

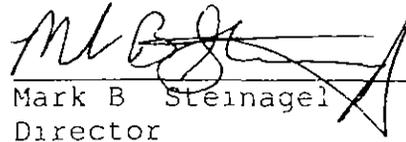
BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE	~	
OF VERA I BAIRD TO PRACTICE	~	ORDER
AS A COSMETOLOGIST/BARBER	~	Case No DOPL-OSC-2009-354
IN THE STATE OF UTAH	~	

BY THE DIVISION:

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah

Dated this 3 day of March 2011.



Mark B Steinagel
Director

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in §63G-4-301 of the Utah Code, and §R151-46b-12 of the Utah Administrative Code.

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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE	~	FINDINGS OF FACT
OF VERA I BAIRD TO PRACTICE	~	CONCLUSIONS OF LAW
AS A COSMETOLOGIST/BARBER	~	AND RECOMMENDED ORDER
IN THE STATE OF UTAH	~	Case No DOPL-OSC-2009-354

APPEARANCES

Laurie N. Noda for the Division of Occupational
and Professional Licensing

Vera T Baird on behalf of Respondent

BY THE BOARD

A December 6, 2010 hearing was conducted in this proceeding before the Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board. Board members present were Marti Fraiser, Lyle Ferguson, Dianne Niebuhr, Sunny Smith, Carlotta Vesay, Annette Bergstrom, Fran Brown, Carol Peterson and Julia Prince. Mark B Steinagel, Director of the Division of Occupational and Professional Licensing, was also present.

Evidence was thus offered and received. The Board took the matter under advisement at the close of the hearing and conducted initial deliberations on that date.

The Board, having concluded its deliberations, now enters

its Findings of Fact, Conclusions of Law and submits the following Recommended Order to the Division for its review and action

FINDINGS OF FACT

1 Respondent has been licensed to practice as a cosmetologist/barber in this state at all time relative to this proceeding. Respondent initially became licensed in July 1979. Respondent submitted a November 2, 2009 license renewal application to the Division

2. Based on Respondent's admissions on that application, the Division became aware Respondent had entered a guilty plea on March 24, 2009 to Illegal Possession of a Controlled Substance, a third degree felony, in Weber County District Court proceedings. Respondent had also entered a guilty plea on that same date to Illegal Possession of less than one ounce marijuana, a Class B misdemeanor Both pleas were held in abeyance

3 The Division granted Respondent's license renewal application pursuant to a November 16, 2009 Order, as based on a Memorandum of Understanding The Division thus issued a probationary license to Respondent, which included various terms and conditions Respondent was required to register with Compass Vision, which is an alcohol and drug testing company designated by the Division, and participate in that testing process.

4 Respondent was to also meet with the Board on a quarterly

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basis She was further required to initially submit employer performance evaluations to the Board every month for the initial six (6) months and on a quarterly basis thereafter Respondent's probation was to remain in effect for two (2) years

5 Respondent was employed as a cosmetologist/barber as of November 2009 and she earned approximately \$120 per month until sometime in August 2010 Respondent terminated her employment during that month due to a lack of sufficient income She has not been employed as a cosmetologist/barber since that time.

6 Respondent did not register for the Compass Vision drug testing program due to a lack of adequate funds to pay for that testing Respondent failed to attend a scheduled Board meeting in March 2010 She also did not attend a Board meeting scheduled for September 13, 2010 Respondent contacted the Division later that day to explain her absence

7 There is no evidence Respondent submitted any employer reports to the Board while she was employed from the entry of the November 16, 2009 Order until her employment as a cosmetologist/barber ceased in August 2010. Respondent's only income since that month has been generated through odd cleaning jobs.

8. Respondent admits she used marijuana and methamphetamines approximately once or twice a week sometime during 2009 Based on Respondent's testimony, but absent any drug test results, she has not used marijuana or methamphetamines since July 2009 nor has she

used alcohol since December 2009. Based on Respondent's testimony, but absent any documentation, Respondent has participated in counseling every two (2) weeks for approximately fourteen (14) months

CONCLUSIONS OF LAW

The Division contends Respondent has failed to comply with some of the terms and conditions of the Memorandum of Understanding on numerous occasions. The Division thus asserts Respondent has engaged in unprofessional conduct and further action is warranted as to her license to practice as a cosmetologist/barber

Accordingly, the Division contends the length of probation as to that license should be extended and Respondent should be expressly required to continue participation in drug abuse counseling. The Division also asserts Respondent should be required to attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) support group meetings which are available at no cost

The Division further contends Respondent should register for the drug testing program administered on behalf of the Division. Given Respondent's extremely limited present income, drug testing should initially occur approximately once each month. Respondent contends she has been unable to obtain work as a cosmetologist/barber and she believed the probationary terms and conditions did

not apply if she was not actively practicing under her license. She asserts she has been a cosmetologist/barber for approximately thirty (30) years and she really enjoys that work. Respondent requests that an opportunity to resume her practice is not eliminated.

