

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

STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS,)	
)	
)	
Petitioner,)	
)	
v.)	Case No. 16-0003
)	
TUYEN NGUYEN,)	
)	
)	
Respondent.)	

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

At its regularly scheduled meeting on July 18, 2016, at approximately 9:00 a.m., 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 Tuyen Nguyen ("Respondent"), has failed to comply with the terms of Respondent's probation of Respondent's "Class MO – manicurist" license, license number 2009003100.

The Board appeared at the hearing through its attorney Jamie Cox. Despite adequate notice, Respondent did not appear at the hearing in person and was not represented by legal counsel. Division of Professional Registration Legal Counsel Thomas Townsend 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. Respondent is a natural person whose address of record for the Board is 424 Ward Avenue, Caruthersville, Missouri 63830.
3. Respondent holds a "Class MO – manicurist" license, license number 2009003100.
4. Respondent's "Class MO – manicurist" license, license number 2009003100 is, and was at all relevant time, current and valid.

5. Respondent operates a cosmetology establishment doing business as Fashion Nails, located at 424 Ward Avenue, Caruthersville, Missouri 63830. Respondent holds establishment license number 2009039743 for this location and the establishment license is current and active.

6. On or about October 17, 2012, Respondent entered into a settlement agreement with the Board, which placed Respondent's "Class MO – manicurist" license, license number 2009003100 on probation for three years for sanitation and licensure violations at Fashion Nails. Respondent's probation was effective as of November 6, 2012 and was to end November 6, 2015.

7. On or about January 27, 2015, Respondent entered into a second Settlement Agreement with the Board, which placed Respondent's "Class MO – manicurist" license, license number 2009003100 on probation for two additional years resulting from violations of the October 17, 2012 Settlement Agreement. Respondent's probation was extended and was to end on or about November 6, 2017.

8. Pursuant to Paragraph II.D., of the January 27, 2015 Settlement Agreement, Respondent was required to comply with all provisions of Chapter 329, RSMo, and Board rules and regulations.

9. Pursuant to Paragraph II.H., of the January 27, 2015 Settlement Agreement, failure of the Respondent to comply with the terms of the agreement, "in any respect", allows the Board to impose such additional or other discipline the Board deems appropriate.

10. On or about October 8, 2015, the Board's inspector conducted an inspection of Fashion Nails which revealed licensure and sanitation issues in violation of § 329.030, RSMo, and 20 CSR 2085-10.010 and 20 CSR 2085-11.020. A violation notice regarding the October 8, 2015 inspection was sent to Respondent on or about October 20, 2015.

11. On or about November 12, 2015, the Board's inspector conducted a follow-up inspection of Fashion Nails which revealed sanitation issues in violation of 20 CSR 2085-11.020. A violation notice regarding the November 12, 2015 inspection was sent to Respondent on or about November 24, 2015.

12. On or about November 23, 2015, a probation violation complaint was filed with the Board against Respondent's "Class MO-manicurist" license.

13. On or about January 25, 2016, a hearing was convened before the Board and although Respondent was duly noticed of the scheduled hearing, Respondent failed to appear.

14. On or about February 29, 2016, the Board issued its Findings of Fact, Conclusions of Law, and Disciplinary Order, which determined that Respondent had violated the terms and conditions of the January 2015 Settlement Agreement and probation with the Board.

15. The February 29, 2016 Disciplinary Order suspended Respondent's "Class MO-manicurist" license for one year, or until the Respondent became compliant with all the provisions of Chapter 329, RSMo, and the Board rules and regulations.

16. The February 29, 2016 Disciplinary Order, at paragraph 17, stated that the Respondent shall not provide cosmetology services during the period of suspension. The February 29th Order also ordered the probationary period as ordered by the October 17, 2012 and January 27, 2015 Settlement Agreements tolled during the term of the suspension. The February 29th Order required that the Respondent's "Class MO-manicurist" license to immediately be placed back on probation at the conclusion of the suspension for the remainder of the disciplinary period and subject to the same terms and conditions set forth in the January 27, 2015 Settlement Agreement.

