

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND  
BARBER EXAMINERS AND STLYE NAILS & SPA, TAM M. PHAM, OWNER

Come now Style Nails & Spa, Tam M. 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 operator 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 Licensee understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee 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 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

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cosmetology operator license, numbered 099398 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.

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 current and valid master cosmetology establishment license with the Board for Style Nails & Spa, license number: 2006035418. Style Nails & Spa is located at 10117 W. Florissant, Dellwood, Missouri 63136.

3. Licensee holds a cosmetology license issued by the Board, license number 099398. Licensee's cosmetologist license was at all times relevant herein, and is now, current and active.

4. On or about November 12, 2010, the Board conducted an inspection of Style Nails & Spa. The inspection noted the following violations: no photos posted with operator licenses in violation of 20 CSR 2085- 10.010; and unlicensed individual providing cosmetology services in violation of Section 329.030 and 20 CSR 2085-10.060. A violation notice was sent to Licensee on December 23, 2010.

5. On or about January 20, 2011, the Board conducted an inspection of Style Nails & Spa. The inspection noted the following violations: credo blades in the establishment in violation of 20 CSR 2008-11.020; and no photos posted with operator licenses in violation of 20 CSR 2085-10.010. A violation notice was sent to Licensee on December 22, 2010.

6. On or about January 12, 2011, the Board conducted an inspection of Lynn's Nail Salon. The inspection noted the following violations: unlicensed individual providing cosmetology services in violation of Section 329.030 and 20 CSR 2085-10.010. A violation notice was sent to Licensee on February 18, 2011.

7. On or about March 11, 2011, the Board conducted an inspection of Style Nails & Spa. The inspection noted the following violations: credo blades in the salon, dirty towels not

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JUL 25 2011  
Missouri Board of Cosmetology  
& Barber Examiners

covered and receptacles used for hair disposal not covered in violation of 20 CSR 2085- 11.020; and no photos posted with operator licenses in violation of 20 CSR 2085- 10.010. A violation notice was sent to Licensee on April 5, 2011 and the date of the next Board-sponsored sanitation workshop.

8. On or about April 21, 2011, Licensee notified the Board that Licensee was unable to attend the Board-sponsored sanitation workshop. Licensee asked to be notified of the next sanitation workshop.

9. On or about April 22, 2011, the Board conducted an inspection of Style Nails & Spa. The inspection noted the following violations: credo blades in the salon in violation of 20 CSR 2085- 11.020; and unlicensed individual providing cosmetology services in violation of Section 329.030 and 20 CSR 2085-10.060.

10. Section 329.030 RSMo states, in relevant part:

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.

11. 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" x 2") photograph taken within the last five (5) years shall be attached to operator licenses. A two inch square (2" x 2") photograph taken within the last five (5) years shall be attached to apprentice licenses and student temporary permits.

Missouri Board of Cosmetology  
& Barber Examiners

12. Regulation 20 CSR 2085- 10.060 states, in relevant part:

(1) Pursuant to Chapters 328 and 329, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permit holder is an employee of the establishment or holds a current and active renter establishment license issued by the board.

(3) 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. For purposes of this section, barbering, hairdressing, manicuring, or esthetician services shall be defined as follows:

(D) "Manicuring"—Cutting, trimming, polishing, coloring, tinting, cleaning, or otherwise beautifying a person's fingernails, applying artificial fingernails, massaging, cleaning a person's hands and arms; pedicuring, which includes cutting, trimming, polishing, coloring, tinting, cleaning, or otherwise beautifying a person's toenails, applying artificial toenails, massaging, or cleaning a person's legs and feet.

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

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

14. As a result of the violations, as described above in paragraphs 4 through 9, Licensee violated chapter 329, RSMo and lawful regulations adopted pursuant to chapter 329, RSMo as described above in paragraphs 10 through 15 for which the Board has cause to take disciplinary action against Licensee's Cosmetology operator license.

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JUL 25 2011  
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Barber Examiners

15. Cause exists for the Board to take disciplinary action against Licensee's operator license under § 329.140.2(6), (10), (13) 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;

...

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not licensed and currently eligible to practice under this chapter;

...

(13) Violation of any professional trust or confidence;

...

(15) failure or refusal to properly guard against contagious m infectious, or communicable disease or the spread thereof.

Joint Agreed Disciplinary Order

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

1. The terms of discipline shall include that the Licensee's cosmetology operator license, license number 099398, be placed on PROBATION for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

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JUL 25 2011

Missouri Board of Cosmetology  
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I. SPECIFIC REQUIREMENTS

- A. Licensee and all employees of Licensee must attend a Board-sponsored sanitation workshop of which it is Licensee's responsibility to inform Licensee of the date of the next Board-sponsored sanitation workshop.
- B. Licensee must correct all sanitation violations within thirty (30) days of the execution date of this Settlement Agreement.
- C. 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 Settlement 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 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, 2012.
- 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 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 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 Chapters 328 and 329, RSMo, by Licensee not specifically mentioned in this document.

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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 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.

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

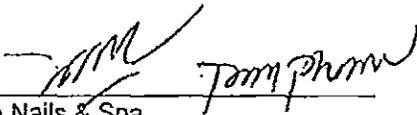
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Missouri Board of Cosmetology  
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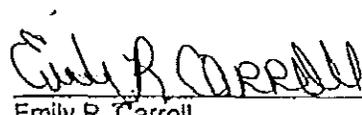
6. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties 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

  
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Style Nails & Spa  
Tam M. Pham, Owner

Date 7-10-2011

BOARD

  
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Emily R. Carroll,  
Executive Director  
Missouri Board of Cosmetology and  
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Date 8/8/2011

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