

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  
**MELANIE LEA GARDNER**  
TO PRACTICE AS A  
**COSMETOLOGIST/BARBER**  
IN THE STATE OF UTAH

**ORDER**

Case No. DOPL-OSC-2010-122

---

**BY THE DIVISION:**

The attached Findings of Fact, Conclusions of Law and Recommended Order is hereby adopted by the Division of Occupational and Professional Licensing of the State of Utah. Respondent's license to practice as a cosmetologist/barber is thus revoked, effective the date of this Order.

IT IS FURTHER ORDERED that the revoked license, wall and wallet sizes as well as any embossed certificate, be surrendered to the Division of Occupational and Professional Licensing.

Dated this 19<sup>th</sup> day of July 2011.



*W. Ray Walker*  
\_\_\_\_\_  
W. Ray Walker  
Regulatory and Compliance Officer  
Division of Occupational  
and Professional Licensing

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

1  
date of this Order. The laws and rules governing agency review are found in Section 63G-4-301 of the Utah Code, and Section R151-4-901 of the Utah Administrative Code.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the following document on the parties of record in this proceeding set forth below, by delivering a copy thereof in person, to Laurie L. Noda, Assistant Attorney General, Heber M. Wells Building, Fourth Floor, 160 East 300 South, Salt Lake City, Utah; and by mailing a copy thereof, properly addressed by certified mail with postage prepaid, to Melanie Lea Gardner, PO Box 651, Heber City, Utah 84032.

Dated this 20 day of July 2011.

  
\_\_\_\_\_  
Kimberley Lesh  
Administrative Secretary  
Division of Occupational  
and Professional Licensing

**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  
MELANIE LEA GARDNER  
TO PRACTICE AS A  
COSMETOLOGIST/BARBER  
IN THE STATE OF UTAH**

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**Case No. DOPL-OSC-2010-122**

---

**APPEARANCES :**

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

Melanie Lea Gardner on behalf of Respondent

**BY THE BOARD:**

A May 23, 2011 hearing was conducted in this proceeding before the Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board. Board members present were Marti Frasier, Lyle G. Ferguson, Fran Brown, Dianne Niebuhr, Annette Bergstrom, Carol Peterson and Julia Prince. The remaining Board members (Sunny Smith and Carlotta Veasy) were absent.

Mark B. Steinagel, Director of the Division of Occupational and Professional Licensing, was also absent. However, Mr. Steinagel had designated W. Ray Walker (Regulatory and Compliance Officer for the Division) as a substitute presiding officer in this proceeding to act on behalf of the Division.

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 initially became licensed on April 28, 1999 to practice as a cosmetologist/barber in this state. Pursuant to a June 10, 2010 Order, Respondent's license was suspended until her release from prison and that license was to then be placed on probation, subject to various terms and conditions.

2. Based on a November 8, 2010 Amended Order, the suspension of Respondent's license was terminated on that date. Her license was thus placed on probation, subject to various terms and conditions set forth in the June 10, 2010 Order and November 8, 2010 Amended Order. Respondent was thus required to participate in a drug testing program and provide a sample for testing whenever scheduled to do so.

3. Respondent duly registered for that program and she submitted a sample for testing as scheduled for September 23, 2010. However, Respondent failed to report for any drug tests which were subsequently scheduled. Based on the substantial and credible evidence presented, Respondent has not been able to obtain employment as a cosmetologist/barber with her license on probationary status.

4. Based on the substantial and credible evidence presented, Respondent has lacked the funds necessary to pay for drug tests. However, Respondent never informed

the Board or the Division that she lacked the financial means for such testing.

### CONCLUSIONS OF LAW

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 a fundamental requirement of the Orders governing her license. She had engaged in prior unauthorized use of controlled substances for a lengthy time and became addicted to those substances. Given the just stated reasons for the entry of the June 10, 2010 Order and the November 8, 2010 Amended Order, it was critical that Respondent fully participate in the drug testing process. Nothing in those Orders made that requirement contingent on whether Respondent was practicing as a cosmetologist/barber.

The Board duly acknowledges Respondent’s lack of employment and income would compromise her ability to comply with drug testing. Nevertheless, the Board’s ability to effectively monitor Respondent’s abstinence from unauthorized drug use was essentially precluded by her failure to have duly participated in the drug testing program.

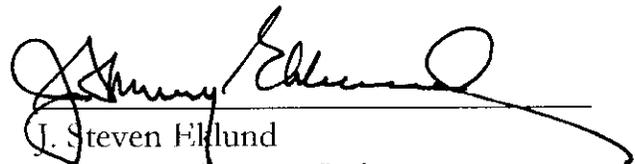
Moreover, it is particularly disturbing Respondent made no prior disclosure to the Board or the Division that she lacked the funds to pay for drug testing. To the contrary,

Respondent obviously elected to simply disregard that testing requirement. Her willful noncompliance with the Orders in question belies any likelihood that she might subsequently comply with any probationary terms and conditions governing her licensure. Accordingly, the Board concludes the public would not be adequately protected under those circumstances. The Board thus readily concludes the following Recommended Order is warranted:

**RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED Respondent's license to practice as a cosmetologist/barber shall be revoked, effective the date this Recommended Order may be adopted by the Division.

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 W. Ray Walker, substitute presiding officer of the Division of Occupational and Professional Licensing, on the 19<sup>th</sup> day of July 2011 for his review and action.

  
J. Steven Eklund  
Administrative Law Judge  
Department of Commerce