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AUG 20 2008

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**BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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IN THE MATTER OF THE ISSUANCE OF ) **MEMORANDUM OF**  
A PROBATIONARY LICENSE TO ) **UNDERSTANDING AND ORDER**  
**ASHLEY MIDBY TO PRACTICE** )  
AS A COSMETOLOGIST/BARBER ) **CASE NO. DOPL 2008- 1166**  
IN THE STATE OF UTAH )

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ASHLEY MIDBY ("Respondent") submitted an application for licensure as a cosmetologist/barber in the State of Utah on or about June 18, 2008. On the Qualifying Questionnaire Respondent answered "yes" to question #17. Documentation has been received by the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("Division") showing that Respondent entered into a plea in abeyance agreement on or about February 13, 2008 in which Respondent's plea of guilty to one count of illegal possession/use of a controlled substance, a felony, was held in abeyance for a period of 36 months.

Based upon Respondent's plea of guilty, Respondent and Division, as evidenced by their signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as a cosmetologist/barber in the State of Utah, subject to the following terms and conditions, which shall be in effect for a period of three years, commencing upon the date this Memorandum of Understanding and Order is approved by the Division Director as evidenced by his signature.

- 1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(c). Respondent

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understands that the issuance of the Order in this matter is disciplinary action against Respondent' license by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2)

2 Respondent acknowledges that Respondent enters into this Memorandum of Understanding and Order knowingly and voluntarily, and other than what is contained in this Memorandum of Understanding and Order, no promise or threat whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce Respondent to enter into this agreement

3 Respondent understands that Respondent has the right to be represented by an attorney in this matter, and the Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter

4 Respondent acknowledges that this Memorandum of Understanding and Order, if adopted by the Director of the Division, will be classified as a public document The Division may release this Memorandum of Understanding and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities

5 Respondent shall successfully complete and satisfy the following terms and conditions

a Respondent shall meet with the Board at the first scheduled Board meeting following the effective date of this Memorandum of Understanding and Order Respondent shall then meet with the Board on a quarterly basis or at such other greater or lesser frequency as determined by the Board and Division for the duration of the Memorandum of Understanding and Order Respondent agrees to meet with an assigned staff member prior to the first Board meeting

b Respondent shall complete all terms and conditions of any criminal sanctions, incurred before or during the period of this agreement, including probation or parole If Respondent has not successfully completed all the terms and conditions of Respondent's criminal probation at the time Respondent's administrative probationary period ends, the period of Respondent's administrative probation shall be extended until all the conditions of Respondent's criminal probation have been successfully completed

c Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form Respondent agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended

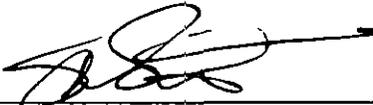
- d Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug analysis upon the request of the Division, to be conducted by any company with which the Division has contracted to conduct drug testing. The designated company may also request such samples and Respondent shall comply with such requests. The Division shall determine when and where Respondent is to submit herself for testing. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division. Any report from a drug testing company that indicates that Respondent failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Respondent for drug analysis is diluted to an extent that it cannot be analyzed, will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions.
- 6 Respondent agrees to abide by all applicable federal and state laws, regulations, rules or orders related to Respondent's licensed area of practice.
- 7 Respondent understands that the issuance of a license pursuant to this Memorandum of Understanding and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative or judicial review of that partial denial of licensure.
- 8 If Respondent successfully completes the terms of this Memorandum of Understanding and Order, the conditions on Respondent's license will be lifted and Respondent's license will not be subject to further restriction.
- 9 If Respondent violates any term or condition of this Memorandum of Understanding and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.
- 10 The terms and conditions of this Memorandum of Understanding and Order become effective immediately upon the approval of this Memorandum of Understanding and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the Division Director signs the Order page of this Memorandum of Understanding and Order. Respondent shall complete all the terms and conditions contained in the Memorandum of Understanding and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in this Memorandum of Understanding and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner shall constitute a violation of the Memorandum of Understanding and Order and may subject

Respondent to revocation or other sanctions

- 11 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.
- 12 Respondent has read each and every paragraph contained in this Memorandum of Understanding and Order. Respondent understands each and every paragraph contained in this Memorandum of Understanding and Order. Respondent has no questions about any paragraph or provision contained in this Memorandum of Understanding and Order.

DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING

RESPONDENT

BY   
\_\_\_\_\_  
SALLY A. STEWART  
Bureau Manager

BY   
\_\_\_\_\_  
ASHLEY MIDBY

DATE 08/25/2008

DATE 8 10 08

MARK L. SHURTLEFF  
ATTORNEY GENERAL

BY   
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L. MITCHELL JONES  
Counsel for the Division

DATE 31 July 2008

ORDER

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **ASHLEY MIDBY**, is hereby approved by the Division of Occupational and Professional Licensing. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2). The terms and conditions of the Memorandum of Understanding are incorporated herein and constitute my final Order in this case.

DATED this 25<sup>th</sup> <sup>was</sup> day of August, 2008

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

*for* W. Ray Walker, Acting Director  
F. DAVID STANLEY  
Director