

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND GEROLD NAVE

Come now Gerold Nave ("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 licenses, 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 operator license, numbered 2003003949 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, Gerold Nave, holds a barber operator license, license number 2003003949. The Board issued Licensee's barber operator license on February 20, 2003. Licensee's barber operator license is, and was at all times herein, current and active.

3. Licensee operates a booth at Cut Creators, located at 13135 New Halls Ferry Road, St. Louis, Missouri. Licensee has been operating the booth rental, as described below, without a current and active barber booth rental establishment license.

4. On or about February 2, 2012, the Board's inspector inspected Cut Creations. Licensee was not present at the time of the inspection. However, based on the inspection, Licensee provided services at his booth at Cut Creations. Cut Creations was open and offering services. The Board's inspection revealed the following violations: Licensee had no current booth rental establishment license and it was not posted in plain view in violation of § 328.115, RSMo, and 20 CSR 2085-10.010.

5. On or about March 30, 2012, the Board's inspector inspected Cut Creations. Licensee was not present at the time of the inspection. However, based on the inspection, Licensee provided services at his booth at Cut Creations. Cut Creations was open and offering services. The Board's inspection revealed the following violations: Licensee had no current booth rental establishment license and it was not posted in plain view in violation of § 328.115, RSMo, and 20 CSR 2085-10.010.

6. On April 17, 2012, the Board sent Licensee a violation notice. The violation notice included a booth rental establishment license application. The violation notice also informed Licensee it was unlawful to operate the shop without an establishment license.

7. On or about May 10, 2012, the Board's inspector inspected Cut Creations. Licensee was not present at the time of the inspection. However, based on the inspection, Licensee provided services at his booth at Cut Creations. Cut Creations was open and offering services. The Board's inspection revealed the following violations: Licensee had no current booth rental establishment license and it was not posted in plain view in violation of § 328.115, RSMo, and 20 CSR 2085-10.010.

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8. On May 30, 2012, the Board sent Licensee a violation notice. The violation notice informed Licensee it was unlawful to operate the shop without an establishment license.

9. On or about July 6, 2012, the Board's inspector inspected Cut Creations. Licensee was not present at the time of the inspection. However, based on the inspection, Licensee provided services at his booth at Cut Creations. Cut Creations was open and offering services. The Board's inspection revealed the following violations: Licensee had no current booth rental establishment license and it was not posted in plain view in violation of § 328.115, RSMo, and 20 CSR 2085-10.010.

10. On July 25, 2012, the Board sent Licensee a violation notice. The violation notice informed Licensee it was unlawful to operate the shop without an establishment license.

11. On or about August 24, 2012, the Board's inspector inspected Cut Creations. Licensee was not present at the time of the inspection. However, based on the inspection, Licensee provided services at his booth at Cut Creations. Cut Creations was open and offering services. The Board's inspection revealed the following violations: Licensee had no current booth rental establishment license and it was not posted in plain view in violation of § 328.115, RSMo, and 20 CSR 2085-10.010.

12. On September 11, 2012, the Board sent Licensee a violation notice. The violation notice included a booth rental establishment license application. The violation notice also informed Licensee it was unlawful to operate the shop without an establishment license.

13. Section 328.020, RSMo, states, in relevant part:

It shall be unlawful for any person to practice the occupation of a barber in this state, unless he or she shall have first obtained a license, as provided in this chapter.

14. Section 328.080, RSMo, states, in relevant part:

1. Any person desiring to practice barbering in this state shall make application for a license to the board and shall pay the required barber examination fee.

2. The board shall examine each qualified application and, upon successful completion of the examination and payment of the required license fee, shall issue the applicant a license authorizing him or her to practice the occupation of barbering in this state[.]

15. 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 there. A new license

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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.

16. 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.

(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.

17. 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 reenter establishment license issued by the board.

18. As a result of the violations, as described above in paragraphs 4 through 11, Licensee violated chapter 328, RSMo, and lawful regulations adopted pursuant to chapter 328, RSMo, as described above in paragraphs 12 through 17 for which the Board has cause to take disciplinary action against Licensee's barber operator license.

19. Cause exists for the Board to take disciplinary action against Licensee's operator license under § 328.150.2(6), (7) and (10), RSMo, which states in pertinent part

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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;

...

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under 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:

20. The terms of discipline shall include that Licensee's barber operator license, license number 2007006778, 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 offer to provide or provide services at Cut Creator unless and until Licensee obtains a booth rental establishment license from the Board pursuant to Chapters 328, RSMo. Licensee shall obtain the booth rental establishment license for Cut Creator from the Board within thirty (30) days of the effective date of this settlement agreement. Licensee shall cease and desist from offering or providing services at Cut Creator until Licensee obtains a booth rental establishment license for Cut Creator. Licensee shall pay any delinquency fees owed to the Board.

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

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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 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.

21. 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.

22. 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.

23. 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, of from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for

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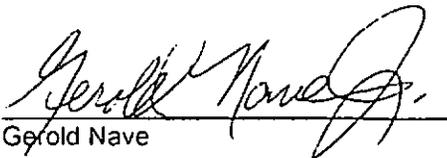
attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The 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.

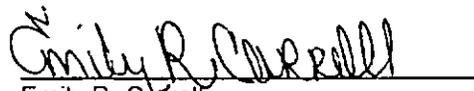
24. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the 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.

25. 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


Gerold Nave


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

Date December 10, 2012

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Date 12/11/2012

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