

**SETTLEMENT AGREEMENT BETWEEN THE STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS AND NINH NGUYEN**

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Ninh Nguyen ("Nguyen"), and the State Board of Cosmetology and Barber Examiners ("Board") enter into this Settlement Agreement ("Agreement") for the purpose of resolving the question of whether Nguyen's manicuring license, license no. 2005011075 ("License"), will be subject to discipline. Pursuant to § 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri, and additionally, the parties hereto waive the right to a disciplinary hearing before the Board under § 621.110, RSMo. Nguyen and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMO.

Nguyen acknowledged that he understands the various rights and privileges afforded by law, including the right to a hearing of the claims against him; the right to appear and be represented by legal counsel; the right to have all claims 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 behalf at the hearing; the right to ruling on questions of law by the Administrative Hearing Commission; the right to a decision based upon the record of the hearing by a fair and impartial Administrative Hearing Commission concerning the claims pending against him; the right to a disciplinary hearing before the Board at which time Nguyen or his attorney may present evidence in mitigation of discipline; the right to a claim for attorney's fees and expenses; and the right to obtain judicial review of the decision of the Administrative Hearing Commission and the Board. Being aware of these rights provided to him by law, Nguyen knowingly and voluntarily waives each and every one of these rights and

freely enters into this Agreement and agrees to abide by the terms of the this document as those terms pertain to him.

Nguyen acknowledges that the Board and its attorney followed the procedure enumerated in § 621.045, RSMo, including, but not limited to providing Nguyen with a written description of the specific conduct for which discipline is sought and citations to the law and rules violated, together with copies of any documents which form the basis thereof.

For the purpose of settling this dispute, Nguyen stipulates his license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Nguyen in Part II herein is based only on the agreed upon stipulation of facts and conclusions of law set out in Part I herein. Nguyen understands that the Board may take further disciplinary action against his license based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

Based upon the foregoing, the Board and Nguyen stipulates to the following:

I.

JOINT STIPULATION OF FACTS & CONCLUSIONS OF LAW

1. The Missouri Board of Cosmetology and Barber Examiners("Board") is an agency of the State of Missouri, created and existing pursuant to § 329.015, RSMO, for the purpose of executing and enforcing the provision for Chapters 328 and 329, RSMo.
2. Nguyen is licensed by the Board, holding a manicuring license no. 2005011075 ("license").
3. Nguyen's Class MO license was at all relevant times current and active.

4. On or about August 11, 2006, the Board's inspector conducted an inspection of Nguyen's cosmetology establishment "Jade Nails" and discovered Nguyen failed to keep the pedicure spa drains clean, in violation of §§ 329.140.2(5)(13)(15), RSMo, Board rule rule 20 CSR 2090-11.010(1)(B), and rule 20 CSR 2090-11.010(2)(A)(D)(H).

5. On or about March 23, 2007 and April 27, 2007, the Board conducted a follow-up inspection of Nguyen's cosmetology establishment and discovered Nguyen failed to comply with the sanitation rules for his shop, in violation of §§ 329.140.2(5)(13)(15), RSMo, Board rule 20 CSR 2090-11.010(1)(B), and rule 20 CSR 2090-11.010(2)(A)(D)(H):

- a. Implements and instruments were dirty and needed to be sanitized.
 - b. Floors needed to be cleaned from hair.
 - c. Manicure tables needed cleaning.
 - d. Waxing services were being provided without a proper license.
6. Cause exists to discipline Nguyen's license pursuant to § 329.140.2, RSMo states,

in part:

2. 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:

- (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
 - (13) Violation of any professional trust or confidence.
 - (15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.
3. Parties stipulate Nguyen violated Chapter 329, RSMo., in the following ways:
- a. Nguyen engaged in misconduct as prohibited by 329.140.2(5) by failing to comply with the sanitation rules and regulations.
 - b. Nguyen violated professional trust and confidence by offering waxing services for which he was not licensed to offer.
 - c. Nguyen failed to properly guard against contagious, infectious or communicable diseases or the spread thereof by failing to comply with the sanitation rules and regulations.

II.

JOINTLY AGREED UPON DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered into by the Board in this matter under the authority of § 329.140, 536.060, 621.045.3, and 621.110, RSMo.

- 1. Nguyen's license no. 2005011075, shall be suspended for two (2) weeks based on Mr. Nguyen's agreement to serve four (4) years of probation ("disciplinary period"). After

serving the two (2) weeks suspension, Nguyen shall be entitled to offer and perform manicuring services provided Nguyen adheres to all the terms stated herein.

2. Terms and conditions of the disciplinary period are as follows:

A. Nguyen shall keep the Board apprised at all times in writing of his current residential and business addresses and telephone numbers. Nguyen shall notify the Board in writing within ten days of any changes in this information. Nguyen is responsible for ensuring that such notification is received by the Board within the time specified.

B. Nguyen shall timely renew his license when required and shall maintain such license in an active and valid state throughout the disciplinary period, including but not limited to, timely paying all fees required for license renewal.

C. If at any time during the disciplinary period, Nguyen changes residence from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 329, RSMo, fails to timely pay all fees required for license renewal, or fails to keep the Board advised of all current places of residence and business, then the time of absence, unlicensed status, delinquency in paying fees for license renewal, or unknown whereabouts shall not be included in the disciplinary period.

D. Nguyen shall comply with all provision of Chapter 329, RSMo, all rules and regulations of the Board, and all local, state, and federal laws. "State" as used herein refers to the state of Missouri and all other states and territories of the United States.

E. Nguyen shall accept and comply with reasonable unannounced visits from the Board's duly authorized agents to monitor compliance with the terms and conditions stated herein.

F. Nguyen shall submit written reports to the Board on or before January 1 and July 1 during each year of the disciplinary period truthfully stating whether there has been compliance with all terms and conditions of this Agreement. The first such report shall be received by the Board on or before July 1, 2008. Nguyen is responsible for ensuring that the Board receives each report by the date due.

3. Upon the expiration of the probationary period, Nguyen's license shall be fully restored if all requirements of law and the terms and conditions of this Agreement have been satisfied.

4. If any alleged violation of this Agreement occurs during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred. Nguyen agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

5. No additional discipline shall be entered by the Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 329, RSMo.

6. If the Board determines that Nguyen has violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may, in its direction, vacate and set aside the discipline imposed herein and impose such further discipline as the Board deems appropriate and may elect to pursue any lawful remedies or procedures afforded it, and the Board is not bound by this Agreement in its determination of appropriate legal actions concerning such violation.

7. This Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct and its resulting violations by Nguyen of Chapter 329, RSMo, or the regulations promulgated thereunder not specifically mentioned in this Agreement that are either now known by the Board or may be discovered.

8. The parties to this Agreement agree to pay all their own fees and expenses incurred as a result of this case, its investigations, its settlement, and/or litigation.

9. Nguyen, together with his shareholders, partners, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit and forever discharge the Board, its representative members, employees, agents, and attorneys, including former members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated. This includes, but is not limited to, any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case, its investigation, its litigation, its settlement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this Agreement or any portion thereof void or unenforceable.

10. The terms of this Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this 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.

11. The parties to this Agreement understand that the Board will maintain this Agreement as an open and public record of the Board as required by Chapters 329, 610, 620, and 621, RSMo.

12. Nguyen understands that he may, either at the time the Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining his license. If Nguyen desires the Administrative Hearing Commission to review this Agreement, Nguyen may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P. O. Box 1557, Jefferson City, Missouri 65101.

13. If Nguyen has requested review, this Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Agreement sets forth cause for disciplining Nguyen's license. If Nguyen has not requested review, this Agreement becomes effective fifteen (15) days after the document is signed by the Executive Director of the Board.

LICENSEE

X Ninh Nguyen 7/15/08
Date

STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

Darla Fox 7/30/08
Date
Executer Director

Respectfully submitted,

WALKER CROW HALCOMB, L.L.C.

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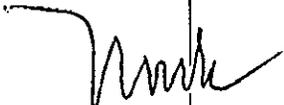
ADDENDUM TO
SETTLEMENT AGREEMENT BETWEEN THE STATE BOARD OF
COSMETOLOGY AND BARBER EXAMINERS AND NINH NGUYEN

II.

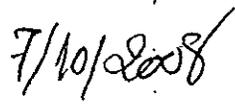
JOINTLY AGREED UPON DISCIPLINARY ORDER

1. Mr. Ninh Nam Nguyen's manicuring license no. 2005011075, as well as the shop license for Jade Nails, # 2006013457, shall be suspended for two (2) weeks based on Mr. Nguyen's agreement to serve four (4) years of probation ("disciplinary period"). After serving the two (2) weeks suspension, Nguyen shall be entitled to offer and perform manicuring services provided Nguyen adheres to all the terms stated herein.

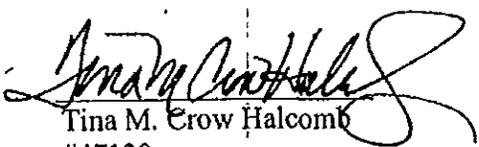
- A. Dates of suspension: the parties agree that Mr. Nguyen's license shall be suspended from the dates of September 22, 2008 to September 29, 2008 and October 20, 2008 to October 27, 2008. The Jade Nails Salon shall close September 22, 2008 and reopen September 29, 2008. The Jade Nails Salon will close again on October 20, 2008 and reopen on October 27, 2008.



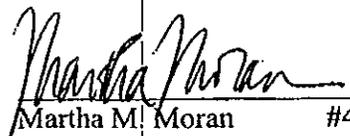
Ninh Nguyen



Date



Tina M. Crow Halcomb
#47120



Martha M. Moran

#42948

**BEFORE THE MISSOURI
STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS**

STATE BOARD OF COSMETOLOGY)
AND BARBER EXAMINERS,)
)
Petitioner,)
)
v.)
)
NINH NGUYEN)
)
Respondent.)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER**

At its regularly scheduled meeting on November 9, 2009, and pursuant to notice described in the Findings of Fact, the Missouri State Board of Cosmetology and Barber Examiners (“Board”) took up the probation violation complaint alleging that Ninh Nguyen (“Nguyen”) failed to comply with the terms of his probation of his class MO manicuring license.

The Board appeared at the hearing through its attorney Tina Crow Halcomb. Ninh Nguyen appeared at the hearing and by counsel Richard Brinkman, Denk & Brinkman, Attorneys at Law. Division of Professional Registration Legal Counsel Earl Kraus served as the board’s legal advisor at the hearing, during deliberations, and in the preparation of this order.

Findings of Fact

1. The Missouri State Board of Cosmetology and Barber Examiners (Board) is an agency of the State of Missouri created and existing pursuant to § 329.015, RSMo,

for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Ninh Nguyen, a natural person, with a current mailing address of Post Office Box 83211, St. Louis, MO 63163, holds a class MO manicuring license, license number 2005001075, and owns and operates Jade Nails, an unincorporated association pursuant to § 1.020(11), RSMo, located at 1455 Chambers Road, St. Louis, Missouri 63135.

3. The Board issued Nguyen a class MO manicurist license, license number 2005011075. Nguyen's class MO manicurist license is, and was at all relevant times, current and active.

4. Nguyen owns and operates Jade Nails, license number 2006013457 as a cosmetology establishment pursuant to § 329.010(6), RSMo. Jade Nails' cosmetology establishment license, license number 2006013457, is and was, at all relevant times, current and active.

5. On or about August 11, 2006, the Board's inspector conducted an inspection of Jade Nails and observed at least one sanitation violation: the pedicure spa needed cleaning.

6. On or about March 23, 2006 and April 27, 2007, the Board's inspector conducted follow-up inspections of Jade Nails and identified several sanitation violations:

- a. Implements and instruments were dirty and needed to be sanitized.
- b. Floors needed to be cleaned from nail clippings.
- c. Manicure tables needed cleaning.
- d. Waxing services were being provided without a proper license.

7. On or about August 21, 2006 and April 11, 2007, the Executive Director of the Board sent violation notices to Respondent stating there were numerous sanitation violations and that waxing services were being provided without the proper license. The notice also identified the specific rules and regulation for the violations as provided in Chapter 329, RSMo, and that if the violations were not corrected, a complaint may be filed against Jade Nails.

8. Nguyen and the Board entered into a Settlement Agreement and Disciplinary Order dated July 31, 2008. Nguyen's class MO manicurist license, number 2005011075 was suspended for two weeks and placed on probation for four years as a result of the violations detailed in paragraphs six and seven above.

9. The July 31, 2008 Settlement Agreement states on page 5, section 2, paragraph D, that as a term and condition of discipline, Jade Nails "shall comply with all provisions of Chapter 329, RSMo, all rules and regulations of the Board, and all local, state and federal laws."

10. On or about April 15, 2009, the Board's inspector conducted a routine inspection of Jade Nails which was open for business.

11. The inspector noted that Jade Nails failed to be licensed for the appropriate number of operators.

12. Nguyen testified at the November 9, 2009 probation violation hearing. Nguyen provided testimony regarding violations alleged in the inspection reports. Nguyen contested the vast majority of violations but admitted the salon had licenses for four operators posted when the salon was only authorized for three licensed operators.

Conclusions of Law

A. The Committee has jurisdiction in this proceeding, pursuant to the July 31, 2008 Order and § 324.042 RSMo, to determine whether Nguyen has violated the terms and conditions of the July 31, 2008 Order for her class MO manicurist license.

B. Section 329.010(4), RSMo, defines, in pertinent part, a cosmetologist as follows:

(4) “Cosmetologist,” any person who, for compensation, engages in the practice of cosmetology, as defined in subdivision (5) of this section[.]

