SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND RANDAL P. FOGGIE

Come now Randal P. Foggie ("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,[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 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 license. Being aware of these rights provided Licensee 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 inspection reports and other documents relied upon by the Board in determining there was cause to discipline Licensee's 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 operator license numbered 2004036024 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621, 328 and 329, RSMo.

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[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 Randal P. Foggie holds a barber operator license, license number 2004036024. The Board originally issued Licensee's barber operator license on December 21, 2004. Licensee's barber operator license was, at all times relevant herein, current and active.

3. Licensee operates a barber rental space at Taylermade Barbershop, located at 5888 Delmar, St. Louis, Missouri. Licensee holds a booth rental establishment license, license number 2012039639, for his booth rental at Taylermade. Licensee's booth rental establishment license, however, expired September 30, 2013 due to non-renewal. Licensee reinstated his booth rental establishment license on March 17, 2015. However, as discussed below, Licensee offered and performed barber services without a current and active barber establishment license.

4. On or about October 3, 2014, the Board's inspector conducted an inspection at Taylermade Barber Shop. Licensee was present at the time of the inspection. Licensee's barber operator license was posted in public view and was current and active. The Board's inspection revealed the following violation: Licensee did not have a current and active rental space establishment license for the current location in violation of § 328.115, RSMo, and 20 CSR 2085-10.010. On or about October 14, 2014, the Board sent Licensee a violation notice regarding the October 3, 2014 inspection.

5. On or about December 19, 2014, the Board's inspector conducted an inspection at Taylermade Barber Shop. Licensee was present at the time of the inspection. Licensee's barber operator license was posted in public view and was current and active. The Board's inspection revealed the following violation: Licensee did not have a current and active rental space establishment license for the current location in violation of § 328.115, RSMo, and 20 CSR 2085-10.010. On or about December 30, 2014, the Board sent Licensee a violation notice regarding the December 19, 2014 inspection.

6. On or about January 30, 2015, the Board's inspector conducted an inspection at Taylermade Barber Shop. Licensee was not present at the time of the inspection. Licensee's barber operator license was posted in public view and was current and active. The Board's inspection revealed the following violation:

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Licensee did not have a current and active rental space establishment license for the current location in violation of § 328.115, RSMo, and 20 CSR 2085-10.010. On or about February 13, 2015, the Board sent Licensee a violation notice regarding the January 30, 2015 inspection.

7. Section 328.115, RSMo, states, in relevant part:

> 1. The owner of every 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 conditions 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:

> ...
>
> (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.
>
> (4) Renewals and Reinstatements.
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> ...
>
> (B) Reinstatement of License. The holder(s) of an establishment license which has not been renewed by the renewal date shall be required to submit a late fee in addition to the biennial renewal fee in order to reinstate the license. The holder(s) of the establishment license who continues to operate although the license has not been renewed shall be subject to disciplinary action for operating an unlicensed establishment if the establishment license is not reinstated within fourteen (14) days following the mailing of a notice to the holder(s) or sixty (60) days from the renewal deadline, whichever is later, for operating an establishment without a license.

9. As a result of the violations, as described above in paragraphs 3 through 6, Licensee violated chapter 328, RSMo, and lawful regulations adopted pursuant to chapters 328 and 329, RSMo, as described above in paragraphs 7 and 8, for which the Board has cause to take disciplinary action against Licensee's barber operator license.

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10. Cause exists for the Board to take disciplinary action against Licensee's operator license under § 328.150.2(6) and (7), 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 to use his or her certificate of registration or authority, permit license or diploma from any school[.]

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:

11. The terms of discipline shall include that Licensee's barber operator license, license number 2004036024, 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 Licensee 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, 2015.

C. Licensee shall keep the Board apprised of Licensee's 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 Licensee's 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.

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F. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapters 328 and 329, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's 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 Licensee's 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.

12. 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.

13. 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.

14. Licensee, together with Licensee's heirs and assigns, and Licensee's 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.

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15. 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.**

16. 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 fact 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

Randal P. Foggie

Date_____

BOARD

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

Date 5/7/2015

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