



3-9-2010

TENNESSEE DEPARTMENT OF
COMMERCE & INSURANCE, Petitioner, v.
CALLIE'S BEAUTY SALON, and CALLIE M.
BRANCH, Respondents.

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

 Part of the [Administrative Law Commons](#)

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

**BEFORE THE BOARD OF COSMETOLOGY
FOR THE STATE OF TENNESSEE**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE & INSURANCE,
*Petitioner,***

v.

**CALLIE’S BEAUTY SALON, *and*
CALLIE M. BRANCH,
*Respondents.***

DOCKET NO: 12.09-106014A

INITIAL ORDER

This contested case was heard in Nashville, Tennessee on March 9, 2010, before Administrative Judge Mary M. Collier, assigned by the Secretary of State Administrative Procedures Division to sit on behalf of the Tennessee State Board of Cosmetology. The Tennessee Department of Commerce and Insurance, Division of Regulatory Boards (hereinafter “Petitioner”) was represented by Laura R. Betty and Terrance L. Bond, Assistant General Counsels. The Respondent Callie M. Branch (hereinafter “Respondent”) represented herself and the Respondent Callie’s Beauty Salon (hereinafter “Respondent Shop”) *pro se*, waiving the right to legal counsel.

At the close of the hearing, a Transcript of the hearing was ordered and the parties were given 15 days after the Transcript was filed in which to submit proposed findings of fact and conclusions of law. The Transcript was filed on March 26, 2010. Thereafter, on April 9, 2010, the Petitioner timely filed proposed findings of fact and conclusions of law. To date, the Respondents have not filed any proposed findings of fact and conclusions of law.

The issue of the hearing was the unlicensed practice of a cosmetologist in the Respondent Shop. After consideration of all of the evidence and arguments of the parties, it is determined

that the Department of Commerce and Insurance proved by a preponderance of the evidence that the Respondents allowed the practice of cosmetology in Respondent Shop without a valid license during the time in question. This decision is based upon the following.

FINDINGS OF FACT

1. On January 20, 1987, the Board duly issued a full service cosmetology shop license to Respondent Shop, Callie's Beauty Salon. Respondent Shop was, at all times pertinent hereto, licensed by the Tennessee State Board of Cosmetology as a cosmetology shop.

2. On March 23, 1980, the Board duly issued a cosmetology license to Callie M. Branch.

3. Since Respondent Shop opened, Respondent has always been the owner of Respondent Shop.

4. On July 3, 2008, State Inspector, Jerry C. Biddle ("Inspector"), visited Respondent Shop in response to a telephone call about an unlicensed person working in Respondent Shop.

5. During that inspection, the Inspector observed Ms. Tiffany Wiggins curling a client's hair. Ms. Wiggins was working in a work station and did not have her license posted. The Inspector asked her for her license and her identification and she walked out of the shop and did not return.

6. While the Inspector was at Respondent Shop, the Inspector issued a NOTICE OF VIOLATION because there was a person who was not licensed by the Board performing cosmetology services in Respondent Shop.

7. Respondent signed the NOTICE OF VIOLATION dated July 3, 2008, acknowledging her receipt of the same.

8. The Respondent knew that Ms. Wiggins was working in Respondent shop without a valid license and that Ms. Wiggins had been doing hair for many years at other shops without a valid license.

9. Ms. Wiggins worked in Respondent Shop for approximately three (3) weeks without having a cosmetology license.

ANALYSIS and CONCLUSIONS OF LAW

1. Pursuant to RULE 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-1 (June 2004 (Revised)), the Petitioner bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the AMENDED NOTICE OF HEARING AND CHARGES are true and that the issues raised therein should be resolved in its favor.

2. The Respondent's acts and conduct, as determined above in the FINDINGS OF FACT, constitute a violation of TENN. CODE ANN. § 62-4-119, which provides:

Responsibilities of owner and manager of shop. --

The owner and manager of a shop shall be responsible for ensuring that:

(1) Only persons duly licensed by the board perform cosmetology services in the shop;

(2) Persons duly licensed by the board perform only those services authorized by their licenses; and

(3) The shop and its operation conform to this chapter and any rules duly promulgated under this chapter.

3. The Petitioner has proven beyond a preponderance of the evidence that the Respondent failed in her responsibilities as the owner of the Respondent Shop. Specifically, the Petitioner has proven beyond a preponderance of the evidence that the Respondent failed in her

responsibilities to ensure that only persons duly licensed by the Board perform cosmetology services in the Respondent Shop and in ensuring that the Respondent Shop and its operation conform to the Tennessee Cosmetology Act.

4. The Respondent's acts and conduct, as determined above in the FINDINGS OF FACT, constitute violations of TENN. CODE ANN. § 62-4-108, which requires that no person shall practice cosmetology without a valid license issued by the Board.

5. The Petitioner has proven beyond a preponderance of the evidence that the Respondent allowed Ms. Wiggins to practice cosmetology in Respondent Shop without a valid license, and thereby failed to ensure that Respondent Shop conformed to the Tennessee Cosmetology Act.

6. The Respondent's violations of TENN. CODE ANN. §§ 62-4-108 and 62-4-119 constitute grounds for the revocation or suspension of the Respondent's personal license or the refusal to renew said license and/or the revocation or suspension of Respondent's license to operate the Respondent Shop or the refusal to renew said license pursuant to TENN. CODE ANN. § 62-4-127(b). Specifically, TENN. CODE ANN. § 62-4-127(b) provides in pertinent part that "[t]he board may suspend, revoke or refuse to issue or renew any license under this chapter for . . . [a] violation of this chapter or any rules duly promulgated under this chapter."

7. The Respondent's violations of TENN. CODE ANN. §§ 62-4-108 and 62-4-119 constitute grounds for disciplinary action against Respondent, including the imposition of civil penalties against the Respondent pursuant to TENN. COMP. R. & REGS. R. 0440-1-.14 (Civil Penalties), which provides that the Board may assess a civil penalty of up to one thousand dollars (\$1,000.00) for each violation. In addition, TENN. CODE ANN. § 56-1-308(a) explains that each day of continued violation constitutes a separate violation.

8. The Respondent's violations of TENN. CODE ANN. §§ 62-4-108 and 62-4-119 constitute grounds for the imposition of costs pursuant to TENN. CODE ANN. § 56-1-311, and TENN. COMP. R. & REGS. R. 0780-5-11-.01 (Assessment of Investigatory and Hearing Costs) of the Rules of the Department of Commerce and Insurance, Division of Regulatory Boards.

9. The Petitioner has proven beyond a preponderance of the evidence that the Respondent permitted an unlicensed individual to provide cosmetology services in Respondent Shop for approximately three weeks in violation of Tennessee law.¹

10. Based upon her violation of Tennessee law, the Respondent Callie M. Branch is assessed a total civil penalty in the amount of Five Hundred Dollars (\$500). This civil penalty consists of a separate \$250 civil penalty for each of the Respondent's two violations — \$250 for the Respondent's violation of TENN. CODE ANN. § 62-4-108 and \$250 for the Respondent's violation of TENN. CODE ANN. § 62-4-119.

11. All investigation and hearing costs are assessed to the Respondent.

12. This INITIAL ORDER is issued to protect the safety and welfare of the citizens of the State of Tennessee.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 2nd day of July, 2010.

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

¹ Although the Respondent admitted that Ms. Wiggins worked in Respondent Shop for approximately 3 weeks, no proof was submitted pertaining to the number of days that Ms. Wiggins worked or the hours of operation during that 3 week period.

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the
2nd day of July, 2010.

Handwritten signature of Thomas G. Stovall in black ink.

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE