

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND BROW ART 23, ELIZABETH PROIKOS-GORGEES, OWNER

Come now Brow Art 23, Elizabeth Proikos-Gorgees, Owner (collectively, "Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's cosmetology establishment license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's cosmetology establishment license, number 2011006328 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

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<sup>1</sup> All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

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Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Board of Cosmetology and Barber Examiners ("Board") is an agency of the State of Missouri created and established pursuant to § 329.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee holds a cosmetology establishment license issued by the Board, license number 2011006328, for Brow Art 23, located at 158K.W. County Center Space 9111, Des Peres, Missouri 63131. Licensee's Missouri cosmetology establishment license was at all times relevant herein, and is now, current and active.

3. On or about March 11, 2014, Licensee entered into a Settlement Agreement with the Board under which Licensee's cosmetology establishment license was placed on probation for a period of three (3) years as a result of sanitation and licensure violations. Licensee's probation was effective as of March 28, 2014 and was to end March 28, 2017. Among the terms of the Settlement Agreement was that Licensee "shall cease and desist all unlicensed activity. . ." Under the Settlement Agreement, Licensee was responsible for compliance with all provisions of Chapter 329, RSMo. The Settlement Agreement advised Licensee that the Board would monitor Licensee's compliance with the terms of the Settlement Agreement and; that failure to comply with the terms of the Settlement Agreement could result in the Board imposing additional or other discipline against Licensee's license.

4. On or about March 20, 2014, the Board conducted a follow-up inspection of Brow Art 23. Licensee was not present during the inspection and Brow Art 23 was open for business. The inspection revealed the following violations: no operator licenses were posted and one unlicensed unidentified person was present but no customers were present during the inspection in violation of 20 CSR 2085-10.010, 20 CSR 2085-7.040 and 20 CSR 2085-10.060. On or about April 15, 2014, the Board sent Licensee a violation notice following the March 20, 2014 inspection.

5. On or about May 15, 2014, the Board conducted a follow-up inspection of Brow Art 23. Licensee was not present during the inspection and Brow Art 23 was open for business. The inspection revealed the following violations: no operator licenses were posted and one unlicensed unidentified person was performing services during the inspection in violation of 20 CSR 2085-10.010 and 20 CSR 2085-10.060. On or about June 17, 2014, the Board sent Licensee a violation notice following the May 15, 2014 inspection.

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6. On or about July 9, 2014, the Board conducted a follow-up inspection of Brow Art 23. Licensee was not present during the inspection and Brow Art 23 was open for business. The inspection revealed the following violations: no operator licenses were posted and one unlicensed unidentified person was present but there were no customers present at the time of the inspection in violation of 20 CSR 2085-10.010 and 20 CSR 2085-10.060. On or about July 25, 2014, the Board sent Licensee a violation notice following the July 9, 2014 inspection.

7. On or about August 21, 2014, the Board conducted a follow-up inspection of Brow Art 23. Licensee was not present during the inspection and Brow Art 23 was open for business. The inspection revealed the following violations: no operator licenses were posted at stations, and one operator was present and did not have a license in violation of 20 CSR 2085-10.010 and 20 CSR 2085-7.040. On or about October 1, 2014, the Board sent Licensee a violation notice following the August 21, 2014 inspection.

8. On or about October 15, 2014, an inspection of Brow Art 23 was conducted at the request of the Board. Licensee was not present during the inspection and Brow Art 23 was open for business. The inspection revealed the following violations: no operator licenses were posted, and one operator was present and did not have a license in violation of 20 CSR 2085-10.010.

9. Section 329.030, RSMo, states:

It is unlawful for any person in this state to engage in the occupation of cosmetology or to operate an establishment or school of cosmetology, unless such person has first obtained a license as provided by this chapter.

10. Regulation 20 CSR 2085-7.040 states, in relevant part:

(2) Renewals. Every two (2) years (biennially) the renewal application for active licensees must be completed, signed, accompanied by the appropriate renewal fee, and returned to the board office prior to the expiration date of the license. All licenses shall expire on September 30 of each odd-numbered year. Any application postmarked after September 30 will be returned and the applicant will be required to reinstate.

(A) Any cosmetologist whose license has expired who wishes to restore the license shall make application to the board by submitting the following within two (2) years of the license renewal date:

1. Reinstatement application for renewal of licensure; and
2. The current renewal fee and the late fee, as set forth in

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20 CSR 2085-7.050 renewal date.

11. Regulation 20 CSR 2085-10.010 states, in relevant part:

(3) Display of license. Establishment licenses shall be posted within the establishment in plain view at all times so that it may be easily seen by the public. Establishment licenses issued to a station or booth rental establishment shall be posted in plain view at the respective work station.

(A) Operator licenses, apprentice licenses, or student temporary permits shall either be posted at each respective assigned work station or all posted together in one (1) conspicuous, readily accessible, central location within the establishment area that will allow easy identification of the persons working in the establishment by clients, board representatives, or the general public.