Utah Code Ann. §58-1-401(2)(a) provides the Division may "revoke, suspend, restrict, place on probation" or otherwise act upon the license of any licensee who "has engaged in unprofessional conduct, as defined by statute or rule under this title." §58-1-501(2)(a) defines unprofessional conduct to include violating "any statute, rule, or order regulating an occupation or profession under this title."

The Board readily finds and concludes Respondent has violated various requirements of the November 16, 2009 Order. Given the reason for that Order, it was critical that Respondent fully participated in the drug testing process and duly meet with the Board as scheduled. Nothing in the Memorandum of Understanding made those requirements conditional on whether Respondent was practicing as a cosmetologist/barber.

The Board duly acknowledges that Respondent's lack of measurable employment and income would compromise her ability to comply with frequent drug testing. Respondent's failure to attend all scheduled Board meetings may also have been influenced by the same concerns. Nevertheless, the Board's ability to monitor

Respondent's compliance and review any progress by Respondent is hampered by her failure to attend required meetings.

The Board is convinced Respondent's noncompliance with the governing Order should prompt an extension of the probationary term initially entered. The Board also concludes Respondent must register to participate in the drug testing program administered on behalf of the Division. However, the initial frequency of actual testing should be reduced on an interim basis due to Respondent's present lack of measurable employment and income.

The Board further concludes Respondent should be required to continue attendance in counseling and commence attendance at Alcoholics/Narcotics Anonymous meetings to promote her ongoing recovery. The Board emphasizes Respondent's continued licensure is largely dependent on her subsequent compliance with the November 16, 2009 Order, as supplemented herein.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED Respondent's license to practice as a cosmetologist/barber shall remain on probation, which shall be extended through November 2012. Except as supplemented or modified herein, the terms and conditions of the November 16, 2009 Order shall remain in effect during the extended probationary - term - - - -

It is further ordered Respondent shall register to participate in the drug testing program administered on behalf of

the Division Respondent shall contact the Division and thus register within fifteen (15) days from the date this Recommended Order may become effective Respondent shall meet with the Division within that time to review the drug testing process, complete the registration and address any questions with the Division as to the Order entered herein

It is further ordered Respondent shall report for scheduled testing once each month until the frequency of testing may be subsequently modified based on this Board's recommendation and the Division's issuance of a modified order in that regard This limitation on the frequency of testing is based on Respondent's present lack of measurable employment and income

It is further ordered Respondent shall initially meet with the Board on June 6, 2011 and every three (3) months thereafter Consistent with the requirement of Paragraph 5(k) of the November 16, 2009 Memorandum of Understanding and Order, Respondent shall submit written notice to the Board if she is not employed in her licensed occupation or not currently working in any capacity

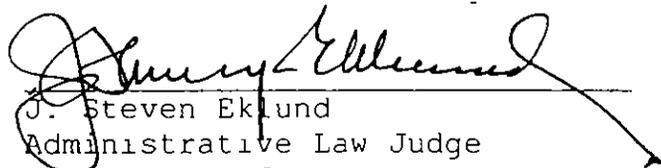
It is further ordered Respondent shall attend counseling twice each month Respondent shall provide a written report by her counselor to the Division no later than June 1, 2011 That report shall set forth the nature and frequency of counseling and any progress by Respondent in that regard.

It is further ordered Respondent shall also attend an AA or NA support group meeting once each week to promote her ongoing recovery Respondent shall provide documentation to the Division no later than June 1, 2011 as to her attendance at such meetings.

It is further ordered Respondent shall submit subsequent counselor reports and documentation of AA or NA meetings to the Division no later than the first day of each month Respondent is scheduled to meet with the Board

The Board emphasizes Respondent's continued licensure is largely dependent on her subsequent compliance with the November 16, 2011 Order, as supplemented or modified herein If Respondent violates any statute or rule which governs her licensure or fails to comply with the terms and conditions of the Order entered herein, further proceedings shall be conducted and a determination made whether a sanction of greater severity should be entered

On behalf of the Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Board, I hereby certify the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER** was submitted to Mark B Steinagel, Director of the Division of Occupational and Professional Licensing, on the 2nd day of March 2011


J. Steven Eklund
Administrative Law Judge
Department of Commerce