

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND
BARBER EXAMINERS AND PONY TAILS, TAMMY OWEN, OWNER

00581 AUG 29

Come now Pony Tails, Tammy Owen, 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 license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, 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 2000.

Licensee acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to present evidence on her 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 her and, subsequently, the right to a disciplinary hearing before the Board at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against her 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 her.

Licensee acknowledges that she has received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline her licenses, 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 operator license, numbered 080730 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2010 and Chapters 328 and 329, RSMo.

FILED
AUG 29 2011
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 2000, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee holds a cosmetologist rental space establishment license with the Board for Pony Tails, license number 2008036179. Pony Tails is located at 1711 J Battlefield, Springfield, Missouri 65807. As of September 30, 2009, Licensee's rental space establishment license was not current due to non-renewal. On or about May 12, 2011, Licensee's cosmetology rental space establishment license was reinstated by the Board.

3. Licensee holds a cosmetologist license issued by the Board License No. 080730. As of September 30, 2009, Licensee's cosmetology operator license was not current due to non-renewal. On or about May 12, 2011, Licensee's operator license was reinstated by the Board.

4. On or about August 27, 2010, the Board conducted an inspection of Pony Tails. The inspection noted the following violations: operator licenses not current or posted in violation of Section 329.120 and 20 CSR 2085-7.040; and unlicensed rental space establishment in operation in violation of Section 329.045 and 20 CSR 2085-10.010. A violation notice was sent to Licensee on September 23, 2010.

5. On or about October 27, 2010, the Board conducted an inspection of Pony Tails. The inspection noted the following violations: operator licenses not current or posted in violation of Section 329.120 and 20 CSR 2085-7.040; and unlicensed rental space establishment in operation in violation of Section 329.045 and 20 CSR 2085-10.010. A violation notice was sent to Licensee on December 22, 2010.

6. On or about November 17, 2010, the Board conducted an inspection of Pony Tails. The inspection noted the following violations: operator licenses not current or posted in violation of Section 329.120 and 20 CSR 2085-7.040; and unlicensed rental space establishment in operation in violation of Section 329.045 and 20 CSR 2085-10.010. A violation notice was sent to Licensee on December 21, 2010.

7. On or about December 29, 2010, the Board conducted an inspection of Pony Tails. The inspection noted the following violations: operator licenses not current or posted in violation of Section 329.120 and 20 CSR 2085-7.040; and unlicensed rental space establishment in operation in violation of Section 329.045 and 20 CSR 2085-10.010. A violation notice was sent to Licensee on February 17, 2011.

8. On or about February 23, 2011, the Board conducted an inspection of Pony Tails. The inspection noted the following violations: operator licenses not current or posted in violation of Section 329.120 and 20 CSR 2085-7.040; and unlicensed rental space establishment in operation in violation of Section 329.045 and 20 CSR 2085-10.010

9. Section 329.045 RSMo states, in relevant part:

1. Every establishment in which the occupation of cosmetology is practiced shall be required to obtain a license from the board. Every establishment required to be licensed shall pay to the board an establishment fee for the first three licensed cosmetologists esthetician and/or manicurists, and/or apprentices and an additional fee for each additional licensee. The fee shall be due and payable on the renewal date and, if the fee remains unpaid thereafter, there shall be a late fee in addition to the regular establishment fee or, if a new establishment opens any time during the licensing period and does not register before opening, there shall be a delinquent fee in addition to the regular establishment fee. The license shall be kept posted in plain view within the establishment at all times.

10. Section 329.120 RSMo states, in relevant part:

The holder of a license issued by the board who continues in active practice or occupation shall on or before the license renewal date renew the holder's license and pay the renewal fee. A license which has not been renewed prior to the renewal date shall expire on the renewal date. The holder of an expired license may have the license restored within two years of the date of expiration without examination, upon the payment of a delinquent fee in addition to the renewal fee.

