

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

STATE BOARD OF COSMETOLOGY  
AND BARBER EXAMINERS,

Petitioner,

v.

KEVIN BUI,

Respondent.

Case No. 09-0401

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND DISCIPLINARY ORDER**

At its regularly scheduled meeting on June 1, 2015, at approximately 9:00 a.m., and pursuant to notice described in the Findings of Fact, the Missouri State Board of Cosmetology and Barber Examiners ("Board") took up the probation violation complaint alleging that Kevin Bui ("Respondent"), has failed to comply with the terms of his probation of his "Class MO- manicurist" license, license number 116933.

The board appeared at the hearing through its attorney Jamie Cox. Bui appeared pro se at the hearing in person and offered testimony and exhibits which were marked and entered into the record. Division of Professional Registration Legal Counsel Thomas Townsend served as the board's legal advisor at the hearing, during deliberations, and in the preparation of this order.

**Findings of Fact**

1. The Missouri State Board of Cosmetology and Barber Examiners ("Board") is an agency of the State of Missouri created and existing pursuant to § 329.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.
2. Respondent is a natural person whose address of record for the Board is 5107 N. Belt Highway, suite 111, Saint Joseph, Missouri 64506.
3. Respondent holds a class MO Manicurist license, license number 116933.
4. Respondent's "Class MO- manicurist" license, license number 116933 is, and was at all relevant time, current and valid.

5. Respondent owns and operates a cosmetology establishment, Kevin's Nails & Spa, an unincorporated association pursuant to § 1.020(11), RSMo, located at 5107 N. Belt Highway, suite 111, Saint Joseph, Missouri 64506.

6. The Board issued Respondent a cosmetology establishment license on February 19, 2008.

7. On or about November 9, 2009, the Board and Respondent entered into a Settlement Agreement placing Respondent's "Class MO- manicurist" license on probation for a period of five (5) years because he was allowing unlicensed persons to offer and perform cosmetology services and faced sanitation violations at Kevin's Nail & Spa in violation of Chapter 329, RSMo, and regulations promulgated thereunder.

8. During the five (5) year probationary period, Respondent was entitled to offer and perform manicuring services, after a two day suspension, provided that he adheres to all of the terms and conditions of the Probation Order.

9. The Order of Probation states on page 8 that Respondent shall comply with all provisions of Chapter 329, all rules and regulations of the Board, and all local, state and federal laws.

10. On or about August 22, 2013, the Board's inspector conducted an inspection of Kevin's Nail & Spa which revealed sanitation and safety violations including the presence of "razor type implements in the salon," accumulated nail dust on the floor of the salon, and a wax pot was on but no one in the salon had a license for waxing.

11. On or about September 6, 2013, the Board sent Respondent a Violation Notice for the violations found during the August 22, 2013 inspection.

12. On or about December 16, 2014, the Board issued an Order disciplining Respondent's class MO – manicurist license, license number 116933, as a result of Respondent's violation of the terms of the November 9, 2009 Settlement Agreement. The December 16, 2014 Order suspended Respondent's license for three (3) consecutive weeks beginning on December 23, 2014 and ending on January 13, 2015.

13. On or about February 9, 2015, the Board filed a Violation Complaint against Respondent. The Violation Complaint alleged that Respondent had violated the terms of the suspension placed on his "Class MO- manicurist" license by the December 16, 2014 Order.

14. The Findings of Fact, Conclusions of Law, and Disciplinary Order, as well as the accompanying December 16, 2014 cover letter, specifically stated that during the period of suspension, Respondent "shall not provide cosmetology services."

15. On or about December 24, 2014, the Board inspector conducted an inspection at Kevin's Nail & Spa. Respondent was present at the time of the inspection, his license was posted in public view and Respondent was witnessed by the inspector to be providing cosmetology manicuring services by performing an acrylic nail service on a female patron while his "Class MO- manicurist" license was suspended.

16. During the December 24, 2014 inspection, the Board inspector found sanitation violations, including disposable buffers in pedicure carts that had been used several times and were not thrown away after each use and pedicure chair bowls that were not properly cleaned and disinfected after each use.

