

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER
EXAMINERS AND METRO, NICOLE KRISTINE DUMM, OWNER

Come now Metro, Nicole Kristine Dumm, 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 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 she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to present evidence on her 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 her and, subsequently, the right to a disciplinary hearing before the Board at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against her 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 her.

Licensee acknowledges that she has received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline her 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 license, numbered 105629 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.

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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 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 cosmetologist rental space establishment license with the Board for Metro Salon on Main. Metro Salon on Main is located at 136 S Main Street, St. Charles, Missouri 63301.

3. Licensee holds a cosmetologist license issued by the Board License No. 105629. Licensee's Missouri cosmetologist license was at all times relevant herein, and is now, current and active.

4. On or about June 18, 2009, the Board conducted a routine inspection of Metro Salon on Main. The inspection noted the following violation: unlicensed rental space establishment in operation in violation of Chapter 329.045 and 20 CSR 2085-10.010. A violation notice was sent to Licensee on June 30, 2009.

5. On or about July 21, 2009, the Board conducted a follow up inspection of Metro Salon on Main. The inspection noted the following violation: unlicensed rental space establishment in operation in violation of Chapter 329.045 and 20 CSR 2085-10.010. A violation notice was sent to Licensee on September 22, 2009.

6. On or about October 2, 2009, the Board conducted a follow up inspection of Metro Salon on Main. The inspection noted the following violation: unlicensed rental space establishment in operation in violation of Chapter 329.045 RSMo and 20 CSR 2085-10.010. A violation notice was sent to Licensee on November 30, 2009.

7. On or about November 17, 2009, the Board conducted an inspection of Metro Salon on Main. The inspection noted the following violation: unlicensed rental space establishment in operation in violation of Chapter 329.045 RSMo and 20 CSR 2085-10.010.

8. On or about December 31, 2009, the Board conducted an inspection of Metro Salon on Main. The inspection noted the following violations: unlicensed rental space establishment in operation in violation of Chapter 329.045 RSMo and 20 CSR 2085- 10.010; and no photo posted with an operator license in violation of 20 CSR 2085- 10.010. A violation notice was sent to Licensee on February 1, 2010.

9. On or about February 7, 2010, the Board conducted an inspection of Metro Salon on Main. The inspection noted the following violations: unlicensed rental space establishment in operation in violation of

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Chapter 329.045 RSMo and 20 CSR 2085- 10.010; and no operator license posted and no photo posted with operator license in violation of 20 CSR 2085- 10.010. A violation notice was sent to Licensee on March 16, 2010.

10. On or about April 20, 2010, the Board conducted an inspection of Metro Salon on Main. The inspection noted the following violations: unlicensed rental space establishment in operation in violation of Chapter 329.045 RSMo and 20 CSR 2085- 10.010; no operator license posted and no photo posted with the operator license in violation of 20 CSR 2085- 10.010. A violation notice was sent to Licensee on June 1, 2010.

11. On or about June 30, 2010, the Board conducted an inspection of Metro Salon on Main. The inspection noted the following violation: unlicensed rental space establishment in operation in violation of Chapter 329.045 RSMo and 20 CSR 2085- 10.010.

12. Section 329.045 RSMO states, in relevant part:

1. Every establishment in which the occupation of cosmetology is practiced shall be required to obtain a license from the board. Every establishment required to be licensed shall pay to the board an establishment fee for the first three licensed cosmetologists esthetician and/or manicurists, and/or apprentices and an additional fee for each additional licensee. The fee shall be due and payable on the renewal date and, if the fee remains unpaid thereafter, there shall be a late fee in addition to the regular establishment fee or, if a new establishment opens any time during the licensing period and does not register before opening, there shall be a delinquent fee in addition to the regular establishment fee. The license shall be kept posted in plain view within the establishment at all times.

2. A new license shall be obtained for a cosmetology establishment within forty-five days when the establishment changes ownership or location. The state inspector shall inspect the sanitary conditions required for licensure 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.

13. 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.

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...
(2) (B) Applications for an establishment license under this subsection shall be submitted on a form provided by the board and shall comply with the requirements defined in 20 CSR 2085-10.010(1)(A)1.-4.
...

(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.

14. As a result of the violations, as described above in paragraphs 4 through 11, Nicole Kristine Dumm violated chapter 329, RSMo and lawful regulations adopted pursuant to chapter 329, RSMo as described above in paragraphs 12 through 13 for which the Board has cause to take disciplinary action against Licensee's license.

15. Cause exists for the Board to take disciplinary action against Licensee's establishment license under § 329.140.2(6), (7), (10) 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 or allowing any person

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to use his or her certificate of registration or authority, permit, license or diploma from any school;

...

(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[.]

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 cosmetology license, license number 105629, 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 her 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 required 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 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.
- 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.

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- 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 herself from the state of Missouri, ceases to be currently licensed under provisions of Chapters 328 and 329, or fails to advise the Board of her current place of business and residence, the time of her 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 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

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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.

LICENSEE

BOARD

Nicole K. Dumm
Metro Salon on Main
Nicole Kristine Dumm, Owner

Date 7-22-11

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

Date 8/8/2011

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