(B) A two inch square (2" x 2") photograph taken within the last five (5) years shall be attached to operator licenses. A two inch square (2" x 2") photograph taken within the last five (5) years shall be attached to apprentice licenses and student temporary permits.

12. Regulation 20 CSR 2085-10.060 states, in relevant part:

(1) Pursuant to Chapters 328 and 329, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permit holder is an employee of the establishment or holds a current and active renter establishment license issued by the board.

(3) Prohibited Practices Within An Establishment. In a licensed establishment, only persons properly licensed by the board shall be allowed to perform barbering, hairdressing, manicuring, or esthetician services on any person within the establishment. The provisions of this section shall apply even if services are being provided for no compensation. For purposes of this section, barbering, hairdressing, manicuring, or esthetician services shall be defined as follows:

(A) "Barbering"—engaging in the capacity so as to shave the beard or cut and dress the hair of any person;

(B) "Esthetician services"—Using mechanical or electrical apparatuses or appliances, cosmetic preparations, antiseptics, tonics, lotions, or creams, not to exceed ten percent (10%) phenol, either directly or indirectly, in any one (1), or any combination, of the following practices:

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massaging, cleansing, stimulating, manipulating, exercising, beautifying, or similar work upon the scalp, face, neck, ears, arms, hands, bust, torso, legs, or feet and removing superfluous hair by means other than electric needle or any other means of arching or tinting eyebrows or tinting eyelashes of any person;

(C) "Hairdressing"—Arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching, tinting, coloring, or similar work upon the hair of any person by any means; or removing superfluous hair from the body of any person by means other than electricity, or any other means of arching or tinting eyebrows or tinting eyelashes. Hairdressing also includes any person who either with the person's hands or with mechanical or electrical apparatuses or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams engages for compensation in any one (1) or any combination of the following: massaging, cleaning, stimulating, manipulating; exercising, beautifying, or similar work upon the scalp, face, neck, arms, or bust; and

(D) "Manicuring"—Cutting, trimming, polishing, coloring, tinting, cleaning, or otherwise beautifying a person's fingernails, applying artificial fingernails, massaging, cleaning a person's hands and arms; pedicuring, which includes cutting, trimming, polishing, coloring, tinting, cleaning, or otherwise beautifying a person's toenails, applying artificial toenails, massaging, or cleaning a person's legs and feet.

13. As a result of the violations, as described above in paragraphs 3 through 8, in violation of the statutes and regulations contained in paragraphs 9 through 12, Licensee violated lawful regulations adopted pursuant to chapter 329, RSMo, and failed to properly guard against contagious, infections or communicable diseases or the spread thereof for which the Board has cause to take disciplinary action against Licensee's cosmetology establishment license.

14. Cause exists for the Board to take disciplinary action against Licensee's cosmetology establishment license under § 329.140 RSMo, which states in pertinent part:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

...  
(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter[.]

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Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045, RSMo:

15. The terms of discipline shall include that Licensee's cosmetology establishment license, license number 2011006328, which is currently on probation until March 28, 2017, be placed on **PROBATION** for a period of two (2) additional years. During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all of the terms of his Settlement Agreement.

I. SPECIFIC REQUIREMENTS

- A. Licensee shall correct all violations cited in the Inspection Reports and Violation Notices as described above in paragraphs 4 through 8 within 30 days of the date of execution of this Agreement.
- B. Licensee shall continue to comply with all terms and requirements contained within the previous Settlement Agreement, which became effective March 28, 2014.

II. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall submit reports to the Missouri Board of Cosmetology and Barber Examiners, Post Office Box 1062, Jefferson City, Missouri 65102, stating truthfully whether Licensee has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period. The first report shall be due July 1, 2015.
- C. Licensee shall keep the Board apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. Licensee shall comply with all provisions of the Chapter 329, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- E. During the disciplinary period, Licensee shall timely renew Licensee's licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.
- F. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, RSMo, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 329.140.3, RSMo.
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.

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- H. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).
- I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 329, RSMo, by Licensee not specifically mentioned in this document.

16. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber and Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 329, 610 and 324, RSMo.

17. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

18. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

19. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

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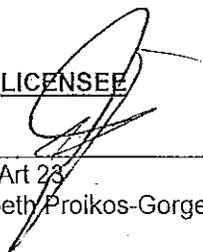
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Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

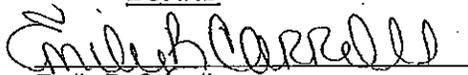
20. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE



Brow Art 23  
Elizabeth Proikos-Gorgees, Owner

BOARD



Emily R. Carroll,  
Executive Director  
Missouri Board of Cosmetology and Barber Examiners

Date

1/24/15

Date

2/3/2015

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