

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 not licensed as a barber in the state of Missouri.

3. Licensee has been offering barbering services out of Cut Creator, located at 13135 New Halls Ferry Road, Florissant, Missouri 63033 without an establishment license.

4. On or about August 24, 2011, Licensee applied to take the Missouri barbering examinations.

5. On or about October 13, 2011, the Board inspected Cut Creator. The Board inspector discovered the following licensure issues: Licensee was present and offering barbering services without a barber operator or establishment license in violation of 20 CSR 2085-10.010, 20 CSR 2085-10.060, and § 328.020, RSMo. On or about November 3, 2011, the Board sent a violation notice to Licensee at Cut Creator.

6. On or about December 8, 2011, the Board inspected Cut Creator. The Board inspector discovered the following licensure issues: Licensee was present and offering barbering services without a barber operator or establishment license in violation of 20 CSR 2085-10.010, 20 CSR 2085-10.060, and § 328.020, RSMo.

7. On or about February 2, 2012, the Board inspected Cut Creator. The Board inspector discovered the following licensure issues: Licensee was present and offering barbering services without a barber operator or establishment license in violation of 20 CSR 2085-10.010, 20 CSR 2085-10.060, and § 328.020, RSMo.

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

8. On or about February 28, 2012, the Board inspected Cut Creator. The Board inspector discovered the following licensure issues: Licensee was present and offering barbering services without a barber operator or establishment license in violation of 20 CSR 2085-10.010, 20 CSR 2085-10.060, and § 328.020, RSMo.

II.

CONCLUSIONS OF LAW

9. The Board has authority to deny or refuse a license application pursuant to § 328.150.1, 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.

10. As a result of the violations identified in paragraphs 2 through 8 herein, the Board has cause to deny or refuse Licensee's application for a barber license pursuant to § 328.150.2(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;

11. § 328.020, RSMo states, in relevant part:

It shall be unlawful for any person to practice the occupation of a barber in this state, unless he or she shall have first obtained a license, as provided in this chapter.

12. Regulation 20 CSR-10.010 states, in relevant part:

(2) Rental Space/Chair Licensing. Any person licensed by the board who rents individual space or a booth/chair within a licensed establishment for the purposes of practicing as a barber or

cosmetologist shall be required to obtain a separate establishment license for the rental space. Licensees that rent individual space or a booth/chair within a licensed barber or cosmetology establishment for the purposes of operating as a barber or cosmetologist must possess a current establishment license as well as an operator license. This section does not apply to licensees operating as establishment employees.

13. Regulation 20 CSR-10.060 states, in relevant part:

(1) Pursuant to Chapters 328 and 329, 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 and active renter establishment license issued by the board.

...

(2) License Posted. Every licensed barber and cosmetologist shall post a current license issued by the board in front of the barber's working chair or the cosmetologist's work station where it shall be readily seen by all patrons.

...

(3) Prohibited Practices Within An Establishment. In a licensed establishment, only persons properly licensed by the board shall be allowed to perform barbering, hairdressing, manicuring, or esthetician services on any person within the establishment. The provisions of this section shall apply even if services are being provided for no compensation. For purposes of this section, barbering, hairdressing, manicuring, or esthetician services shall be defined as follows:

(A) "Barbering"—engaging in the capacity so as to shave the beard or cut and dress the hair of any person;

14. As a result of the licensure violations set forth in paragraphs 2 through 7 herein, the Board has cause to deny Licensee's application for licensure pursuant to § 328.150.2(6), 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 § 324.038, 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.

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

III.

TERMS AND CONDITIONS

17. Based on the foregoing, Mario Wallace, is granted a barber license, which is hereby placed on PROBATION for a period of FIVE (5) YEARS from the effective date of this Order. During the aforementioned probation, Licensee shall be entitled to operate as a barber subject to the following terms and conditions:

I. SPECIFIC REQUIREMENTS

A. Licensee shall obtain an establishment license or obtain employment at a licensed barber establishment and until doing so Licensee shall cease offering or performing barber services.

II. GENERAL REQUIREMENTS

A. During the disciplinary period, Licensee shall comply with all provisions of Chapter 328, 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 (10) days of any change in this information.

C. During the probationary period, Licensee shall timely renew Licensee's barber 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, 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.

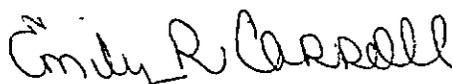
- F. Licensee shall submit written reports to the Board on or before January 1 and July 1 during each year of the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Order. The first such report shall be received by the Board on or before January 1, 2013.
- G. If, at any time during the probationary period, Licensee ceases to maintain Licensee's barber license current or active under the provisions of Chapter 328, 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.

18. 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 328, 329 or 324, RSMo, or the regulations promulgated thereunder.

19. The Board will maintain this Order as an open, public record of the Board as provided in Chapters 328, 329, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 15th DAY OF August 2012.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Emily R. Carroll, Executive Director