17. On or about March 22, 2016, the Board's inspector conducted an inspection at Fashion Nails which revealed that Respondent was present and performing services while her license was suspended in violation of paragraph 17 of the February 29, 2016 Disciplinary Order and § 329.030, RSMo, and 20 CSR 2085-10.060. On or about April 8, 2016, Respondent was provided a written notice of violation regarding the finding of the March 22, 2016 inspection.

18. On or about April 12, 2016, the Board's inspector conducted an inspection at Fashion Nails which revealed that Respondent was present and performing services while her license was suspended in violation of paragraph 17 of the February 29, 2016 Disciplinary Order and § 329.030, RSMo, and 20 CSR 2085-10.060. In addition, workstations at Fashion Nails were found not to be clean and dirty implements were also noted, all in violation of 20 CSR 2085-

11.020. On or about April 29, 2016, Respondent was provided a written notice of violation regarding the finding of the April 12, 2016 inspection.

19. On or about May 23, 2016, a violation complaint was filed with the Board alleging Respondent's conduct in continuing to offer to provide and provide cosmetology services while her "Class MO-manicurist" license was suspended was in violation of Chapter 329, RSMo, and Board rules and regulations, and constitutes a violation of Respondent's suspension as ordered in the February 29, 2016 Disciplinary Order, including paragraph 17 of the Disciplinary Order.

20. During the July 18, 2016 hearing, testimony indicated that Respondent, subsequent to the filing of the May 23, 2016 Violation Complaint, had become compliant with the licensing and sanitation issues addressed by the February 29, 2016 Disciplinary Order. As such, the Respondent's suspension, as ordered by the February 29, 2016 Disciplinary Order, ended on or about May 24, 2016. Respondent's tolled probation sprung back into effect on or about May 24, 2016. However, as Respondent continued to work during the period of suspension, Respondent violated the suspension provision of February 29, 2016 Disciplinary Order and is subject to additional discipline.

Conclusions of Law

21. The Board has jurisdiction in this proceeding, pursuant to the February 29, 2016 Disciplinary Order and § 324.042 RSMo, to determine whether Respondent has violated the terms and conditions of the February 29, 2016 Disciplinary Order regarding Respondent's "Class MO – manicurist" license, license number 2009003100, as described in the Findings of Fact of this Order.

22. 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.

23. The February 29, 2016 Disciplinary 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 the February 29, 2016 Disciplinary Order.

Decision and Order

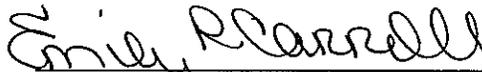
24. Respondent has violated the terms of the February 29, 2016 Disciplinary Order, and that Respondent's "Class MO – manicurist" license, license number 2009003100 is, therefore, subject to further disciplinary action.

25. As Respondent's "Class MO – manicurist" license is already on probation until November 6, 2017, it is the decision of the Board to take no further disciplinary action at this time. Respondent's "Class MO – manicurist" license, license number 2009003100, shall continue to be on **PROBATION** for the remainder of the ordered probationary period and subject to the terms and conditions of the October 17, 2012 and January 27, 2015 Settlement Agreements.

26. 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 21 DAY OF NOVEMBER, 2016.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Emily R. Carroll, Executive Director

5. Respondent operates a cosmetology establishment doing business as Fashion Nails, located at 424 Ward Avenue, Caruthersville, Missouri 63830. Respondent holds establishment license number 2009039743 for this location and the establishment license is current and active.

6. On or about October 17, 2012, Respondent entered into a settlement agreement with the Board, which placed Respondent's "Class MO – manicurist" license, license number 2009003100 on probation for three years for sanitation and licensure violations at Fashion Nails. Respondent's probation was effective as of November 6, 2012 and was to end November 6, 2015.

7. On or about January 27, 2015, Respondent entered into a second Settlement Agreement with the Board, which placed Respondent's "Class MO – manicurist" license, license number 2009003100 on probation for two additional years resulting from violations of the October 17, 2012 Settlement Agreement. Respondent's probation was extended and was to end on or about November 6, 2017.

8. Pursuant to Paragraph II.D., of the January 17, 2015 Settlement Agreement, Respondent was required to comply with all provisions of Chapter 329, RSMo, and Board rules and regulations.

9. Pursuant to Paragraph II.H., of the January 17, 2015 Settlement Agreement, failure of the Respondent to comply with the terms of the agreement, "in any respect", allows the Board to impose such additional or other discipline the Board deems appropriate.

10. On or about October 8, 2015, the Board's inspector conducted an inspection of Fashion Nails which revealed licensure and sanitation issues in violation of section 329.030, RSMo, and 20 CSR 2085-10.010 and 20 CSR 2085-11.020. A violation notice regarding the October 8, 2015 inspection was sent to Respondent on or about October 20, 2015.

11. On or about November 12, 2015, the Board's inspector conducted a follow-up inspection of Fashion Nails which revealed sanitation issues in violation of 20 CSR 2085-11.020.

12. Respondent's conduct is in violation of Chapter 329, RSMo, and Board rules and regulations, and constitutes a violation of his probation and settlement agreement with the Board, including Paragraph II.D. of the agreement.

Conclusions of Law

13. The Board has jurisdiction in this proceeding, pursuant to the January 27, 2015 Settlement Agreement, Paragraph II.H., and § 324.042 RSMo, to determine whether Respondent has violated the terms and conditions of the January 27, 2015 Settlement Agreement regarding his "Class MO – manicurist" license, license number 2009003100, as described in the Findings of Fact of this Order.

14. 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.

15. The January 27, 2015 Settlement Agreement, Paragraph II.H., 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 the January 27, 2015 Settlement Agreement.

Decision and Order

16. It is the decision of the Missouri State Board of Cosmetology and Barber Examiners that Respondent has violated the terms of the January 27, 2015 Settlement Agreement, and that his "Class MO – manicurist" license, license number 2009003100 is, therefore, subject to further disciplinary action.

17. The Missouri State Board of Cosmetology and Barber Examiners orders that Respondent's "Class MO – manicurist" license, license number 2009003100, be **SUSPENDED**, starting the effective date of this Order, for a period of one (1) year, or until Respondent is compliant with all provisions of Chapter 329, RSMo, and Board rules and regulations. During such time of suspension, Respondent shall not provide cosmetology services. During Respondent's suspension, the probationary period ordered pursuant to the January 27, 2015

Settlement Agreement shall be tolled. At the conclusion of the ordered suspension, Respondent's "Class MO – manicurist" license, license number 2009003100, shall be immediately placed back on **PROBATION** for the remainder of the previously ordered probationary period and subject to the terms and conditions of the January 27, 2015 Settlement Agreement.

18. 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 29th DAY OF February, 2016.

MISSOURI STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS



Emily R. Carroll, Executive Director

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND
BARBER EXAMINERS AND FASHION NAILS, TUYEN NGUYEN, OWNER

Come now Fashion Nails, Tuyen 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 operator license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ all statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise, indicated. 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 investigative report 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 cosmetology operator

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

license, numbered 2009003100, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, RSMo, and Chapter 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 holds a cosmetology establishment license issued by the Board, license no. 2009039743 for Fashion Nails. Fashion Nails is located at 424 Ward Ave, Caruthersville, Missouri 63830. Licensee's cosmetology establishment license was at all times relevant herein, and is now, current and active.

3. Licensee holds a cosmetology operator license originally issued by the Board, license number 2009003100. Licensee's cosmetology operator license was at all times relevant herein, and is now, current and active.

4. On or about January 25, 2012, the Board conducted an inspection of Fashion Nails. The inspection identified the following violations: nail implements were unsanitary due to a failure to clean after each use in violation of 20 CSR 2085-11.020(2)(D), floors were unsanitary in violation of 20 CSR 2085-11.020(1)(B), and restroom were unsanitary in violation of 20 CSR 2085-11.020(1)(D). A violation notice was sent to Licensee on March 30, 2012.

5. On or about May 10, 2012, the Board conducted an inspection of Fashion Nails. The inspection identified the following violations: implements were unsanitary due to a failure to clean after each use and no EPA registered disinfectant available in violation of 20 CSR 2085-11.020(2)(D), floors were unsanitary and work stations were unsanitary in violation of 20 CSR 2085-11.020(1)(B), dirty towels were not in closed containers in violation of 20 CSR 2085-11.020(2)(A)(3), and clean towels were not available on each manicuring table in violation of 20 CSR 2085-11.020(2)(A)(2).

6. On or about June 7, 2012, the Board invited Licensee, establishment manager and other employees to attend the sanitation workshop on June 25, 2012.

7. On or about July 6, 2012, the Board conducted an inspection of Fashion Nails. The inspection identified the following violations: no EPA registered disinfectant was available in violation of 20 CSR 2085-11.020(2)(D) and floors were unsanitary and work stations were unsanitary in violation of 20 CSR 2085-11.020(1)(B).

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

(1) Physical Facilities.

...

(1)(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, equipment, and contents shall be constructed of washable materials and must be kept clean and in good repair at all times. Commercial-type carpet may be used.

...

(1)(D) Restrooms. All cosmetology establishments shall provide adequate and conveniently located restrooms, for use by patrons and operators. All schools shall provide two (2) or more restrooms to separately accommodate male and female students. All restrooms shall be provided with, at least, an operating toilet, a functional sink with hot and cold running water, soap (liquid or powder), and individual towels. Floors, walls, ceilings, and fixtures shall be made of washable materials and kept clean and in good repair at all times.

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

(2) Sanitation Requirements.

...

(A)(2) Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens.

...

(A)(3) Soiled towels shall be placed in closeable, leak proof container immediately upon completion of use.

...

(A)(5) Implements and instruments shall be sanitized after use on each patron.

...

(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[.]

10. As a result of the sanitation and licensure violations, as described above in paragraphs 4 through 7, in violation of the laws and regulations contained in paragraphs 8 and 9, Licensee violated chapter 329, RSMo, and the 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 cosmetology operator license.

11. Cause exists for the Board to take disciplinary action against Licensee's cosmetology operator 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 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

12. 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 Licensee's cosmetology license, license number 2009003100 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 through Licensee's cosmetology establishment license 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 above listed inspections within 30 days of the date of execution of this Agreement and keep the establishment clean and comply with all sanitation regulations.

B. Licensee, Tuyen Nguyen, and all employees of Fashion Nails 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 Licensee and Licensee 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 he 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 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 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.

E. During the disciplinary period, Licensee shall timely renew his 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 himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 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 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 and 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 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, 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.

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 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

Tuyen Nguyen
Tuyen Nguyen, Owner
Fashion Nails

Date 10-11-12

BOARD

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

Date 10/17/2012

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Missouri Board of Cosmetology
& Barber Examiners

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND FASHION NAILS, TUYEN NGUYEN, OWNER

Come now Fashion Nails, Tuyen 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 "Class MO – manicurist" 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 a preponderance of the 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 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 "Class MO – manicurist" license, number 2009003100 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

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Missouri Board of Cosmetology
& Barber Examiners

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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 license number 2009039743, Fashion Nails, located at 424 Ward Avenue, Caruthersville, Missouri 63830. Licensee also holds a "Class MO – manicurist" license, license number 2009003100. Licensee's Missouri establishment license and "Class MO – manicurist" licenses were not at all times relevant herein, and are now, current and active.

3. On or about October 17, 2012, Licensee entered into a Settlement Agreement with the Board under which Licensee's "Class MO – manicurist" license was placed on probation for a period of three (3) years as a result of sanitation and licensure violations. Licensee's probation was effective as of November 6, 2012 and was to end November 6, 2015. Among the terms of the Settlement Agreement was that Licensee be required to "keep the establishment clean and comply with all sanitation regulations." Under the Settlement Agreement Licensee was responsible for compliance with all provisions of Chapter 329, RSMo. The Settlement Agreement advised Licensee that the Board would monitor Licensee's compliance with the terms of the Settlement Agreement and; that failure to comply with the terms of the Settlement Agreement could result in the Board imposing additional or other discipline against Licensee's license.

4. On or about January 8, 2014, the Board conducted an inspection of Fashion Nails. Licensee was present during the inspection and Fashion Nails was open for business. The inspection revealed the following violations: licenses were not current in violation of 20 CSR 2085-10.010. On or about January 28, 2014, the Board sent Licensee a violation notice following the January 8, 2014 inspection.

5. On or about February 5, 2014, the Board conducted a follow-up inspection of Fashion Nails. Licensee was present during the inspection and Fashion Nails was open for business. The inspection revealed no new violations and all previous violations had been corrected.

6. On or about July 16, 2014, an inspection made at the Board's request was at Fashion Nails. Licensee was present during the inspection and Fashion Nails was open for business. The inspection revealed the following violations: files and buffers were dirty in violation 20 CSR 2085-11.020. On or about August 2014, the Board sent Licensee a violation notice following the July 16, 2014 inspection.

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Missouri Board of Cosmetology
& Barber Examiners

7. On or about September 23, 2014, a follow-up inspection was conducted at Fashion Nails. Licensee was present during the inspection and Fashion Nails was open for business. The inspection revealed the following violations: dirty files and buffers were laying around and in the stations in violation 20 CSR 2085-11.020; floors needed cleaning and the pedis were dirty, in violation of 20 CSR 2085-11.020 and the restrooms were dirty, in violation of 20 CSR 2085-11.020. On or about October 3, 2014, the Board sent Licensee a violation notice following the September 23, 2014 inspection.

8. On or about December 16, 2014, a follow-up inspection was conducted at Fashion Nails. Licensee was present during the inspection and Fashion Nails was open for business. The inspection revealed the following violations: dirty implements in the station drawers, which needed to be disinfected after every client; floors were dirty and needed cleaning; excessive amounts of nail dust at each station, must clean station after every client, all in violation 20 CSR 2085-11.020. On or about December 30, 2014, the Board sent Licensee a violation notice following the December 16, 2014 inspection.

9. 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 by this chapter.

10. 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[.]

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

(1) Physical Facilities.

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

(D) Restrooms. All cosmetology establishments shall provide adequate and conveniently located restrooms, for use by patrons and operators. All schools shall provide two (2) or more restrooms to separately accommodate male and female students. All restrooms shall be provided with, at least, an operating toilet, a functional sink with hot and cold running water, soap (liquid or powder), and individual towels[.]

(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;

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(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[.]

12. As a result of the violations, as described above in paragraphs 3 through 8, in violation of the statutes and regulations contained in paragraphs 9 through 11, Licensee 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 additional disciplinary action against Licensee's "Class MO – manicurist" license.

13. Cause exists for the Board to take disciplinary action against Licensee's "Class MO – manicurist" license under § 329.140.2(6), (12) 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 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;

(12) Failure to display a valid license if so required by this chapter or any rule promulgated hereunder;

(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, RSMo:

14. The terms of discipline shall include that Licensee's "Class MO – manicurist" license, license number 2009003100, which is currently on probation until November 6, 2015, be placed on **PROBATION** for a period of two (2) additional years. 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 his Settlement Agreement.

I. SPECIFIC REQUIREMENTS

- A. Licensee shall correct all sanitation violations from the July 16, 2014, September 23, 2014, and December 16, 2014 inspections within 30 days of the date of execution of this Agreement.
- B. Licensee shall continue to comply with all terms and requirements contained within the previous Settlement Agreement, which became effective November 6, 2012.

II. GENERAL REQUIREMENTS

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Missouri Board of Cosmetology & Barber Examiners

- 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 next 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 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.
- 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 329, RSMo, 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, 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 and Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 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.

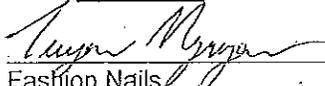
17. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby, 2015
 waive, release, acquit and forever discharge the Board, its respective members and any of its employees
 Missouri Board of Cosmetology
 & Barber Examiners

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.

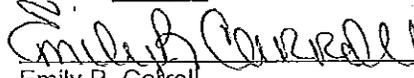
18. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the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


Fashion Nails
Tuyen Nguyen, Owner

BOARD


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

Date 1-27-15

Date 2/3/2015 FEB 02 2015

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