

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER
EXAMINERS AND HOUSE OF CUTS, PHILLIP J. CARTER, OWNER**

Come now House of Cuts, Phillip J. Carter, 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 barber operator license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, 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 he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges 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 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 him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him 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 him.

Licensee acknowledges that he has received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline his 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 operator license, numbered 010369 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2010 and Chapters 328 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 2000, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee does not have a current or valid barber establishment license with the Board for House of Cuts. House of Cuts is located at 2019 Redman Road, St. Louis, Missouri 63138.

3. Licensee holds a barber license issued by the Board License No. 010369. Licensee's Missouri barber license was at all times relevant herein, and is now, current and active.

4. On or about April 2, 2010, the Board conducted a routine inspection of House of Cuts. The inspection noted the following violation: unlicensed establishment in operation in violation of Chapter 328.115, RSMo and 20 CSR 2085-10.010. A violation notice was sent to Licensee on April 20, 2010.

5. On or about April 23 and 29, 2010; May 14, 20, 25, 27 and 28, 2010; June 2, 3, 4, 9, 11, 14, 17, 22, 23 and 25, 2010; and July 2 and 9, 2010, the Board attempted to conduct a follow up inspection of House of Cuts. On all the dates listed in this paragraph, House of Cuts was closed and unavailable for inspection.

6. On or about July 22, 2010, the Board conducted an inspection of House of Cuts. The inspection noted the following violation: unlicensed establishment in operation in violation of Chapter 328.115, RSMo and 20 CSR 2085-10.010.

7. Section 328.115 RSMO states, in relevant part:

1. The owner of very establishment in which the occupation of barbering is practiced shall obtain a license for such establishment issued by the board before barbering is practiced therein. A new license shall be obtained for a barber establishment within forty-five days when the establishment changes ownership or location. The state inspector shall inspect the sanitary condition required for licensure, established under subsection 2 of this section, for an establishment that has changed ownership or location without requiring the owner to close business or deviate in any way from the establishment's regular hours of operation.

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

(1) (C) No establishment shall open in Missouri until the board receives a completed application, on a form supplied by the board, the biennial establishment fee is paid, the establishment passes a board inspection,

and the application is approved by the board. If an establishment opens for business before the board issues the original establishment license, a delinquent fee shall be assessed in addition to all other required licensure fees, and the board may take legal action pursuant to Chapter 328 and/or 329, RSMo.

9. As a result of the violations, as described above in paragraphs 4 through 6, Phillip J. Carter violated chapter 328, RSMo and lawful regulations adopted pursuant to chapter 328, RSMo as described above in paragraphs 7 through 8 for which the Board has cause to take disciplinary action against Licensee's license.

10. Cause exists for the Board to take disciplinary action against Licensee's establishment license under § 328.150.2(6), (7) and (13) 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;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license . . . ;

...

(13) Violation of any professional trust or confidence[.]

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 2000:

1. The terms of discipline shall include that the Licensee's barber operator license, license number 010369, 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 barbering under Chapter 328, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

I. SPECIFIC REQUIREMENTS

- A. Licensee shall not personally offer to provide or provide services unless and until Licensee obtains an establishment license from the Board pursuant to Chapter 328 or 329, RSMo, and pays all applicable licensing fees including any delinquency fees.
- B. Licensee shall employ only individuals licensed by the Board pursuant to Chapter 328 or 329, RSMo. All employees not currently holding a license shall obtain an operator license from the Board within thirty (30) days of the 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 he 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 his 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 Chapters 328 and 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 his license(s) 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 himself from the state of Missouri, ceases to be currently licensed under provisions of Chapters 328 and 329, or fails to advise the Board of his 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 § 328.150.3, RSMo.
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his 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 Chapters 328 and 329, RSMo, by Licensee not specifically mentioned in this document.

2. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 328, 329, 610, and 324, RSMo.

3. 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.

4. Licensee, together with his heirs and assigns, and his 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.

5. 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.

6. 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.

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LICENSEE

BOARD

Phillip J. Carter

House of Cuts
Phillip J. Carter, Owner

Date 6-28-11

Emily R. Carroll

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

Date 7/8/2011

RECEIVED

JUL - 5 2011

Missouri Board of Cosmetology
& Barber Examiners