

August 30, 2016

# Project Belle, LLC Formal Response Letter to Board & Attachments.pdf

Daniel A. Horwitz

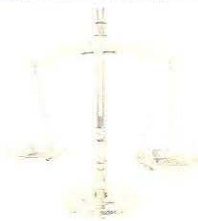


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8/30/2016

*Transmitted Via E-mail and Certified U.S. Mail*

**Re: Case No. COS-2016013441: Project Belle, LLC's Response to July 14, 2016 Demand Letter Requesting that Project Belle Pay a Civil Fine and Cease and Desist from Operating**

Dear Ms. Martin,

I am in receipt of your July 14, 2016 Demand Letter sent on behalf of the Tennessee State Board of Cosmetology and Barber Examiners (hereinafter, the "Board") concerning Project Belle, LLC—an extraordinarily popular tech startup based in Nashville that the Nashville Business Journal recently hailed as the "Uber for beauty professionals." As you explain in your correspondence accompanying the Board's Demand Letter, you recently conducted an investigation into Project Belle after receiving a formal complaint from Ms. Karen Kops, one of Project Belle's direct competitors in the cosmetology industry. In particular, Ms. Kops complained that Project Belle is providing off-site cosmetology services to willing customers in the privacy of their own homes. She further complained that "I find this type of competition highly disturbing."

Following your investigation into Project Belle's business model, you have alleged that Project Belle is presently in violation of the Tennessee Cosmetology Act of 1986, codified at Tenn. Code Ann. § 62-4-101, *et seq.*, or the administrative regulations that have been promulgated thereunder. Based on your allegations, you have threatened to initiate a civil enforcement action against Project Belle. You have further requested that Project Belle sign a Consent Order that would require, *inter alia*, that Project Belle: (1) submit to the Board's jurisdiction; (2) waive its right to judicial review; (3) pay the Board a civil monetary penalty; and (4) abandon its business plan and cease and desist from operating. For the reasons provided below, this offer is declined.

## **I. The Board Does Not Have Jurisdiction to Regulate Project Belle**

As a threshold matter, the Board does not have jurisdiction to regulate or interfere with Project Belle's business model. Consequently, it does not have the authority to initiate an enforcement action against Project Belle. As forthrightly acknowledged in your July 14, 2016 Demand Letter, the Tennessee General Assembly has only granted the Board the authority to regulate and take disciplinary action against persons or entities that are "licensed or required to be licensed" under the Tennessee Cosmetology Act. See TENN. COMP. R. AND REGS. 0440-1-.14(1). See also Tenn. Code Ann. § 62-4-108; Tenn. Code Ann. § 62-4-127. As a technology company that does not perform cosmetology services, however, Project Belle does not fall into this category. Accordingly, the Board's proposed enforcement action is *ultra vires* and void from its inception.

Your claim that Project Belle requires a cosmetology license in order to conduct business in the State of Tennessee rests upon the false assumption that Project Belle is providing cosmetology services. It is not. To the contrary, Project Belle has never provided any cosmetology services to any customer in Nashville or anywhere else. It also has no plans to do so in the future.

Instead, Project Belle is a technology company that utilizes a web-based app to connect licensed cosmetologists – including manicurists and hairdressers – with eager customers who wish to purchase premium salon services in the privacy of their own homes. Thus, regulating Project Belle under the Tennessee Cosmetology Act because it uses the internet to connect cosmetologists with consumers would be akin to regulating the Yellow Pages under the Tennessee Health Care Liability Act because the phone book contains listings for medical professionals. Simply stated, such a position "taxes the credulity of the credulous." *Maryland v. King*, 133 S. Ct. 1958, 1980 (2013) (Scalia, J., dissenting). As such, your threatened enforcement action falls outside the scope of the Board's jurisdiction, and it cannot lawfully be maintained.

## **II. Threatening to Initiate a Disciplinary Action Against Project Belle for the Sole Purpose of Protecting an Industry Competitor is Unconstitutional**

As intimated by the industry competitor whose complaint prompted the Board's threatened enforcement action, Project Belle is beloved by both cosmetologists and consumers alike. In particular, Project Belle's affiliated cosmetologists – who are traditionally among the lowest paid and most exploited workers in the United States – love Project Belle because it allows them to connect with their customers directly, frees them from the constraints and workplace hazards of brick-and-mortar salons, affords them flexible and non-mandatory working hours, and drastically reduces the cost of their overhead expenses. The end result is that cosmetologists who engage with consumers through Project Belle are able to work on their own schedules and benefit from a 200%-400% increase in their ultimate take home pay depending on the specific services provided.

