

December 22, 2020

**VIA ELECTRONIC MAIL**

Douglas T. Miracle  
Assistant Attorney General  
Mississippi Attorney General's Office  
Civil Litigation Division  
doug.miracle@ago.ms.gov

RE: Letter of Representation – Offer to Compromise – Eyelash Extension Lounge

Dear Doug:

The Mississippi Justice Institute represents Amy Burks, who is the owner of Lavish, an eyelash extension lounge in Madison, Mississippi, as well as her employees, Emily Gonseth, Hannah Nichols, Terri Stokes, and Meredith Womack. Lavish opened in 2013 and offers only one service: applying eyelash extensions. Customers of Lavish praise the skill of its eyelash artists and are very loyal to the business. Ms. Burks has never had a complaint regarding Lavish's services.

The Mississippi cosmetology statutes do not identify the application of eyelash extensions as a service requiring a license, even though those statutes specifically require licensure for several similar practices such as eyebrow threading and eyelash tinting. Nevertheless, in October, 2019, an inspector with the Mississippi Board of Cosmetology ("the Board") issued a citation to Ms. Burks for operating an unlicensed salon. The Board has since taken the position, through a declaratory opinion, that it may regulate the application of eyelash extensions because the Mississippi cosmetology statutes include the phrase "beautification of the face" in the definition of esthetics. Thus, according to the Board's interpretation of the relevant statutes, Ms. Burks and all of her employees must take 600 hours of training and pass an exam before they can apply eyelash extensions.

I am writing to you because I believe your clients, the members of the Mississippi Board of Cosmetology, might be interested in resolving this matter through a collaborative approach and without litigation.

Eyelash extensions are exactly what they sound like: false eyelashes applied to natural eyelashes. This practice has existed for decades, and false eyelashes for self-application are available at most drug stores. However, in recent years a new trend has emerged. Rather than purchasing a pair of traditional, self-adhesive strips of false eyelashes that are self-applied all at once, many women are beginning to pay eyelash artists to apply individual false eyelashes to each individual natural eyelash using a cosmetic glue, which results in a more natural look. This is a time-consuming and tedious process, but it is safe and easy to learn.

The potential risks of eyelash extensions are exceedingly minimal and rare. More importantly, those minor risks are not affected by the techniques used by eyelash artists: they are present whether false eyelashes are self-applied with a self-adhesive strip or individually applied by an eyelash artist.

During the 600 hours of training that the Board wants Ms. Burks and her employees to pay for and go through, not one minute of the required curriculum will teach them how to apply eyelash extensions. As you know, in *Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69 (Tex. 2015), the Texas Supreme Court declared that similarly irrelevant licensing requirements for eyebrow threading violated the Texas Constitution. We believe that the U.S. Court of Appeals for the Fifth Circuit would reach a similar conclusion under the U.S. Constitution if presented with the opportunity.

Additionally, the Board is exceeding its statutory authority by requiring Ms. Burks and her employees to obtain estheticians' licenses in order to perform a service which does not require a license under Mississippi's cosmetology statutes. Administrative agencies have only such powers as are expressly granted to them, or necessarily implied, and any such power exercised must be found within the four corners of the statute under which the agency operates. Any acts which are not so authorized are void. Because the cosmetology statutes do not authorize the Board to regulate the application of eyelash extensions, it simply may not do so. Even if the Board were correct that the term "beautification of the face" included the application of eyelash extensions, that phrase would be unconstitutionally vague.

Lastly, the Board's actions violate the Occupational Board Compliance Act of 2017, Miss. Code Ann. § 73-47-1, *et seq.* and the Mississippi Administrative Procedures Law, Miss. Code Ann. § 25-43-1, *et seq.* As you know, the Board may only issue a declaratory opinion if requested to do so by a person with a substantial interest in the applicability of a statute, rule or order to specified circumstances. Miss. Code Ann. § 25-43-2.103. Here, our clients never requested a declaratory opinion from the Board. Rather, the Board issued the opinion in response to a request that the Board seek a legal opinion from the Attorney General. Regardless, a declaratory opinion from the Board is not binding or effective on third parties who did not request the opinion. If the Board believes it has the authority to broadly regulate the practice of applying eyelash extensions (which it does not), the proper method to attempt to do so would be by promulgating a rule in compliance with the Mississippi Administrative Procedures Law. According to the Occupational Board Compliance Act of 2017, any such proposed rule would require approval from the Occupational Licensing Review Commission to ensure that it was in compliance with the policy of the State of Mississippi to "(a) increase economic opportunities for all its citizens by promoting competition and thereby encouraging innovation and job growth; and (b) Use the least restrictive regulation necessary to protect consumers from present, significant and substantiated harms that threaten public health and safety." Miss. Code Ann. § 73-47-7. Requiring eyelash artists to undergo 600 hours of training does not comply with this state policy.

Our clients have been safely and openly operating their small business in Mississippi for eight years. Their customers are happy with their service. They simply want to continue serving their loyal customers and to earn an honest living in our state. Shutting down their business for months on end while they pay for and attain hundreds of hours of irrelevant training is simply not an option for our clients. It should not be required of them to do so, especially during a pandemic.

We believe this matter can be resolved, and we request that the Board support legislation or promulgate regulations clarifying that the application of eyelash extensions does not require an esthetician license. However, we are prepared to take further action to protect the rights of our clients. Please discuss this with your clients and let me know if I can be of further assistance.

Sincerely,

MISSISSIPPI JUSTICE INSTITUTE

A handwritten signature in blue ink, appearing to read "Aaron R. Rice". The signature is stylized with a large, sweeping initial "A" and a long horizontal stroke.

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