-7.050.

6. On or about March 27, 2012, the Board sent a settlement agreement certified mail to Licensee at MODA. Licensee did not return the settlement agreement.

7. On or about April 18, 2012, the Board inspected MODA. The Board inspector discovered the following licensure issues: Licensee was present and offering cosmetology services without an establishment license in violation of 20 CSR 2085-10.010, 20 CSR 2085-10.060, and § 329.030, RSMo.

II.

CONCLUSIONS OF LAW

8. The Board has authority to deny or refuse a license application pursuant to § 329.140.1, RSMo 2000, 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.

9. As a result of the violations identified in paragraphs 3 through 7 herein, the Board has cause to deny or refuse Licensee's application for a cosmetology establishment license pursuant to § 329.140.2(6), RSMo, which provide:

2. 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:

...

(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;

10. Regulation to 20 CSR 2085-10.010 states, in relevant part:

(1)(A) Except as provided herein, any person desiring to open a barber or cosmetology establishment in Missouri, whether a beauty shop, nail salon, other cosmetology establishment, shall submit an application to the board at least thirty (30) days prior to the anticipated opening of the establishment. The establishment license application shall be submitted on a form provided by the board, accompanied by the biennial establishment fee, and including the following information:[.]

10. Regulation to 20 CSR 2085-10.060 states, in relevant part:

(1) Pursuant to Chapters 328 and 29, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permit holder is an employee of the establishment or holds a current an active renter establishment license issued by the board.

11. Section 329.00, RSMo, states, in relevant part:

It is unlawful for any person in this state to engage in the occupation of cosmetology or to operate an establishment or school of cosmetology, unless such person has first obtained a license as provided by this chapter.

12. Regulation to 20 CSR 2085-7.050 states, in relevant part:

(1) The holder of an expired license to practice any of the classified occupations of cosmetology may submit an application to the board to reinstate that license within two (2) years of the date the license expired. The application shall be on a form supplied by the board and shall be accompanied by the license renewal fee plus the late fee.

13. As a result of the licensure violations set forth in paragraphs 3 through 7 herein, the Board has cause to deny Licensee's application for licensure pursuant to § 329.140.2(6), RSMo.

14. 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 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.

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

III.

TERMS AND CONDITIONS

16. Based on the foregoing, MODA, Ivy Miller, owner, is granted a cosmetology establishment license, which is hereby placed on **PROBATION** for a period of **THREE (3) YEARS** from the effective date of this Order. During the aforementioned probation, Licensee shall be entitled to operate as a cosmetology establishment subject to the following terms and conditions:

- A. During the disciplinary period, Licensee 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, Licensee shall keep the Board informed of Licensee's current work and home telephone numbers. Licensee shall notify the Board in writing within ten days (10) of any change in this information.
- C. During the probationary period, Licensee shall timely renew Licensee's cosmetology operator and establishment license and shall timely pay all fees required for licensure

and comply with all other Board requirements necessary to maintain said license in a current and active state.

- D. During the probationary period, Licensee 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 probationary period, Licensee shall appear in person for interviews with the Board or its designee upon request.

F. Licensee 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, 2012.

G. If, at any time during the probationary period, Licensee ceases to maintain Licensee's licenses current or active under the provisions of Chapter 329, RSMo, or fails to keep the Board advised of all current places of business and 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. In the event the Board determines that Licensee has violated any term or condition of this Order, the Board may, in its discretion, pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions or remedies concerning the allegations identified herein.

I. 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 required by Missouri law.

J. 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.

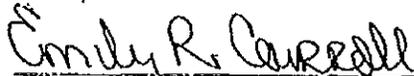
K. Any failure by Licensee to comply with any condition of discipline set forth herein constitutes a violation of this Order.

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

18. 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 31 DAY OF May 2012.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Emily R. Carroll, Executive Director