In stark contrast, outside of Project Belle, the vast majority of cosmetologists are low-wage women who are frequently exploited and routinely plagued by unsafe working

conditions. See, e.g., Sarah M. Nir, *The Price of Nice Nails: Manicurists are routinely underpaid and exploited, and endure ethnic bias and other abuse*, *The New York Times* has found, THE NEW YORK TIMES (May 7, 2015), available at <http://www.nytimes.com/2015/05/10/nyregion/at-nail-salons-in-nyc-manicurists-are-underpaid-and-unprotected.html> (“The New York Times interviewed more than 150 nail salon workers and owners, in four languages, and found that a vast majority of workers are paid below minimum wage; sometimes they are not even paid. Workers endure all manner of humiliation, including having their tips docked as punishment for minor transgressions, constant video monitoring by owners, even physical abuse. Employers are rarely punished for labor and other violations.”); Caroline Frederickson, *Under the Bus: How Working Women Are Being Run Over* 10-11 (2015) (noting that 73% of manicurists and hairdressers are women who make only \$2.13 per hour before tips); Sarah M. Nir, *Perfect Nails, Poisoned Workers: Some ingredients used in nail products have been tied to cancer, miscarriages lung disease and other ailments. The industry has long fought regulations*, THE NEW YORK TIMES (May 8, 2015), available at <http://www.nytimes.com/2015/05/11/nyregion/nail-salon-workers-in-nyc-face-hazardous-chemicals.html> (documenting the dangerous working conditions experienced by manicurists as a consequence of harmful chemical exposure and inadequate ventilation in nail salons). Additionally, given the myriad exemptions that apply to independent contractors and individuals who work in businesses with few employees, most cosmetologists are exempt from labor laws that would otherwise guarantee them basic workplace protections like a minimum wage, overtime pay, health insurance, family medical leave, and legal rights against discrimination and exploitation in the workplace. See, e.g., Frederickson, *supra*, at 9-128 (detailing how female-dominated industries like cosmetology were intentionally exempted from federal labor laws as a consequence of overt gender discrimination). Accordingly, Project Belle’s successful efforts to increase cosmetologists’ incomes, close the gender pay gap, improve workplace safety, and promote flexibility throughout the cosmetology industry should be encouraged and applauded by this Board—not threatened and sanctioned by it.

Similarly, Project Belle’s customers – many of whom are disabled or homebound seniors – love Project Belle because at the mere click of a button, its web-based platform allows them to purchase premium quality beauty services in the privacy of their own homes that they would otherwise be unable to access. As importantly, Project Belle is also able to offer its premium services to consumers at significantly lower prices than its brick-and-mortar competitors. Despite empowering its affiliated cosmetologists to generate income that frequently doubles, triples, or even quadruples their take home pay, see *supra*, p. 2, by reducing the traditional overhead costs of cosmetology services by approximately 80%, Project Belle’s business model allows for significant cost savings by consumers, too. Thus, broadly considered, Project Belle provides Tennessee’s consumers with significantly higher quality services at significantly lower prices, thereby embodying the very definition of customer value.

Commendably, and unlike many of its competitors, Project Belle is also able to accomplish all of this without resorting to disgusting but disturbingly common shortcuts like wage theft and employee misclassification—both of which are rampant throughout the cosmetology industry but are frequently ignored by regulatory authorities.

Furthermore, by empowering cosmetology workers to earn living wages in safe working environments, Project Belle's business model also provides measurable benefits to the public at large by reducing – and in many cases, by eliminating – its affiliated cosmetologists' dependence on welfare, healthcare, and public services.

As in any industry, however, despite creating a winning recipe for workers, consumers, and the public at large, Project Belle's disruptive business model does produce losers. Specifically, the losers in the above-described scenario are Project Belle's competitors, who cannot match either the income earned by Project Belle's affiliated cosmetologists or the value that Project Belle provides its customers. Given their inability to compete on either price or quality, these competitors apparently "find this type of competition highly disturbing." See February 22, 2016 Complaint of Salon Owner Karen Kops.

