

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND NEW NAILS 2000, DIEM NGUYEN, OWNER

Come now New Nails 2000, Diem Nguyen, 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 establishment license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo¹, 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 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 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the investigative report 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 establishment license, numbered 2009000434 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

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¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated. Missouri Board of Cosmetology & Barber Examiners

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 cosmetology establishment license issued by the Board on or about January 9, 2009, License No. 2009000434 for New Nails 2000. New Nails 2000 is located at 12500 East US 40 Highway, Independence, Missouri. Licensee's establishment license is now current and active.

3. On or about September 27, 2012, the Board received a complaint regarding New Nails 2000. The complainant alleged that he went into the salon on June 10, 2012 and informed them that he was severe diabetic with no feeling in his feet. The complainant alleged that the operator cut the complainant and it bled. He stated that the manager came with antiseptic to stop the bleeding. The complainant stated he went to his general practitioner on June 12, 2012 to treat the infection he developed at the site of the cut. The general practitioner referred the complainant first to a podiatrist and then to a heart doctor as a result. The complainant was hospitalized as a result of the cut.

4. On or about October 29, 2012, the Board's inspector conducted an inspection of New Nails 2000. The Board's inspector identified no violations during the inspection.

5. On or about January 4, 2013, the Board invited both the complainant and Licensee to attend its regularly scheduled board meeting to discuss the complaint. The complainant and his legal counsel met with the Board by telephone on January 27, 2013. Licensee did not appear in person or by legal counsel.

6. On or about January 31, 2013, the Board's inspector conducted an inspection of New Nails 2000. *New Nails 2000 was open for business and offering services. The Board inspector identified the following sanitation violations at New Nails 2000 all in violation of 20 CSR 2085-11.020: the nail implements were in dirty drawers and operators had used nail files at their stations; the nail tables were dirty and the cushions for the clients were torn and in need of repair or replacement; the nail tables needed to be cleaned inside and out; the carpet around the nail stations was full of dust and debris; and the drawers in the stations needed to be cleaned and sanitized. The inspection report stated that New Nails 2000 was undergoing remodeling at the time of the inspection.* On or about February 21, 2013, the Board sent Licensee a Violation Notice following the inspection.

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7. On or about February 1, 2013, the Board sent a copy of the complaint to Licensee for a response to the allegations in the complaint.

8. On or about February 25, 2013, the Board received Licensee's response to the complaint. Licensee stated that "there were no incidences that occurred during the course of the pedicure. The customer paid and left the salon, leaving the impression he was happy with the service." He stated that two days later, the complainant came back to the salon and asked the staff to repair two artificial nails on one of his hands. Licensee stated that "the nails were repaired for no charge and the customer left leaving the impression he was happy with the service." Finally, Licensee stated the complainant returned and asked to speak to the owner or manager. Staff informed the complainant that the owner was not in the building but they would set up an appointment for the complainant to meet with him. Staff provided the complainant a business card with the owner's contact information. The complainant stated that he wanted New Nails 2000 to pay for the treatment of his toes. Licensee stated that at that time the complainant began "to speak loudly, pace around the salon, cursing." Licensee stated that the complainant said "I've already shut one shop down, I can shut you down." Licensee stated the complainant also stated he was a licensed cosmetologist and "knew what should happen." Licensee stated that other customers in the salon encouraged staff to call the police because the complainant's behavior was "scaring them." Licensee stated he left shortly thereafter and has not contacted them again.

9. On or about March 6, 2013, the Board's inspector conducted an inspection at New Nails 2000. New Nails 2000 was open and offering services. The Board inspector identified one sanitation violation in violation of 20 CSR 2085-11.020: the arm rests which were torn and in need of repair had been ordered by Licensee. The inspection report stated all other violations had been corrected, the shop was still in the process of remodeling and it would be finished in two to four weeks. On or about March 7, 2013, the Board sent Licensee a Violation Notice following the inspection.

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

(1) *Physical Facilities.*

...
(B) Floors, Walls, Ceilings, Equipment and Contents. For areas where all classified occupations of cosmetology are practiced, including retail cosmetic sales counters, all floors, walls, ceilings,

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equipment and contents shall be constructed of washable materials and must be kept clean and in good repair at all times.

(2) Sanitation Requirements.

...

(D) Disinfecting and Storing Implements. All implements (instruments or tools) used in cosmetology establishments and schools, including scissors, clips, blades, rods, brushes, combs, etc. shall be thoroughly cleansed after each use. All implements which may come in contact directly or indirectly with the skin of the patron shall be disinfected with an Environmental Protection Agency (EPA) - registered disinfectant, which may be a spray solution. The label on the disinfectant shall show that it is EPA-registered with demonstrated bactericidal (disinfectant), virucidal, and fungicidal activity and shall be used according to the manufacturer's instructions. All implements shall be completely immersed in the solution, or, if not capable of immersion, thoroughly dipped in the solution for a period of not less than five (5) minutes. Implements shall either be stored in the solution or removed and stored in a dust-tight cabinet, covered container or drawer at all times when not in use. The dust-tight cabinet, covered container or drawer shall be kept free of other items not capable of being disinfected. Implements shall be permitted to air dry;

...

(I) Covered Waste Receptacles. Any cosmetology establishment or school shall be required to have covered waste receptacles for the disposal of hair and nail clippings. Hair and nail clippings shall be swept up and disposed of in a covered waste receptacle after each patron.

11. As a result of the sanitation violations, as described above in paragraphs 3 through 9 above, in violation of the regulations contained in paragraph 10, New Nails 2000 violated lawful regulations adopted pursuant to chapter 329, RSMo and failed to properly guard against contagious, infections or communicable diseases or the spread thereof for which the Board has cause to take disciplinary action against Licensee's establishment license.

12. Cause exists for the Board to take disciplinary action against Licensee's establishment license under § 329.140.2(6) and (15), 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

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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;

...

(15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.

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:

13. The terms of discipline shall include that the cosmetology establishment license 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 Settlement Agreement.

I. **SPECIFIC REQUIREMENTS**

- A. Licensee shall correct all sanitation violations from the March 6, 2013 inspection report within 30 days of the date of execution of this Agreement.
- B. Licensee and all staff of New Nails 2000 shall attend the next available sanitation workshop offered by the Board. Licensee shall be responsible for contacting the Board to determine the date of the next workshop and ensuring that he and his employees attend the workshop.

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, 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 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 Licensee's license(s) and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license(s) 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 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.

14. 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 329, 610, 324, RSMo.

15. 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.

16. 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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17. 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.

18. 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

Diem Nguyen
New Nails 2000
Diem Nguyen, Owner
Date 8/5/13

Emily R. Carroll
Emily R. Carroll,
Executive Director
Missouri Board of Cosmetology and Barber Examiners
Date 5/16/2013

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