

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND MARY'S NAILS, VUONG BUI, OWNER

0000229 MAR-13

Come now Mary's Nails, Vuong Bui, 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 and class MO manicurist license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo¹, 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 licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

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 competent and substantial 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 licenses. 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 investigative report and other documents relied upon by the Board in determining there was cause to discipline Licensee's licenses, 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 establishment license, numbered

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

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MAR 07 2013

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2010036026 and operator license, numbered 2009035942 are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

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 on or about October 14, 2010, License No. 2010036026 for Mary's Nails. Mary's Nails is located at 1209 N. Belt Highway, Suite C, St. Joseph, Missouri. Licensee also holds a class MO manicurist license, License No. 2009035942. Licensee's Missouri license establishment license and manicurist license were at all times relevant herein, and is now, current and active.

3. On or about July 20, 2011, the Board's inspector conducted an inspection at Mary's Nails. The July 20, 2011 inspection revealed the following violations: credo blades were present in the salon, jars with nail polish remover were not disinfectible and were shared between clients and the clean and dirty implements were stored together in the same drawer in violation of regulation 20 CSR 2085-11.020.

4. On August 22, 2011, the Board sent Licensee a violation notice following the July 20, 2011 inspection. The violation notice advised Licensee of the three violations stated in paragraph 3 above and stated that Licensee should correct the violations immediately.

5. On November 3, 2011, the Board's inspector conducted an inspection at Mary's Nails. The November 3, 2011 inspection revealed the following violations: credo blades and other razor-type callous removers were present in the salon, the buffers and files were used several times on different consumers and were not disinfectible, the nail drill bits needed to be cleaned and disinfected after each use and the salon used the same container of nail polish remover with a foam pad for all clients in violation of regulation 20 CSR 2085-11.020.

6. On August 22, 2011, the Board sent Licensee a violation notice following the November 3, 2011 inspection. The violation notice advised Licensee of the three violations stated in paragraph 5 above and stated that Licensee should correct the violations immediately.

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7. On December 20, 2011, the Board's inspector conducted an inspection at Mary's Nails. The December 20, 2011 inspection revealed the following violation: credo blades were present in the salon in violation of 20 CSR 2085-11.020.

8. On January 30, 2012, the Board sent Licensee a violation notice following the December 20, 2011 inspection. The violation notice advised Licensee of the violation stated in paragraph 7 above and stated that Licensee should correct the violation immediately.

9. On February 24, 2012, the Board's inspector conducted an inspection at Mary's Nails. The February 24, 2012 inspection revealed the following violations: the pedicure cart had dirty and clean buffers and files stored together, pedicure carts had dirty buffers and files on them that were not disinfected and were being reused for multiple customers, and had paraffin wax in an open bowl which cannot be reused between customers in violation of 20 CSR 2085-11.020.

10. As a result of Licensee's repeated sanitation violations, on June 7, 2012, the Board sent Licensee a letter inviting Licensee and her operators to attend the Board's sanitation workshop on June 25, 2012. The letter stated that failure to attend could result in Licensee having to appear for an informal conference before the Board.

11. On June 25, 2012, Licensee attended the Board's sanitation workshop. Licensee took, and passed a Missouri cosmetology state law examination and signed a form stating she attended the class and fully understood the material presented.

12. On July 18, 2012, the Board's inspector conducted an inspection at Mary's Nails. The July 18, 2012 inspection revealed the following violations: credo blades were present in the salon being stored in the backroom refrigerator in the butter dish and crisper, dirty implements, files and buffers, were being kept in the pedicure carts and there was insufficient ventilation in the facility in violation of 20 CSR 2085-11.020.

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

(1) Physical Facilities.

(A) Lighting and Ventilation: A minimum of thirty (30) footcandles light intensity shall be provided in all areas where all classified occupations of cosmetology are practiced. A minimum of five (5) footcandles must be provided in areas used for waiting rooms, storage, corridors, etc. For all physical facilities and retail cosmetic sales counters, sufficient ventilation shall be provided to dispel odors, condensates, and vapors. For this purpose, ventilating equipment, such as individual fans, vents and hoods, shall be provided where needed.

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(2) Sanitation Requirements.

(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) 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[.]

14. As a result of the sanitation violations, as described above in paragraphs 3 through 12 above, in violation of the regulations contained in paragraph 13, Mary's Nails 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 establishment license and manicurist license.

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15. Cause exists for the Board to take disciplinary action against Licensee's establishment license and operator license under § 329.140.2(6) and (15), 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;

(15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.

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 § 621.045.3, RSMo:

The terms of discipline shall include that the cosmetology establishment license and manicurist

license be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided she adheres to all of the terms of his Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. Licensee shall correct all sanitation violations from the July 18, 2012, inspection within 30 days of the date of execution of this Agreement.

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 she 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, 2011.

C. Licensee shall keep the Board apprised of her 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.

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- 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 her 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 herself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, or fails to advise the Board of her current place of business and residence, the time of his 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 her compliance with the terms and conditions of this Settlement Agreement.
- 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.

It is understood that the Missouri Board of Cosmetology and Barber Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 329, 610, 324, RSMo.

18. 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.

19. Licensee, together with her heirs and assigns, and her 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

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even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

20. 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:

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

21. 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 act 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.

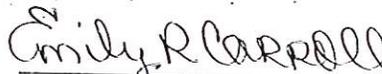
LICENSEE



Mary's Nails
Vuong Bui, Owner

Date 3-1-13

BOARD



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

Date 3/1/2013

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