Crucially, however, taking disciplinary action against a duly-authorized entity solely for the purpose of protecting an industry competitor constitutes illegitimate state action that would violate both the 14th Amendment to the United States Constitution and Article I, Section 8 of the Tennessee Constitution. See, e.g., *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) ("protecting a discrete interest group from economic competition is not a legitimate governmental purpose."); *Merrifield v. Lockyer*, 547 F.3d 978, 991, n.15 (9th Cir. 2008) ("[M]ere economic protectionism for the sake of economic protectionism is irrational with respect to determining if a classification survives rational basis review."); *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222 (5th Cir. 2013) ("[N]either precedent nor broader principles suggest that mere economic protection of a particular industry is a legitimate governmental purpose. . . ."); *Consumers Gasoline Stations v. City of Pulaski*, 292 S.W.2d 735, 737 (Tenn. 1956) ("Although [a] city may have the right to regulate [a] business, it does not have the right to exclude certain persons from engaging in the business while allowing others to do so."). Consequently, if initiated, such an action would subject this Board to legal liability under both 42 U.S.C. § 1983 and the Tennessee Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq.* Initiating an enforcement action against Project Belle may also result in an order compelling this Board to pay Project Belle's attorney's fees pursuant to the provisions of 42 U.S.C. § 1988(b).

### **III. Tenn. Code Ann. § 62-4-125(d)(2) Is Void for Vagueness**

By its own terms, Tenn. Code Ann. § 62-4-125(d)(2) expressly permits the practice of cosmetology "outside a shop or school" if the service falls within one of the many exemptions outlined in Tenn. Code Ann. § 62-4-125(d)(2)(A)-(F). Among these exemptions, Tenn. Code Ann. § 62-4-125(d)(2)(F) permits cosmetologists to perform cosmetology services "[a]t the site of television, motion picture, video or theatrical productions, photographic sessions ***or similar activities***." *Id.* (emphasis added).

Many of Project Belle's customers seek out its affiliated cosmetologists for purposes that plausibly fall within this exemption, requesting beauty services for events such as musical productions, bachelorette parties, galas, fundraisers, weddings, and any number of other activities. As you know, however, the Board has never developed a formal rule defining "similar activities" for purposes of Tenn. Code Ann. § 62-4-



125(d)(2)(F). Based on our correspondence dated August 18, 2016, I also understand that the Board has not developed an informal rule defining “similar activities” under Tenn. Code Ann. § 62-4-125(d)(2)(F), either. Accordingly, you have explained that the applicability of the “similar activities” exemption contained in Tenn. Code Ann. § 62-4-125(d)(2)(F) is currently subject to “Board discretion.”

Significantly, the vagueness introduced into Tenn. Code Ann. § 62-4-125(d)(2) by its undefined “similar activities” exemption renders the Board’s proposed enforcement action unlawful. “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). *See also State v. Lyons*, 802 S.W.2d 590, 591 (Tenn. 1990) (“The due process doctrine of vagueness . . . encompasses as a principal element the requirement that legislatures set reasonably clear guidelines for law enforcement officials and triers of fact to prevent arbitrary and discriminatory enforcement. A statute may be held vague on its face if it provides no legally fixed standards and leaves to the ‘personal predilections’ of an officer, prosecutor, judge or jury the determination of the illegality of conduct.”). Here, there is no question that the “similar activities” exemption contained in Tenn. Code Ann. § 62-4-125(d)(2)(F) has not been defined at all—much less defined “clearly.” *Grayned*, 408 U.S. at 108. Accordingly, it is not even disputed that alleged violations of Tenn. Code Ann. § 62-4-125(d)(2) are currently subject to “resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Id.* Consequently, unless and until a formal administrative Rule defining “similar activities” under Tenn. Code Ann. § 62-4-125(d)(2)(F) has been promulgated by the Board, this fatal shortcoming renders both Tenn. Code Ann. § 62-4-125(d)(2) and any attendant enforcement action void.

#### **IV. Initiating a Disciplinary Action Against Project Belle Would Violate Tennessee’s Public Policy and Harm Tennesseans**

As noted above, Project Belle’s successful business model has measurably benefited workers, consumers, and the public alike. Perhaps the best indication of this reality is that the one and only complaint involving Project Belle that has been filed with this Board is a grievance expressed by an industry competitor who complains that she “find[s] this type of competition highly disturbing.” *See* February 22, 2016 Complaint of Salon Owner Karen Kops. Initiating an enforcement action against Project Belle for reasons that are unrelated to protecting legitimate state interests involving public health or welfare, however, would violate the public policy of the State of Tennessee and harm the public at large.

As you know, the State of Tennessee boasts a longstanding commitment to promoting economic liberty and workplace freedom. *See, e.g., Harbison v. Knoxville Iron Co.*, 53 S.W. 955, 957 (Tenn. 1899) (“The ‘liberty’ contemplated in [the Tennessee Constitution] means not only the right of freedom from servitude, imprisonment, or physical restraint, *but also the right to use one’s faculties in all lawful ways, to live and work where he chooses, to pursue any lawful calling, vocation, trade, or profession, to make all proper contracts in relation thereto, and to enjoy the legitimate fruits thereof.*”) (emphasis added); *Yardley v. Hosp. Housekeeping Sys., LLC*, 470 S.W.3d 800, 806

(Tenn. 2015) (“This State has an interest in ensuring that its citizens have access to employment and the ability to earn a livelihood . . . ”). Significantly, Tennessee’s public policy in this regard was also reaffirmed by the Tennessee General Assembly as recently as this year’s legislative session, during which our legislature declared through the Right to Earn a Living Act that:

(1) “the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right;”

(2) “the freedom to earn an honest living traditionally has provided the surest means for economic mobility;”

(3) “many regulations of entry into businesses and professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition;”

(4) “the burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed;” and

(5) “it is in the public interest to ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition; to provide the means for the vindication of this right; and to ensure that regulations of entry into businesses, professions, and occupations are demonstrably necessary and narrowly tailored to legitimate health, safety, and welfare objectives[.]”

See Public Chapter No. 1053 (2016) (codified at Tenn. Code Ann. § 4-5-501), *available at* <http://share.tn.gov/sos/acts/109/pub/pc1053.pdf>.

Based on its inference with this cherished public policy, this Board has recently garnered forceful criticism from both local and national news outlets following its overzealous attempts to prohibit cosmetologists from practicing their professions free from unreasonable governmental interference. *See, e.g.,* Nick Sibilla, *Shampooing Hair Without A License Could Mean Jail Time In Tennessee*, FORBES (May 5, 2016, 9:15 AM), <http://www.forbes.com/sites/instituteforjustice/2016/05/05/shampooing-hair-without-a-license-could-mean-jail-time-in-tennessee> (“unlicensed shampooing is a crime [in Tennessee], punishable by up to six months in jail. The Tennessee Board of Cosmetology and Barber Examiners can also impose civil penalties as high as \$1,000 for those who dare to lather, rinse and repeat without a license.”); Kevin McKenzie, *Memphis sisters star in think tank's assault on shampoo license*, THE COMMERCIAL APPEAL (May 2, 2016), <http://www.commercialappeal.com/business/development/Memphis-sisters->

star-in-think-tanks-assault-on-shampoo-license-377866341.html (“two Memphis sisters [suing the Tennessee State Board of Cosmetology and Barber Examiners serve] as prime examples of citizens denied opportunity by bureaucracy.”). Continuing to engage in administrative overreach with respect to the cosmetology industry significantly undermines the public interest that this Board is charged with promoting. The instant enforcement action should be abandoned accordingly.

## **V. Voluntary Modification of Business Practices**

Notwithstanding both the Board’s lack of jurisdiction over Project Belle and the unlawful nature of the Board’s threatened enforcement action, *see supra*, pp. 1-5, Project Belle has modified its current business practices on a voluntary basis in two regards to resolve any lingering doubts that its business practices are compliant with the Tennessee Cosmetology Act of 1986.

First, prior to approving any customer’s requested appointment, Project Belle has updated its purchasing platform to require its customers to certify that they fall within at least one of the exemptions to the Tennessee Cosmetology Act that permits the provision of off-site services. As noted in your July 14, 2016 Demand Letter, the Tennessee Cosmetology Act includes a multitude of exemptions that permit cosmetology services to be performed outside of a brick-and-mortar salon. For example, the Act expressly permits cosmetology services to be performed: (1) “In any nursing home;” (2) “In the residence of the person treated when the person is actually ill; (3) “In any hospital or infirmary;” (4) “In a funeral establishment;” and (5) “In a retail establishment, to demonstrate or apply, or both, cosmetics without charge[.]” *See* Tenn. Code Ann. § 62-4-125(d)(2)(A)–(E). The Act further provides that: (6) “A manicurist may provide manicuring services to an ill, disabled or homebound individual, or to such individual’s caregiver, custodian or guardian, in the individual’s residence.” *See* Tenn. Code Ann. § 62-4-125(e). “Persons . . . engaged exclusively in massage” are also exempt from the Act entirely. *See* Tenn. Code Ann. § 62-4-109(A). Accordingly, to ensure that its customers fall within the Act’s exemptions, Project Belle’s customers are now required to affirm the following statement prior to checking out:

**“I agree to the terms & conditions and certify that I am seeking off-site cosmetology services that satisfy the requirements of Tenn. Code Ann. § 62-4-125(d)(2)(A)–(E), Tenn. Code Ann. § 62-4-125(e); Tenn. Code Ann. § 62-4-109(A); or some other exemption to the Tennessee Cosmetology Act of 1986.”**

Second, if a customer does not affirm the above statement, then Project Belle offers its customers the option of purchasing “photographic sessions or similar activities” in addition to cosmetology services in accordance with Tenn. Code Ann. § 62-4-125(d)(2)(F).



I trust that these voluntary accommodations will satisfy the Board that even if it had jurisdiction over Project Belle (which it does not), Project Belle is nonetheless in full compliance with the provisions of the Tennessee Cosmetology Act. Accordingly, I respectfully request that the Board refrain from subjecting Project Belle to additional threats or interference concerning its business model going forward. At a future point, however, if the Board is interested in crafting a regulation that brings businesses like Project Belle into its jurisdiction, then Project Belle would be more than happy to lend the Board its expertise for that purpose. In particular, Project Belle is ready and willing to work with the Board to develop reasonable, measured regulations that protect public health, promote consumer safety, and do not deprive either workers of their right to earn an honest living or consumers of their right to purchase hair, nail, and makeup services in the privacy of their own homes without unreasonable governmental interference.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. Horwitz".

Daniel A. Horwitz, Esq.

**Attachments:**

- July 14, 2016 Board Demand Letter
- February 22, 2016 Complaint of Salon Owner Karen Kops



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
OFFICE OF LEGAL COUNSEL  
500 JAMES ROBERTSON PARKWAY  
DAVY CROCKETT TOWER  
NASHVILLE, TENNESSEE 37243  
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750

July 14, 2016

VIA CERTIFIED MAIL AND FIRST CLASS U.S. MAIL

Project Belle LLC  
ATTN: Armand Lauzon, Managing Member  
909 Beacon Street U4  
Boston, MA 02215

**RE: *Before the Tennessee State Board of Cosmetology and Barber Examiners***  
***Case No. COS-2016013441***  
***Consent Order in lieu of Formal Disciplinary Proceedings***

Dear Respondent:

I serve as attorney for the Tennessee State Board of Cosmetology and Barber Examiners (the "Board"). Please be advised that the Board recently considered the above-referenced consumer complaint alleges, in part, that your company is offering and advertising for cosmetology services through [www.projectbelle.com](http://www.projectbelle.com) on location outside of the current state law and rules, in violation of the Tennessee Cosmetology Act of 1986 ("the Act"), Tenn. Code Ann. § 62-4-101, *et seq.*, or the administrative rules duly enacted thereunder. Upon consideration of the complaint, the Board found probable cause to charge you with one or more violation of the Cosmetology Act "Act" or the rules.

The Board has authorized me to resolve this matter without a formal hearing by a Consent Order making formal proceedings unnecessary. Enclosed you will find an unexecuted Consent Order which provides for you to pay a civil penalty in the amount of **Five Hundred Dollars (\$500.00)** for the enclosed violation(s).

Any violation of the Act or the rules constitutes grounds for disciplinary action by the Board. These include the revocation, suspension of or refusal to renew any license held pursuant to the Act, the assessment of civil penalties of up to One Thousand Dollars (\$1,000) per day for each violation of the Act or the rules, and the actual and reasonable costs of hearing and investigation of a disciplinary matter pursuant to Tenn. Code Ann. § 62-4-127, Tenn. Comp. R.

and Reg. 0440—01—.14 [CIVIL PENALTIES] and 0780—05—11—.01 [INVESTIGATORY AND HEARING COSTS].

The Board has authorized this office to file formal disciplinary charges against you if you do not choose to settle beforehand. This letter and the enclosed Consent Order shall serve to notify you of the facts and conduct that warrant disciplinary action and provide you an opportunity to show compliance with all lawful requirements in the State of Tennessee for the avoidance of stronger disciplinary measures.

