

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND  
BARBER EXAMINERS AND SAMANTHA HUYNH d/b/a NAIL ART**

Come now Nail Art, Samantha Huynh, 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 manicuring operator license, license number 2003030194, and establishment license for Nail Art, license number 2010004663, will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo, 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<sup>1</sup>.

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 manicuring operator license,

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<sup>1</sup> All statutory references are to the revised statutes of Missouri, as amended, unless otherwise indicated.

license number 2003030194 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 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, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee has a current and valid cosmetologist establishment license with the Board for Nail Art, license number 2010004663. Nail Art is located at 9162 Overland Plaza, Overland, Missouri 63114.

3. Licensee has a current and valid manicuring operator license, license number 2003030194.

4. On or about September 2, 2011, the Board conducted an inspection of Nail Art. The inspection noted the following violations; operator licenses not current or posted in violation of 20 CSR 2085-10.010; unlicensed person offering or performing cosmetology services in violation of Section 329.045 and 20 CSR 2085-10.060; all implements were not properly cleaned after each use in violation of 20 CSR 2085-11.020 and credo blades were present in violation of 20 CSR 2085-11.020. A violation notice was sent to Licensee on October 18, 2011.

5. On or about October 27, 2011, the Board conducted an inspection of Nail Art. The inspection noted the following violations; operator licenses not current or posted in violation of Section 329.045 and 20 CSR 2085-10.010; establishment license needs increased by two (2) additional operators in violation of 20 CSR 2085-10.050 and implements were not properly cleaned and/or stored in violation of 20 CSR 2085-11.020. A violation notice was sent to Licensee on November 30, 2011.

6. On or about December 14, 2011, the Board conducted an inspection of Nail Art. The inspection noted the following violations; establishment license needs increased by one (1) additional operator in violation of 20 CSR 2085-10.050 and credo blades were present in violation of 20 CSR 2085-11.020.

7. 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.

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. Regulation 20 CSR 2085-10.060 states, in relevant part:

(1) Pursuant to Chapters 328 and 329, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permit holder is an employee of the establishment or holds a current and active renter establishment license issued by the board.

(2) License Posted. Every licensed barber and cosmetologist shall post a current license issued by the Board in front of the barber's working chair or the cosmetologist's work station where it shall be readily seen by all patrons.

(3) Prohibited Practices Within An Establishment. In a license establishment, only persons properly licensed by the Board shall be allowed to perform barbering, hairdressing, manicuring, or esthetician services on any person within the establishment. The provisions of this section shall apply even if services are being provided for no compensation. For purposes of this section, barbering, hairdressing, manicuring, or esthetician services shall be defined as follows:

(C) "Hairdressing"—Arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching, tinting, coloring, or similar work upon the hair of any person by any means; or removing superfluous hair from the body of any person by means other than electricity, or any other means of arching or tinting eyebrows or tinting eyelashes. Hairdressing also includes any person who either with the person's hands or with mechanical or electrical apparatuses or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams engages for compensation in any one (1) or any combination of the following: massaging, cleaning, stimulating, manipulating, exercising, beautifying, or similar work upon the scalp, face, neck, arms, or bust[.]

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

(2) Sanitation Requirements.

(A) Protection of the Patron.

1. Headrests shall be covered with a clean towel or paper protector for each usage.
2. Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens.
3. Soiled towels shall be placed in a closeable, leakproof container immediately upon completion of use.

4. A new laundered towel or neck strip shall be placed around each patron's neck to prevent cape or hair cloth from touching skin[.]

11. Regulation 20 CSR 2085-10.050 states, in relevant part:

(1) The minimum biennial fee for a cosmetology establishment shall license the establishment for up to three (3) operators, including apprentices, students with temporary permits, or both. An additional fee is required for each additional operator working in the establishment. If at any time during the license period the number of operators working in the establishment exceeds the number of operators for which the establishment is licensed, it is the responsibility of the holder(s) of the establishment license to submit written notification to the board along with the fee for each additional operator.

12. As a result of the facts described in paragraphs 4 through 6, licensee violated chapter 329, RSMo and lawful regulations adopted pursuant to chapter 329, RSMo as described above in paragraphs 7 through 11 for which the Board has cause to take disciplinary action against the Licensee's license.

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

...

(10) Assisting or enabling any person to practice or offer to practice any Professional 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.

14. The terms of discipline shall include that Licensee's manicuring operator license, license number 2003030194, and establishment license for Nail Art, license number 2010004663, be **SUSPENDED** for a period of two (2) days, to be served on June 2, 2013 and June 3, 2013, and to 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 Licensee adheres to all of the terms of this Licensee Settlement Agreement, including the specific and general requirements set forth below.

I. SPECIFIC REQUIREMENTS:

- a. Licensee shall cease offering or performing cosmetology services unless services are provided by a licensed individual.

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 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 January 1, 2013.
- 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 Chapter 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 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 Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapter 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 § 329.140.3, 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 Chapter 329, RSMo, by Licensee not specifically mentioned in this document.
15. 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.
16. 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.
17. 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.
18. 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.

19. 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



Nail Art  
Samantha Huynh, Owner

Date 5/29/13

BOARD



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

Date 5/30/2013