#### Conclusions of Law

17. The Committee has jurisdiction in this proceeding, pursuant to the November 9, 2009 Settlement Agreement, the December 16, 2014 Disciplinary Order and § 324.042 RSMo, to determine whether Respondent has violated the terms and conditions of the December 16, 2014 Order regarding his "Class MO- manicurist" license, license number 116933.

18. Regulation 20 CSR 2085-11.020 states, in relevant part:

(1) Physical Facilities.

(B) Floors, Walls, Ceilings, Equipment, and Contents.  
For areas where all classified occupations of cosmetology are practiced, including retail cosmetic sales counters, all floors, walls, ceilings, equipment, and contents shall be constructed of washable materials and must be kept clean and in good repair at all times. Commercial-type carpet may be used.

19. Regulation 20 CSR 2085-11.020 states, in relevant part:

(2) Sanitation Requirements.

(A) Protection of the Patron.

...

(D) Disinfecting and Storing Implements.

All implements (instruments or tools) used in cosmetology establishments and schools, including scissors, clips, blades, rods, brushes, combs, etc. shall be thoroughly cleansed after each use. All implements which may come in contact directly or indirectly with the skin of the patron shall be disinfected with an Environmental Protection Agency (EPA)-registered disinfectant, which may be a spray solution. The label on the disinfectant shall show that it is EPA-registered with demonstrated bactericidal (disinfectant), virucidal, and fungicidal activity and shall be used according to the manufacturer's instructions. All implements shall be completely immersed in the solution or, if not capable of immersion, thoroughly dipped in the solution for a period of not less than five (5) minutes. Implements shall either be stored in the solution or removed and stored in a dust-tight cabinet, covered container, or drawer at all times when not in use. The dust-tight cabinet, covered container, or drawer shall be kept free of other items not capable of being disinfected. Implements shall be permitted to air dry.

20. Respondent violated the terms of discipline set forth in the December 16, 2014 Order, as described in the Findings of Fact of this Order by violating regulation 20 CSR 2085-11.020(1)(B), and 2085-11.020(2)(A) and (D), as detailed in paragraphs 12 through 16 above.

21. The November 9, 2009 Settlement Agreement, the December 16, 2014 Order and § 324.042 RSMo, allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of December 16, 2014 Order.

22. Jurisdiction and venue are proper before the Missouri State Board of Cosmetology and Barber Examiners pursuant to the November 9, 2009 Settlement Agreement,

the December 16, 2014 Order and § 324.042, RSMo, which authorize the Board to impose additional discipline in a disciplinary hearing arising from a probation violation.

#### Decision and Order

23. It is the decision of the Missouri State Board of Cosmetology and Barber Examiners that Respondent has violated the terms of the December 16, 2014 Order, and that his "Class MO- manicurist" license, license number 116933 is, therefore, subject to further disciplinary action.

24. The Missouri State Board of Cosmetology and Barber Examiners orders that Respondent's "Class MO- manicurist" license, license number 116933, is **SUSPENDED** for a period of three (3) consecutive weeks starting fifteen (15) days from the effective date of this Order. During such time of suspension, Respondent shall not provide cosmetology services. Respondent's suspension shall be immediately followed by **PROBATION** for a period of three (3) years.

#### Terms and Conditions of Probation

During the aforementioned probation, Respondent shall be entitled to a "Class MO- manicurist" license subject to the following terms and conditions:

- A. During the disciplinary period, Respondent shall comply with all provisions of Chapter 329, RSMo (as amended), all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. During the disciplinary period, Respondent shall keep the Board informed of his current work telephone numbers. Respondent shall notify the Board in writing within ten days (10) of any change in this information.
- C. During the probationary period, Respondent shall timely renew his license(s) and shall timely pay all fees required for licensure and comply with all other Board requirements necessary to maintain said licenses in a current and active state.
- D. During the probationary period, Respondent shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.

- E. During the disciplinary period, Respondent shall appear in person for interviews with the Board or its designee upon request.
- F. Respondent shall submit written reports to the Board on or before January 1 and July 1 during each year of the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Order. The first such report shall be received by the Board on or before January 1, 2016.
- G. If, at any time during the probationary period, Respondent changes his address from the state of Missouri, or ceases to maintain his cosmetology establishment license current or active under the provisions of Chapter 329, RSMo, or fails to keep the Board advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- H. The Board retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Board. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board as provided by Chapter 536, RSMo.
- I. Unless otherwise specified by the Board, all reports, documentation, notices, or other materials required to be submitted to the Board shall be forwarded to: Missouri State Board of Cosmetology and Barber Examiners, P.O. Box 1062, Jefferson City, Missouri 65102.
- J. Any failure by Respondent to comply with any condition of discipline set forth herein constitutes a violation of this Order.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 329, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 15 DAY OF July, 2015.