In order to resolve this matter informally by Consent Order and without formal disciplinary proceedings, you should sign and date the Consent Order and return it **within thirty (30) days of your receipt of this letter**, along with the civil penalty payment of \$500.00 made payable to the "State of Tennessee". **PLEASE NOTE, you must return both the ENTIRE Consent Order (signed and dated), and the civil penalty payment to the following address:**

TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE  
OFFICE OF LEGAL COUNSEL  
ATTENTION: LAURA MARTIN  
DAVY CROCKETT TOWER, FIFTH FLOOR  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TN 37243

The offer to resolve this matter by executing the Consent Order is limited to the above-specified thirty (30)-day period. **If the executed Consent Order has not been received by this office within the thirty (30)-day period, the offer will be considered withdrawn, formal disciplinary charges will be filed against you and a hearing set before an Administrative Law Judge.** Such formal disciplinary proceedings could likely result in the imposition of penalties more severe (i.e. revocation, more severe civil penalties and costs) than those proposed in the Consent Order.

Thank you for your prompt attention to this matter. Please feel free to contact me if you have any questions.

Sincerely,



Laura E. Martin  
Assistant General Counsel

Enclosures



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

**IN THE MATTER OF :**

**PROJECT BELLE LLC  
909 BEACON STREET U4  
BOSTON, MA 02215**

**Case No. COS-2016013441**

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**CONSENT ORDER**

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**PROJECT BELLE LLC** (hereinafter "Respondent") voluntarily enters into this Consent Order to avoid formal charges and a contested case proceeding with respect to the matter described herein.

**GENERAL STIPULATIONS**

1. It is expressly understood that this Consent Order is subject to the Tennessee State Board of Cosmetology and Barber Examiners (hereinafter "Board") acceptance and has no force and effect until such acceptance is evidenced by the entry of the Board.
2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Board, it is agreed that presentation to and consideration of this Consent Order by the Board shall not unfairly or illegally prejudice the Board from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Board against Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or actions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Board for violations of the Tennessee Board of Cosmetology and Barber Examiners or the Board's Administrative Rules addressed specifically in this Consent Order, against the Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondents.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Board.

#### **AUTHORITY AND JURISDICTION**

TENN. CODE ANN. § 62-4-127 (Inspections — Cause for suspension, revocation, and for denial of license), TENN. COMP. R. AND REGS. 0440—1—.14 [CIVIL PENALTIES] and TENN. COMP. R. AND REGS. 0780—5—11—.01 [INVESTIGATORY AND HEARING COSTS], authorize the Board to take disciplinary action, including the assessment of civil penalties and costs, against any person licensed or required to be licensed pursuant to the Tennessee Cosmetology Act of 1986, as amended, TENN. CODE ANN. § 62-4-101, et seq., or any rules lawfully enacted thereunder.

## **PARTIES**

1. The Board is the lawful agent through which the Act and its rules are administered and is authorized to bring this action.
2. Respondent did not and does not hold a valid cosmetology shop license issued by the Board, at all times relevant to the proceedings of this matter.

## **FINDINGS OF FACT**

1. On or about February 22, 2016, the Board office received a consumer complaint alleges, in part, that the Respondent is offering and advertising for cosmetology services through [www.projectbelle.com](http://www.projectbelle.com) on location outside of the current state law and rules.
2. A review of the Respondent's website revealed that the Respondent is allowing licensed hair stylists, aestheticians, and manicurists to do in-home work to the public in the State of Tennessee without possessing a valid cosmetology shop license issued by the Board and outside the statutory requirements, and that the Respondent does not prompt a potential customer to verify if a person setting up an appointment falls into the statutory exception.
3. Respondent, at no time relevant to the proceedings of this matter, held a valid cosmetology shop license issued by the Board.

4. Respondent hereby admits to the foregoing findings of fact.

## **CONCLUSIONS OF LAW**

1. TENN. CODE ANN. § 62-4-102(a) [DEFINITIONS], states, in pertinent part, as follows:

(a) As used in this chapter, unless the context otherwise requires:

...