11. Regulation 20 CSR 2085-7.040 states, in relevant part:

(2) Renewals. Every two (2) years (biennially) the renewal application for active licensees must be completed, signed, accompanied by the appropriate renewal fee, and returned to the board office prior to the expiration date of the license. All licenses shall expire on September 30 of each odd-numbered year. Any application postmarked after September 30 will be returned and the applicant will be required to reinstate.

(A) Any cosmetologist whose license has expired who wishes to restore the license shall make application to the board by submitting the following within two (2) years of the license renewal date:

1. Reinstatement application for renewal of licensure; and
2. The current renewal fee and the late fee, as set forth in 20 CSR 2085-7.050.

...
(C) Any licensee who fails to renew shall not perform or offer to perform any act for which a license is required.

12. Regulation 20 CSR 2085-10.010 states, in relevant part:

...
(1) (C) No establishment shall open in Missouri until the board receives a completed application, on a form supplied by the board, the biennial establishment fee is paid, the establishment passes a board inspection, and the application is approved by the board. If an establishment opens for business before the board issues the original establishment license, a delinquent fee shall be assessed in addition to all other required licensure fees, and the board may take legal action pursuant to Chapter 328 and/or 329, RSMo.

(2) Rental Space/Chair Licensing. Any person licensed by the board who rents individual space or a booth/chair within a licensed establishment for the purposes of practicing as a barber or cosmetologist shall be required to obtain a separate establishment license for the rental space. Licensees that rent individual space or a booth/chair within a licensed barber or cosmetology establishment for the purposes of operating as a barber or cosmetologist must possess a current establishment license as well as an operator license. This section does not apply to licensees operating as establishment employees.

...
(B) Applications for an establishment license under this subsection shall be submitted on a form provided by the board and shall comply with the requirements defined in 20 CSR 2085-10.010(1)(A) 1.-4.

13. As a result of the violations, as described above in paragraphs 4 through 8, Licensee violated chapter 329, RSMo and lawful regulations adopted pursuant to chapter 329, RSMo as described above in paragraphs 9 through 12 for which the Board has cause to take disciplinary action against Licensee's license.

14. Cause exists for the Board to take disciplinary action against Licensee's operator license under § 329.140.2(6), (7) and (13) RSMo, which states in pertinent part:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

...

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

...

(13) Violation of any professional trust or confidence[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo 2000:

1. The terms of discipline shall include that the Licensee's operator license, license number 080730, 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 she adheres to all of the terms of her Settlement Agreement.

I. SPECIFIC REQUIREMENTS

- A. Licensee shall not personally offer to provide or provide services unless and until Licensee obtains a rental space establishment license from the Board pursuant to Chapter 328 or 329, RSMo, and pays all applicable licensing fees including any delinquency fees.
- B. Licensee shall employ only individuals licensed by the Board pursuant to Chapter 328 or 329, RSMo. All employees not currently holding a license shall obtain an operator license from the Board within thirty (30) days of the execution of this Agreement.

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 January 1, 2012.
- C. Licensee shall keep the Board apprised of her current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. Licensee shall comply with all provisions of the Chapters 328 and 329, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- E. During the disciplinary period, Licensee shall timely renew her license(s) and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.
- F. If at any time during the disciplinary period, Licensee removes herself from the state of Missouri, ceases to be currently licensed under provisions of Chapters 328 and 329, or fails to advise the Board of her current place of business and residence, the time of her 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 her 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).

1. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapters 328 and 329, RSMo, by Licensee not specifically mentioned in this document.

2. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 328, 329, 610, and 324, RSMo.

3. 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.

4. Licensee, together with her heirs and assigns, and her 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.

5. 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

AUG 28 2011
MISSOURI

Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O.
Box 1557, Jefferson City, Missouri 65101.

6. 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

Tammy S. Owen
Pony Tails
Tammy Owen, Owner

Date 8-15-11

BOARD

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

Date 8/31/2011

RECEIVED
AUG 29 2011
MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS