

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. Ashley Smith ("Applicant") is a natural person residing at Women's Eastern Reception, Diagnostic and Correctional Center, 1101 East Highway 54, Vandalia, Missouri 63382. [REDACTED]

3. On or about June 1, 2004, Applicant pled guilty in the Audrain County Circuit Court, State of Missouri, case number 04U1-R00403-01, to one count of class C felony of Burglary in the Second Degree and two counts of class C felony of Theft/Stealing (Value of Property or Services Is \$500 Or More But Less Than \$25,000), for which Applicant received a suspended imposition of sentence, received 10 days shock incarceration and was placed on five years supervised probation. Applicant's probation was later revoked and on or about February 17, 2006, Applicant was sentenced to seven years incarceration in the Missouri Department of Corrections, with a suspended execution of sentence, 120 days shock incarceration followed by five years supervised probation. Applicant's probation was later again revoked and on or about March 21, 2011, Applicant was incarcerated toward completion of her sentence in the Missouri Department of Corrections.

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

4. On or about May 3, 2006, Applicant pled guilty in the Audrain County Circuit Court, State of Missouri, case number 06UI-CR00083, to one count of class A misdemeanor of Stealing Motor Fuel for which Applicant was sentenced to 120 days incarceration in jail with execution of the sentence suspended and Applicant placed on two years probation.

5. On or about May 3, 2006, Applicant pled guilty in the Audrain County Circuit Court, State of Missouri, case number 06UI-CR00086, to one count of the class A misdemeanor of Theft/Stealing (Value of Property or Services Is \$500 Or More But Less Than \$25,000) for which Applicant was sentenced to 120 days incarceration in jail.

6. On or about May 3, 2006, Applicant pled guilty in the Audrain County Circuit Court, State of Missouri, case number 06UI-CR00341, to one count of class A misdemeanor of Receiving Stolen Property – Less than \$500 for which Applicant was sentenced to 120 days incarceration in jail; and in this same case Applicant pled guilty to one count of class C misdemeanor of As Owner, Oper Or Auth Another To Oper A Mtr Veh W/Out Maintain Financial Responsibility for which Applicant was sentenced to 48 hours incarceration in jail.

7. On or about June 13, 2007, Applicant pled guilty in the Audrain County Circuit Court, State of Missouri, case number 06UI-CR01114, to one count of class A misdemeanor of Operated Motor Vehicle On Highway While Drivers License/Privilege Revoked for which Applicant was sentenced to 90 days incarceration in jail.

8. On or about June 13, 2007, Applicant pled guilty in the Audrain County Circuit Court, State of Missouri, case number 07UI-CR00290, to one count of class B

misdemeanor of Trespass – 1st Degree for which Applicant was sentenced to 90 days incarceration in jail.

9. On or about June 25, 2007, Applicant pled guilty in the Audrain County Circuit Court, State of Missouri, case number 06UJ-CR01112-01, to the class D felony of Possession Of Burglary Tools for which Applicant was sentenced to four years incarceration in the Missouri Department of Corrections. Upon serving 120 days, Applicant's sentence was suspended and Applicant was placed on supervised probation. Applicant's probation was later revoked and on or about March 21, 2011, Applicant was again incarcerated under her prior sentence in the Missouri Department of Corrections.

10. On or about March 7, 2011, Applicant plead guilty in the Audrain County Circuit Court, State of Missouri, case number 10AU-CR00785-01, to the class B felony of Dist/Del/Manf/Produce or Attempt to Possess W/Intent to Dist/Manf/Produce a Controlled Substance for which Applicant was sentenced to seven years incarceration in the Missouri Department of Corrections.

11. On or about August 12, 2011, Applicant filed a Student Enrollment Application with the Board seeking a cosmetology student license.

II.

CONCLUSIONS OF LAW

12. 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 his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

13. The Board has cause to deny or refuse Applicant'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[.]

14. As a result of Applicant's actions as set forth in paragraphs 3 through 10 above, the Board has cause to deny or refuse Applicant's application for a cosmetology student license pursuant to § 329.140.1, RSMo, and § 329.140.2(2), RSMo.

15. As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation, pursuant to § 324.03.18, 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.

16. The Board issues this Order in lieu of denial of Applicant'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

Based on the foregoing, Ashley Smith 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, Ashley Smith shall be entitled to enroll as a cosmetology student subject to the following terms and conditions.

IV.

TERMS AND CONDITIONS

During the aforementioned probation, Ashley Smith, Applicant, 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 timely renew Applicant's student license granted hereby 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, Applicant 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, Applicant shall appear in person for interviews with the Board or its designee upon request.
- F. 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, 2012.
- G. 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.
- 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.
- 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 1062, Jefferson City, Missouri 65102.
- J. Any failure by Applicant 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 Applicant of the terms and conditions of this Order, Chapter 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 24 DAY OF October, 2011.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Emily Carroll, Executive Director