(3) "Cosmetology" means any of the following practices:

(A) Arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring or similar work on the hair of any person by any means;



- (B) Caring and servicing of wigs and hair pieces;
- (C) Manicuring;
- (D) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work upon the hands, arms, face, neck or feet with hands or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams;
- (E) Placing or applying artificial eyelashes;
- (F) Giving facials, applying makeup, giving skin care or removing superfluous hair by tweezing, depilatories or waxing;
- (G) Providing a necessary service that is preparatory or ancillary to a service pursuant to this subdivision (a)(3); or
- (H) Treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, trimming, or shaving with a safety razor;

(4) "Cosmetology shop" means any place of business where any person engages or offers to engage in any practice of cosmetology for a fee or other form of compensation, but does not include a manicure shop or skin care shop;

...

(13) "Manicure shop" means any place of business where any person performs or offers to perform only manicuring services for a fee or other form of compensation;

...

(21) "Skin care shop" means any place of business where any person performs or offers to perform exclusively aesthetics services for a fee or other form of compensation; ...

2. Tenn. Comp. R. and Regs. 0440—2—.01 [DEFINITIONS], which states, in part, as follows:

(1) As used in this Chapter, unless the context requires otherwise, the definitions of terms contained in Tenn. Code Ann. § 64-4-102 are applicable. In addition:

(a) "Establishment" means any cosmetology, manicure, skin care or natural hair stylist shop or school of cosmetology;

...

(d) "Shop" means a cosmetology shop, manicure shop, skin care shop or natural hair styling shop.

...

(f) "Violation" means any breach or failure to abide by the statutes, rules and orders enforceable by the Tennessee State Board of Cosmetology and Barber Examiners and any unprofessional conduct by any individual or entity licensed or required to be licensed under the Tennessee Cosmetology Act.

3. Tenn. Comp. R. and Regs. 0440—2—.07, [EQUIPMENT], which states, in part, as follows:

(7) A cosmetology, skin care, natural hair stylist or manicure shop located in a mobile home or mobile unit will not be approved for a license unless it is placed on a permanent foundation or otherwise rendered immobile.

4. Respondent's acts and conduct, as set forth in the foregoing "Findings of Fact," does not fall under TENN. CODE ANN. § 62-4-109 [EXEMPTIONS], which states, in pertinent part, as follows:

(a) The following persons are exempt from this chapter:

(1) Persons and establishments engaged exclusively in massage, as defined by § 63-18-102;

(2) Duly registered barbers and technicians operating in duly registered barber shops only;

(3) Physicians and surgeons or trained nurses, trained nurses assistants, aides or similar personnel, acting solely in their professional capacities;

(4) Any person rendering cosmetology services in the person's own home without charge to the recipient;

(5) Any person who demonstrates or applies, or both, cosmetics without charge in a retail establishment; and

(6) Any person who engages in hair wrapping; provided, that the person posts a notice at the place of business indicating that the person is not licensed by the state board of cosmetology and barber examiners; and provided, further, that the person uses disposable instruments or implements that are sanitized in a disinfectant approved for hospital use or approved by the federal environmental protection agency. Before engaging in hair wrapping, a person shall attend sixteen (16) hours of training provided by a licensed school of cosmetology and shall receive a certificate indicating attendance at the training. The certificate shall be retained and displayed on request. The training shall consist of eight (8) hours concerning health and hygiene issues and eight (8) hours concerning relevant state law.

5. Respondent's acts and conduct, as set forth in the foregoing "Findings of Fact," constitutes violations of Tenn. Code Ann. § 62-4-118 [SHOPS; REQUIREMENTS], which states, in part, as follows:

(a) Except as otherwise provided hereunder, it is unlawful to operate a shop without conspicuously displaying a valid license issued by the board under this chapter.

6. Respondent's acts and conduct, as set forth in the foregoing "Findings of Fact," constitutes violations of Tenn. Code Ann. § 62-4-125 [HYGIENE; RULES AND REGULATIONS], which states, in part, as follows:

(d) It is unlawful:

(2) For any person, firm or corporation that holds a cosmetology, manicurist or aesthetician license to practice cosmetology outside a shop or school, or for any person, firm or corporation that holds a natural hair styling license to practice natural hair styling outside a shop or school, except:

(A) In any nursing home;

(B) In the residence of the person treated when the person is actually ill;

(C) In any hospital or infirmary;

(D) In a funeral establishment;

(E) In a retail establishment, to demonstrate or apply, or both, cosmetics without charge; or

(F) At the site of television, motion picture, video or theatrical productions, photographic sessions or similar activities.

