SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND NAIL TIME, DAI Q. PHAM, OWNER

Come now Nail Time, Dai Q. Pham, Owner (collectively, "Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's cosmetology establishment license and "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 licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

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

RECEIVED
JUN 16 2014
Missouri Board of Cosmetology & Barber Examiners

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 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 establishment license, numbered

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

2009008169 and operator license, numbered 2006004845 are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 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 on or about April 3, 2009, license number 2009008169, for Nail Time, located at 820 S. Main Street, Sikeston, MO. Licensee also holds a "Class MO- manicurist" license, license number 2006004845. Licensee's Missouri cosmetology establishment license and "Class MO- manicurist" license were at all times relevant herein, and is now, current and active.

3. On or about April 10, 2013, the Board conducted an inspection of Nail Time. Owner Dai Q. Pham was present during the inspection and Q Nails was open for business. The inspection revealed the following violations: there were no paper towels available in violation of 20 CSR 2085-11.020 and the pedicure spa was dirty and needed to be cleaned after each client in violation of 20 CSR 2085-11.020. On or about April 26, 2013, the Board sent Licensee a violation notice following the April 10, 2013 inspection.

4. On or about May 10, 2013, the Board conducted an inspection of Nail Time. Owner Dai Q. Pham was present during the inspection and Q Nails was open for business. The inspection revealed the following violations: there were dirty clippers and nippers in the station drawers in violation of 20 CSR 2085-11.020; the work stations were dirty in violation of 20 CSR 2085-11.020; and the tweezers and eye brow brushes were dirty and needed to be cleaned after each client in violation of 20 CSR 2085-11.020. On or about May 24, 2013, the Board sent Licensee a violation notice following the May 10, 2013 inspection.

5. On or about June 11, 2013, the Board conducted an inspection of Nail Time. Owner Dai Q. Pham was present during the inspection and Q Nails was open for business. The inspection revealed the following violations: there were dirty files and buffers that should have been thrown away after every client in violation of 20 CSR 2085-11.020 and the work stations were not clean and free of nail dust or cleaned with EPA disinfectant in violation of 20 CSR 2085-11.020. On or about July 26, 2013, the Board sent Licensee a violation notice following the May 11, 2013 inspection.

RECEIVED
JUN 18 2014
Missouri Board of Cosmetology
& Barber Examiners

6. On or about December 26, 2013, the Board conducted an inspection of Nail Time. Owner Dai Q. Pham was present during the inspection and Q Nails was open for business. The inspection revealed the following violations: the EPA registered disinfectant was not active at all times, there were dirty files and buffers not cleaned after every client, the nails stations had nail dust on them, and there was a credo blade on the premises all in violation of 20 CSR 2085-11.020; and there was a non-licensed operator providing services at the time of the inspection in violation of § 329.030, RSMO, and 20 CSR 2085-10.010. On or about January 24, 2014, the Board sent Licensee a violation notice following the December 26, 2013 inspection.

7. 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.

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

> ... ...
>
> (3) Display of license. Establishment licenses shall be posted within the establishment in plain view at all times so that it may be easily seen by the public. Establishment licenses issued to a station or booth rental establishment shall be posted in plain view at the respective work station.
>
> > (A) Operator licenses, apprentice licenses, or student temporary permits shall either be posted at each respective assigned work station or all posted together in one (1) conspicuous, readily accessible, central location within the establishment area that will allow easy identification of the persons working in the establishment by clients, board representatives, or the general public.
> >
> > (B) A two inch square (2" × 2") photograph taken within the last five (5) years shall be attached to operator licenses. A two inch square (2" × 2") photograph taken within the last five (5) years shall be attached to apprentice licenses and student temporary permits.

9. Regulation 20 CSR 2085-10.060(3) states:

> Prohibited Practices Within An Establishment. In a licensed establishment, only persons properly licensed by the board shall be allowed to perform barbering, hairdressing, manicuring, or esthetician services on any person within the establishment. The provisions of this section shall apply even if services are being provided for no compensation.

RECEIVED
JUN 18 2014
Missouri Board of Cosmetology
& Barber Examiners

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

(1) Physical Facilities.

...

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

...

(L) Prohibited Practices. To prevent the risk of injury or infection—

1. A licensee shall not use or offer to use in the performance of cosmetology services, or possess on the premises of a licensed cosmetology establishment, any razor-type callus shaver designed or intended to cut growths of skin on hands or feet such as corns and calluses including, but not limited to, a credo blade or

RECEIVED
JUN 18 2014
Missouri Board of Cosmetology
& Barber Examiners

similar type instrument. Any licensee using a razor-type callus shaver prohibited by this rule at a licensed cosmetology establishment or in the performance of any cosmetology, manicuring, or esthetician services shall be deemed to be rendering services in an unsafe and unsanitary manner. Cosmetology establishment licensees shall ensure that razortype callus shavers are not located or used on the premises of the cosmetology establishment;

2. The board shall provide a flyer prohibiting the use of these razor-type callus shavers. Every cosmetology establishment and cosmetology school shall post such flyer in plain view of the public in each of their establishment(s) and school(s); and

3. Violation of this rule shall constitute grounds for discipline under section 329.140.2(15), RSMo.

11. As a result of the violations, as described above in paragraphs 3 through 6, in violation of the statutes and regulations contained in paragraphs 7 through 10, 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 disciplinary action against Licensee's cosmetology establishment and "Class MO- manicurist" licenses.

12. Cause exists for the Board to take disciplinary action against Licensee's establishment and "Class MO- manicurist" licenses 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.

RECEIVED

JUN 18 2014

Missouri Board of Cosmetology
& Barber Examiners

Joint Agreed Disciplinary Order

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

13. The terms of discipline shall include that the cosmetology establishment and "Class MO-manicurist" licenses be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all of the terms of his Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. Licensee shall correct all sanitation violations from the April 10, May 10, June 11 and December 26, 2013 inspections within 30 days of the date of execution of this Agreement.

B. Licensee shall correct all licensing violations from the December 26, 2013 inspection within 30 days of the date of 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 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 first report shall be due January 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, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 329.140.3, RSMo.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.

RECEIVED

JUN 18 2014

Missouri Board of Cosmetology
& Barber Examiners

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 and 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 Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

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.**

RECEIVED
JUN 18 2014
Missouri Board of Cosmetology
& Barber Examiners

18. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Nail Time
Dai Q. Pham, Owner

Date 06 - 16 - 2014

BOARD

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

Date 6/18/2014

RECEIVED

JUN 18 2014

Missouri Board of Cosmetology
& Barber Examiners