MISSOURI STATE BOARD OF COSMETOLOGY  
AND BARBER EXAMINERS

  
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Emily R. Carroll, Executive Director

SETTLEMENT AGREEMENT BETWEEN THE STATE BOARD OF COSMETOLOGY  
AND BARBER EXAMINERS AND KEVIN BUI

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Kevin Bui ("Bui"), and the State Board of Cosmetology and Barber Examiners ("Board") enter into this Settlement Agreement ("Agreement") for the purpose of resolving the question of whether Bui's Class MO Cosmetology/Manicuring license no. 116933 ("License"), will be subject to discipline. Pursuant to § 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri, and additionally, the parties hereto waive the right to a disciplinary hearing before the Board under § 621.110, RSMo. Bui and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Bui acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the claims against him; the right to appear and be represented by legal counsel; the right to have all claims against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his behalf at the hearing; the right to ruling on questions of law by the Administrative Hearing Commission; the right to a decision based upon the record of the hearing by a fair and impartial Administrative Hearing Commission concerning the claims pending against him; the right to a disciplinary hearing before the Board at which time Bui may present evidence in mitigation of discipline; the right to a claim for attorney's fees and expenses; and the right to obtain judicial review of the decision of the Administrative Hearing Commission and the Board. Being aware of these rights provided to him by law, Bui knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of the this document as those terms pertain to him.

3. Bui owns and operates Kevin's Nails, located at 5107 N. Belt Highway, Ste. 113, Saint Joseph, Missouri 64506, operating as a cosmetology establishment for the purpose of rendering cosmetology services and has since February 2008.

4. Kevin's Nails is licensed by the Board, as a cosmetology establishment, license no. 2008005133 ("license").

5. Kevin's Nails' cosmetology establishment license was at all relevant times current and active.

6. From April 23, 2007 to present, Bui practiced and performed cosmetology services on patrons for compensation.

7. Bui's Class MO Cosmetology/Manicuring, license number 116933 is culpable for the conduct and violations as described in this Joint Stipulation below.

✓ 8. On or about February 15, 2008, the Board's inspector conducted inspection of Kevin's Nails, finding Bui failed to have Kevin's Nails licensed for the appropriate number of operators, in violation of Board Rule 20 CSR 2085-10.050(1). Bui corrected this violation during the inspection of February 15, 2008.

✓ 9. On the February 15, 2008 inspection, Bui allowed Tommy Tran to perform and practice cosmetology services on an inactive license and Bui failed to ensure Tommy Tran's license was current and posted, in violation of Board Rules 20 CSR 2085-7.040(3), 20 CSR 2085-7.040(3)(A), 20 CSR 2085-7.040(3)(B), 20 CSR 2085-10.010(3)(A) and 20 CSR 2085-10.060(2).

10. The inspection report of February 15, 2008 was signed, acknowledged, and agreed to by Bui.

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:

- (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
- (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;
- (10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not licensed and currently eligible to practice under this chapter;
- (13) Violation of any professional trust or confidence.
- (15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.

15. Parties stipulate Bui violated Chapter 329, RSMo., in the following ways:

- a. Bui's failure to have Kevin's Nails licensed for the appropriate number of operators violated Board Rule 20 CSR 2085-10.050(1), in violation of § 329.140.2(6), RSMo.

i. Bui's violated §§ 329.140.2(6), RSMo., and 329.140.2(15), RSMo., by failing to comply with the sanitary rules and regulations of the Board.

j. Bui violated a professional trust and confidence owed the Board, patrons, public, and students pursuant to § 329.140.2(13), RSMo., by failing to comply with the sanitary rules and regulations of the Board.

## II.

### JOINTLY AGREED UPON DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered into by the Board in this matter under the authority of § 329.140, 536.060, 621.045.3, and 621.110, RSMo.

