

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND DERRICK MCKAY, DERRICK MCKAY, OWNER

Come now Derrick McKay, Derrick McKay, 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 establishment license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ 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 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 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 barber establishment license, numbered 2013044928 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621, 328 and 329, RSMo.

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

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 barber rental shop license issued by the Board, license No. 2013044928 for Derrick McKay, located at 1724 Olive, St. Louis, Missouri. Licensee's Missouri barber rental shop license is now current and active. Licensee also holds a current and active barber operator license, license number 009566.

3. On or about October 16, 2012, the Board's inspector conducted an inspection of Shack's Beauty Shop located at 1724 Olive, St. Louis, Missouri. The shop was open and offering services. Licensee was not present at the time of the inspection but Licensee's barber operator license was current and active and posted in plain view. The Board's inspection revealed the following violations: Licensee did not have a barber shop license in violation of Section 328.115, RSMo, and 20 CSR 2085-10.010. The inspection report also instructed Licensee to apply for a barber rental license within two weeks. On or October 29, 2012, the Board sent Licensee a violation notice regarding the October 16, 2012 inspection.

4. On or about May 24, 2013, the Board's inspector conducted an inspection of Shack's Beauty Shop located at 1724 Olive, St. Louis, Missouri. The shop was open and offering services. Licensee was not present at the time of the inspection but Licensee's barber operator license was current and active and posted in plain view. The Board's inspection revealed the following violations: Licensee did not have a barber shop license in violation of Section 328.115, RSMo, and 20 CSR 2085-10.010. On or June 7, 2013, the Board sent Licensee a violation notice regarding the May 24, 2013 inspection.

5. On or about July 10, 2013, the Board's inspector conducted an inspection of Shack's Beauty Shop located at 1724 Olive, St. Louis, Missouri. The shop was open and offering services. Licensee was not present at the time of the inspection but Licensee's barber operator license was current and active and posted in plain view. The Board's inspection revealed the following violations: Licensee did not have a barber shop license in violation of Section 328.115, RSMo, and 20 CSR 2085-10.010. The inspection report also stated that if Licensee did not obtain the shop rental license by the next inspection, he may be fined \$100 for providing

services without an shop license. On or July 31, 2013, the Board sent Licensee a violation notice regarding the July 10, 2013 inspection.

6. On or about September 6, 2013, the Board's inspector conducted an inspection of Shack's Beauty Shop located at 1724 Olive, St. Louis, Missouri. The shop was open and offering services. Licensee was present at the time of the inspection and Licensee's barber operator license was current and active and posted in plain view. The Board's inspection revealed the following violations: Licensee did not have a barber shop license in violation of Section 328.115, RSMo, and 20 CSR 2085-10.010. The inspection report also stated that Licensee informed the inspector he had sent the shop license paperwork to the Board. On or September 24, 2013, the Board sent Licensee a violation notice regarding the September 6, 2013 inspection.

7. On or about November 6, 2013, the Board's inspector conducted an inspection of Shack's Beauty Shop located at 1724 Olive, St. Louis, Missouri. The shop was open and offering services. Licensee was present at the time of the inspection. Licensee's barber operator license was not current and active but was posted in plain view. The Board's inspection revealed the following violations: Licensee did not have a barber shop license in violation of Section 328.115, RSMo, and 20 CSR 2085-10.010 and Licensee did not have a current and active barber operator license in violation of 20 CSR 285-10.010. On or December 13, 2013, the Board sent Licensee a violation notice regarding the November 6, 2013 inspection.

8. On or about December 18, 2013, the Board's inspector conducted an inspection of Derrick McKay located at 1724 Olive, St. Louis, Missouri as a new barber shop. The shop was open and offering services. Licensee was present at the time of the inspection. Licensee's barber operator license was not current and active but was posted in plain view. The Board's inspection revealed the following violations: Licensee did not have a current and active barber operator license in violation of 20 CSR 285-10.010. The inspection report also approved Derrick McKay to begin operating as a new barber rental shop.

9. On or about January 16, 2014, the Board's inspector conducted an inspection of Derrick McKay located at 1724 Olive, St. Louis, Missouri. The shop was open and offering services. Licensee was present at the time of the inspection. Licensee's barber operator license was not current and active but was posted in plain view. The Board's inspection revealed the following violations: Licensee did not have a current and active barber operator license in violation of 20 CSR 285-10.010. On or January 28, 2014, the Board sent Licensee a violation notice regarding the January 16, 2014 inspection.

10. Section 328.115.3, RSMo, states, in relevant part:

The license shall be kept posted in plain view within the barber establishment at all times.

11. Regulation 20 CSR 2085-5.040(2) 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 barber 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. An application for renewal of licensure; and
2. The current renewal fee and the reinstatement fee, as set forth in 20 CSR 2085-3.010.

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

(1) New Barber Establishments or Cosmetology Establishments.

...

(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.

...

(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.

13. As a result of the violations, as described above in paragraphs 4 through 9, Licensee violated chapter 328, RSMo, and lawful regulations adopted pursuant to chapter 328, RSMo, as described above in paragraphs 10 through 13 for which the Board has cause to take disciplinary action against Licensee's barber rental shop license.

14. Cause exists for the Board to take disciplinary action against Licensee's barber rental shop license under § 328.150.2(6), 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[.]

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:

15. The terms of discipline shall include that the barber shop license, license number 2013044928, 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. 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 January 1, 2015.

- 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 § 329.140.3, 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.

16. 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.

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 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

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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:
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 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

Derrick McKay
Derrick McKay
Derrick McKay, Owner

Date 7/8/14

BOARD

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

Date 7/16/2014

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Missouri Board of Cosmetology
& Barber Examiners