C. Section 329.010(5), RSMo defines, in pertinent part, the practice of cosmetology as follows:

(5) “Cosmetology,” includes performing or offering to engage in any acts of the classified occupations of cosmetology for compensation, which include:

(a) “Class CH-hairdresser,” includes 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;

(b) “Class MO-manicurist,” includes cutting, trimming, polishing, coloring, tinting, cleaning or otherwise beautifying a person’s fingernails, applying artificial fingernails, massing, cleaning a person’s hands and arms; pedicuring, which includes cutting, trimming, polishing, coloring, tinting, cleaning or otherwise beautifying a person’s toenails, massaging, cleaning a person’s legs and feet;

(c) “Class CA-hairdressing and manicuring,” includes all practices of cosmetology, as defined in paragraphs (a) and (b) of this subdivision[.]

D. Section 329.010(6), RSMo, defines, in pertinent part, cosmetology establishment as follows:

(6) "Cosmetology establishment," that part of any building wherein or whereupon any of the classified occupations are practice including any space rented within a licensed establishment by a person licensed under this chapter, for the purpose of rendering cosmetology services[.]

E. Section 329.030, RSMo states:

It is unlawful for any person in this state to engage in the occupation of cosmetology or to operate an establishment or school of cosmetology, unless such person has first obtained a license as provided in this chapter.

F. Section 329.110.1, RSMo states:

The license shall be evidence that the person to whom it is issued is entitled to engage in the practices, occupation or occupations stipulated therein as prescribed by this chapter. The license shall be conspicuously displayed in his or her principal office, place of business, or employment.

G. Regulation 20 CSR 2085-10.050(1) states:

The minimal 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.

H. Regulation 20 CSR 2085-10.010(3)(A) states:

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.

I. Section 324.042 RSMo provides:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

J. Section 329.045.1, RSMo provides:

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[.]

K. Section 1.020(11), RSMo, defines a person as follows:

(11) The word "person" may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations[.]

L. Nguyen violated:

1. Regulation 20 CSR 2085-10.050(1) by not having sufficient licensure for the operators in the establishment;
2. Regulations 20 CSR 2085-10.010(3)(A) and 20 CSR 2085-10.060(2) by failing to appropriately post licenses;

M. Nguyen violated the terms of discipline set forth in the July 31, 2008,

Order, as described in the Findings of Fact of this Order by violating multiple regulations as detailed in paragraph L above.

N. The July 31, 2008 Order and § 324.042 RSMo., allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of July 31, 2008 Order.

O. Jurisdiction and venue are proper before the State Board of Cosmetology and Barber Examiners pursuant to § 324.042, RSMo, which authorizes the Board to impose additional discipline in a disciplinary hearing arising from a probation violation.

Decision and Order

It is the decision of the Missouri State Board of Cosmetology and Barber Examiners that Nguyen has violated the terms of the July 31, 2008, Order, and his class Mo manicuring license is, therefore, subject to further disciplinary action.

The Missouri State Board of Cosmetology and Barber Examiners orders that the class Mo manicuring license for Ninh Nguyen, license number 2005011075, be placed on one additional year of PROBATION. The additional year will conclude July 30, 2013. Nguyen is placed on an additional year of probation subject to the terms and conditions set forth below.

Terms and Conditions

During the aforementioned probation, Nguyen shall be entitled to a class MO manicurist license subject to the following terms and conditions:

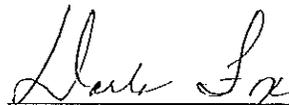
- A. During the disciplinary period, Nguyen shall comply with all provisions of Chapter 329, RSMo (as amended), all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. During the disciplinary period, Nguyen shall keep the Board informed of his current home and work telephone numbers. Nguyen shall notify the Board in writing within ten days (10) of any change in this information.
- C. During the probationary period, Nguyen shall timely renew his class MO manicurist license granted hereby and shall timely pay all fees required for licensure and comply with all other Board requirements necessary to maintain said license in a current and active state.
- D. During the probationary period, Nguyen shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- E. During the disciplinary period, Nguyen shall appear in person for interviews with the Board or its designee upon request.

- F. Nguyen shall submit written reports to the Board on or before January 1 and July 1 during each year of the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Order. The first such report shall be received by the Board on or before January 1, 2010.
- G. If, at any time during the probationary period, Nguyen changes his address from the state of Missouri, or ceases to maintain his class MO manicurist license current or active under the provisions of Chapter 329, RSMo (as amended), or fails to keep the Board advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- H. The Board retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Board. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board as provided by Chapter 536, RSMo (as amended).
- I. Unless otherwise specified by the Board, all reports, documentation, notices, or other materials required to be submitted to the Board shall be forwarded to: Missouri State Board of Cosmetology and Barber Examiners, P.O. Box 1062, Jefferson City, Missouri 65102.
- J. Any failure by Nguyen to comply with any condition of discipline set forth herein constitutes a violation of this Order.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 329, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 9TH DAY OF November, 2009.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Darla Fox, Executive Director