1. Bui's Class MO Cosmetology/Manicuring, license number 116933, shall be suspended for two (2) days on November 27, 2009 and November 28, 2009. After serving the two (2) days suspension, Bui's Class MO Cosmetology/Manicuring, license number 116933 shall be placed on probation for five (5) years. Bui shall be otherwise entitled to offer and perform manicuring services, as of provided Bui adheres to all the terms stated herein.

2. Terms and conditions of the disciplinary period are as follows:

A. Bui shall keep the Board apprised at all times in writing of his current residential and business addresses and telephone numbers. Bui shall notify the Board in writing within ten days of any changes in this information. Bui is responsible for ensuring that such notification is received by the Board within the time specified.

B. Bui shall timely renew his manicuring license, his cosmetology establishment license for Kevin's Nails when required and shall maintain such licenses in

4. If any alleged violation of this Agreement occurs during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred. Bui agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

5. No additional discipline shall be entered by the Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 329, RSMo.

6. If the Board determines that Bui has violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may, in its direction, vacate and set aside the discipline imposed herein and impose such further discipline as the Board deems appropriate and may elect to pursue any lawful remedies or procedures afforded it, and the Board is not bound by this Agreement in its determination of appropriate legal actions concerning such violation.

7. This Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct and its resulting violations by Bui of Chapter 329, RSMo, or the regulations promulgated thereunder not specifically mentioned in this Agreement that are either now known by the Board or may be discovered.

8. The parties to this Agreement agree to pay all their own fees and expenses incurred as a result of this case, its investigations, its settlement, and/or litigation.

9. Bui, together with his shareholders, partners, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit and forever discharge the





5. Bui owns and operates a cosmetology establishment, Kevin's Nails & Spa, an unincorporated association pursuant to § 1.020(11), RSMo, located at 5107 N. Belt Highway, suite 111, Saint Joseph, Missouri 64506.

6. The Board issued Bui a cosmetology establishment license on February 19, 2008.

7. On or about November 9, 2009, the Board and Bui entered into a Settlement Agreement placing Bui's "Class MO – manicurist" license on probation for a period of five (5) years because he was allowing unlicensed persons to offer and perform cosmetology services and faced sanitation violations at Kevin's Nail & Spa in violation of Chapter 329, RSMo, and regulations promulgated thereunder.

8. During the five (5) year probationary period, Bui was entitled to offer and perform manicuring services, after a two day suspension, provided that he adhere to all of the terms and conditions of the Probation Order.

9. The Order of Probation states on page 8 that Bui shall comply with all provisions of Chapter 329, all rules and regulations of the Board, and all local, state and federal laws.

10. On or about August 22, 2013, the Board's inspector conducted an inspection of Kevin's Nail & Spa which revealed sanitation and safety violations including the presence of "razor type implements in the salon," accumulated nail dust on the floor of the salon, and a wax pot was on but no one in the salon had a license for waxing.

11. On or about September 6, 2013, the Board sent Bui a Violation Notice for the violations found during the August 22, 2013 inspection.

#### **Conclusions of Law**

12. The Committee has jurisdiction in this proceeding, pursuant to the November 9, 2009 Settlement Agreement and § 324.042 RSMo, to determine whether Bui has violated the terms and conditions of the November 9, 2009 Settlement Agreement regarding his "Class MO – manicurist" license, license number 116933.

13. Regulation 20 CSR 2085-11.020 states, in relevant part:

(1) Physical Facilities.

...

(B) Floors, Walls, Ceilings, Equipment, and Contents.

For areas where all classified occupations of cosmetology are practiced, including retail cosmetic sales counters, all floors, walls, ceilings, equipment, and contents shall be constructed of washable materials and must be kept clean and in good repair at all times. Commercial-type carpet may be used.

(C) Water Supply and Waste Disposal.

