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October 2015

Mileah Barton vs. COMMERCE AND INSURANCE

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STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
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October 6, 2015

Hon. Richard Collier, Director
Administrative Procedures Division
312 Rosa L. Parks Avenue
Snodgrass Tower, 8th Floor
Nashville, TN 37243

Re: 12.09-132669A
Mileah Brooke Barton d/b/a Studio Lash
Proposed Initial Order

Dear Judge Collier:

The State respectfully submits the attached Proposed Initial Order in the above referenced matter which was heard September 24, 2015. A copy is being mailed by United States mail to Respondent.

Respectfully submitted,

A handwritten signature in cursive script that reads "Adrian Chick".

ADRIAN CHICK (BPR # 020010)
Asst. General Counsel
Department of Commerce and Insurance
500 James Robertson Pkwy
Nashville, TN 37243
615-253-3704

Enc Proposed Initial Order

**BEFORE THE STATE BOARD OF COSMETOLOGY AND BARBER
EXAMINERS**

IN THE MATTER OF:)	
MILEAH BROOKE BARTON)	
2650 B MEMORIAL BLVD)	Docket No. 12.09-132669A
MURFREESBORO, TN 37129)	Complaint No. 2014014111
)	2014014121

(PROPOSED) INITIAL ORDER

This contested case was heard on September 24, 2015 by the undersigned administrative judge sitting alone for the State Board of Cosmetology and Barber Examiners (the "Board"). The Department of Commerce and Insurance, Division of Regulatory Boards (the "State") was represented by Adrian Chick, Assistant General Counsel. The Respondent, Mileah Brooke Barton ("Respondent") was not represented by counsel and was not present at the hearing.

NOTICE OF DEFAULT

Upon determining that Respondent was personally served with a copy of the notice of hearing and charges on August 21, 2015 and that Respondent was not present, the undersigned administrative judge declared Respondent in default. The State made a motion to proceed with the hearing in Respondent's absence, which was granted.

Based upon the sworn testimony of witnesses, the evidence admitted at the hearing, and the record as a whole, the undersigned administrative judge makes the following findings:

FINDINGS OF FACT

1. At all times relevant to this contested case, Respondent owned a skin care shop known as Studio Lash. On July 3, 2013, the Board issued a shop license to Respondent which authorized Respondent to operate the shop at 201 West Main Street, Murfreesboro, Tennessee 37130.
2. Respondent was issued an aesthetician license by the Board on August 8, 2007.
3. Terry Barnes, an inspector employed by the Department of Commerce and Insurance, attempted to conduct a yearly inspection of Respondent's shop in May, 2014. After finding that the shop was no longer in operation, Mr. Barnes contacted the Respondent who advised that the shop had been relocated to 745 South Church Street in Murfreesboro, Tennessee. Mr. Barnes visited the new location several times but found that the shop was not open.
4. On June 13, 2014, Mr. Barnes visited the new location (745 South Church Street) and found that the shop was in operation. Respondent had not notified the Board of the change in location and the new location had not been inspected and approved by the Board.

5. Mr. Barnes also observed on June 13, 2014 that Respondent was applying artificial eye lashes to a customer. Respondent was not wearing an identification tag.

6. Mr. Barnes issued two (2) notices of violation to Respondent on June 13, 2014. The first was for relocating and operating the shop without first passing an inspection. The second was for performing services on a client without wearing an identification tag.

CONCLUSIONS OF LAW

1. The undersigned administrative judge concludes that Respondent violated TENN. CODE ANN. § 62-4-118 by relocating and operating the shop without first applying for a change of location and passing an inspection. This section provides in part as follows:

(d) Prior to the opening of a new shop or the relocation of an existing shop, the shop must pass an initial inspection. The fee for an initial inspection shall be set by the board. The inspection shall be made within ten (10) days of receipt by the board of a request for the inspection.

2. The undersigned administrative judge also concludes that the Respondent violated TENN. COMP. R. & REGS. 0440-01-.14 by engaging in the practice of cosmetology without wearing an identification tag. This rule provides in part as follows:

(1) Shops...Any licensee actively engaged in the practice of cosmetology, manicuring, natural hair styling, shampooing or aesthetics in a shop must wear:

(a) an identification tag, with file number.

3. Respondent's violations constitute grounds for the Board to revoke, suspend, or refuse to renew any license issued by the Board pursuant to TENN. CODE ANN. § 62-4-127, to assess a civil penalty up to \$1,000 for each violation pursuant to TENN. CODE ANN. § 56-1-308 and TENN. COMP. R. & REGS. 0440-1-.14, and to assess investigatory and hearing costs pursuant to TENN. CODE ANN. § 56-1-311 and TENN. COMP. RULES & REGS. 0780-05-11-.01.

At the close of this contested case hearing, the State requested that Respondent be assessed a civil penalty of \$750 for relocating and operating the shop without first passing an inspection and a civil penalty of \$250 for providing services without wearing an identification tag. The State also requested that the costs of hearing and investigation be assessed against Respondent.

THEREFORE, finding that the State has carried its burden of proof with respect to the above violations and that the following disciplinary action is necessary in order for the Board to protect the public health and safety, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. Respondent is assessed a civil penalty of \$750 for relocating and operating the shop without first passing an inspection which Respondent shall pay within thirty (30) days of the effective date of this Initial Order;
2. Respondent is assessed a civil penalty of \$250 for providing services without wearing an identification tag which Respondent shall pay within thirty (30) days of the effective date of this Initial Order;
3. Respondent is assessed all costs of hearing and investigation in this matter including all costs of the Administrative Law Judge, including filing fees with Administrative Procedures Division, Court Report fess, investigation costs incurred which Respondent shall pay within thirty (30) days of receipt of a Bill of Cost and any other invoice for costs.

It is so ORDERED.

**This INITIAL ORDER entered and effective this the ___ day of
October, 2015.**

**J. RICHARD COLLIER,
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**

Filed in the Administrative Procedures Division, Office of Secretary of State, this
___ day of _____, 2015.

J. Richard Collier, Director
Administrative Procedures Division

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing proposed initial
order has been mailed to Mileah Brooke Barton, 2650B Memorial Blvd,
Murfreesboro, TN 37129 this 7th day of October, 2015.



ADRIAN CHICK (BPR # 020010)
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