7. TENN. CODE ANN. § 62-4-127(b) [INSPECTIONS; LICENSES; DENIAL, SUSPENSION OR REVOCATION], states, in pertinent part, as follows:

"The board may suspend, revoke, or refuse to issue or renew any license under this chapter for any of the following cause(s):

...

(9) A violation of this chapter or of any rules duly promulgated under this chapter;

8. The above-described acts in violation of applicable law independently and/or collectively constitute grounds for the revocation of, suspension of or refusal to renew any Board-issued license that the Respondent currently holds pursuant to TENN. CODE ANN. § 62-4-127 (Inspections — Cause for suspension, revocation, or for denial of license), as well as grounds for the imposition of civil penalties and costs upon the Respondent pursuant to TENN. COMP. R. AND REGS. 0440—1—.14 [CIVIL PENALTIES] and TENN. COMP. R. AND

**ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Act and the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 to 4-5-404 (2011), and Respondent's admission of jurisdiction of the Board, the Board finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Order and agrees that this Order is in the public interest, necessary for the protection of the public and consistent with the purposes fairly intended by the policy and provisions of the Board of Cosmetology and Barber Examiners and the rules promulgated thereunder.

**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 62-4-127 (Inspections — Cause for suspension, revocation, and for denial of license) of the Act and TENN. COMP. R. AND REGS. 0440—1—.14 [CIVIL PENALTIES] of the Board's Administrative rules that Respondent:

1. Pay **CIVIL PENALTIES** in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**. Payment shall be made immediately of the date this agreement is executed by the Board, and payment shall be mailed to:

**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
OFFICE OF LEGAL COUNSEL  
DAVY CROCKETT TOWER  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243**

2. In addition, it is further **ORDERED** that Respondent and all persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of the Tennessee Cosmetology Act of 1986 (the "Act") or the Rules, shall **CEASE AND DESIST** from all such

activities in violation of the Act or the rules.

3. **IT IS ORDERED** that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Board against Respondent for violations of the Act alleged by the Board to have occurred with respect to the actions involving Respondent and the facts contained herein.

4. This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, Respondent affirmatively states that Respondent has freely agreed to the entry of this Consent Order, that Respondent waives the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to Respondent by the Board, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Consent Order, are binding upon them.

**APPROVED FOR ENTRY:**

\_\_\_\_\_  
Authorized signer(s) for Respondent  
Project Belle LLC

\_\_\_\_\_  
Date

Respectfully Submitted,

\_\_\_\_\_  
Laura E. Martin, BPR No. 033093

\_\_\_\_\_  
Date

Assistant General Counsel

Tennessee State Board of Cosmetology and Barber Examiners

500 James Robertson Parkway

Davy Crockett Tower

Nashville, TN 37243

(615) 741-3072

**ENTERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Laura E. Martin, Esq.



## Caleb Darnell

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**From:** Jon Lillard  
**Sent:** Monday, February 22, 2016 10:21 AM  
**To:** Caleb Darnell  
**Cc:** Roxana Gumucio; Laura Martin  
**Subject:** FW: [TDCI] Update: Complaint regarding Project Belle

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Other attachment, Open Complaint, Consumer Complaint, ATTN!



**Tim Smith (TDCI)**

Feb 22, 10:14 AM

Good Morning,

Thank you for contacting the Tennessee Department Of Commerce and Insurance Customer Service Division. My name is Tim and I will be more than happy to assist you today. I will have one our licensing specialist look over this question and we will be in contact with you shortly. I do appreciate your patience and we look forward to serving you.



**Karen Kops**

Feb 22, 9:39 AM

Hello,

I'm writing to advise you of a local company, [www.projectbelle.com](http://www.projectbelle.com), offering and advertising for cosmetology services on location which I believe is outside of current state law rules. As a business owner with a brick and mortar shop adhering to all state law requirements, I find this type of competition highly disturbing. Kindly look into this at your earliest convenience.

Thank you,

Karen Kops

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You are an agent. Add a comment by replying to this email or [view ticket in Zendesk](#).

**Ticket #** 7961

**Status** On-hold

**Requester** Karen Kops

**CCs** Jonathan Lillard

**Group** Cosmetology and Barber

Assignee Tim Smith  
Priority Normal  
Type Ticket  
Channel By Mail

This email is a service from TDCI. Delivered by Zendesk