For cosmetology establishments and schools in cities and towns where these facilities are available, water must be obtained from the public water supply system and wastewater must be drained through pipes into the public sewer system. In all towns or communities in which a public water supply or public sewer system is not available, the water must be obtained from an individual supply source approved by the Division of Environmental Quality. Wastewater and sewage must be disposed of into a suitable sewage treatment device constructed and operated in a manner approved by the Missouri Clean Water Commission. Hot and cold water must be available to all lavatories and shampoo bowls. Water from the supply to the hot water faucets must be piped through a continuous water heater capable of providing an ample supply of water not to exceed one hundred twenty degrees Fahrenheit (120 °F) at all times. All plumbing in establishments and schools shall be installed in accordance with any applicable municipal, city, or government requirements. All lavatories and shampoo bowls shall be provided with soap (liquid or powder) and individual towels.

(D) Restrooms. All cosmetology establishments shall provide adequate and conveniently located restrooms, for use by patrons and operators. All schools shall provide two (2) or more restrooms to separately accommodate male and female students. All restrooms shall be provided with, at least, an operating toilet, a functional sink with hot and cold running water, soap (liquid or powder), and individual towels. Floors, walls, ceilings, and fixtures shall be made of washable Materials and kept clean and in good repair at all times.

14. Regulation 20 CSR 2085-11.020 states, in relevant part:

(2) Sanitation Requirements.

(A) Protection of the Patron.

...

2. Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens[.]

(D) Disinfecting and Storing Implements.

All implements (instruments or tools) used in cosmetology establishments and schools, including scissors, clips, blades, rods, brushes, combs, etc. shall be thoroughly cleansed after each use. All implements which may come in contact directly or indirectly with the skin of the patron shall be disinfected with an Environmental Protection Agency (EPA)-registered disinfectant, which may be a spray solution. The label on the disinfectant shall show that it is EPA-registered with demonstrated bactericidal (disinfectant), virucidal, and fungicidal activity and shall be used according to the manufacturer's instructions. All implements shall be completely immersed in the solution or, if not capable of immersion, thoroughly dipped in the solution for a period of not less than five (5) minutes. Implements shall either be stored in the solution or removed and stored in a dust-tight cabinet, covered container, or drawer at all times when not in use. The dust-tight cabinet, covered container, or drawer shall be kept free of other items not capable of being disinfected. Implements shall be permitted to air dry.

...

(L) Prohibited Practices. To prevent the risk of injury or infection—

1. A licensee shall not use or offer to use in the performance of cosmetology services, or possess on the premises of a licensed establishment, any razor-type callus shaver designed or intended to cut growths of skin on hands or feet such as corns and calluses including, but not limited to, a credo blade or similar type instrument. Any licensee using a razor-type callus shaver prohibited by this rule at a licensed establishment or in the performance of any cosmetology, manicuring, or esthetician services shall be deemed to be rendering services in an unsafe and unsanitary matter. Establishment licensees shall ensure that razor-type callus shavers are not located or used on the premises of the establishment; and

2. Violation of this rule shall constitute grounds for discipline under section 329.140.2(15), RSMo.

15. Section 329.140.2, RSMo states, in relevant 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[.]

16. Bui violated the terms of discipline set forth in the November 9, 2009 Settlement Agreement, as described in the Findings of Fact of this Order by violating regulation 20 CSR 2085-11.020(1)(B), (C) and (D); and 2085-11.020(2)(A), (D) and (L), as detailed in paragraphs 10 through 17 above.

17. The November 9, 2009 Settlement Agreement and § 324.042 RSMo., allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of November 9, 2009 Settlement Agreement.

18. Jurisdiction and venue are proper before the Missouri State Board of Cosmetology and Barber Examiners pursuant to the November 9, 2009 Settlement Agreement and § 324.042, RSMo, which authorizes the Board to impose additional discipline in a disciplinary hearing arising from a probation violation.

#### **Decision and Order**

19. It is the decision of the Missouri State Board of Cosmetology and Barber Examiners that Bui has violated the terms of the November 9, 2009 Settlement Agreement, and that his "Class MO – manicurist" license, license number 116933 is, therefore, subject to further disciplinary action.

20. The Missouri State Board of Cosmetology and Barber Examiners orders that Bui's "Class MO – manicurist" license, license number 116933, is immediately SUSPENDED for a

period of three (3) weeks starting seven (7) days after the date of this Order. During such time, Licensee shall not provide cosmetology services.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 329, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 14 DAY OF December, 2014.

MISSOURI STATE BOARD OF COSMETOLOGY  
AND BARBER EXAMINERS



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Emily R. Carroll, Executive Director