

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND SUPERCUTS #9403, SUPERCUTS CORPORATE STORES, OWNER

Come now Supercuts #9403, Supercuts Corporate Stores, 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 will be subject to discipline.

Pursuant to the terms of § 538.060, 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 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 investigative report 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 establishment license, numbered

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FEB 28 2014

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

046221 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 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 2000, 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. 046221 for Supercuts #9403. Supercuts #9403 is located at 5815 NE Anitoch Road, Gladstone, Missouri. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about May 1, 2013, the Board conducted an inspection of Supercuts #9403. Supercuts #9403 was open and offering services. The Board's inspection noted the following violations:

- a. The implements and instruments were not being cleaned after every use in violation of 20 CSR 2085-11.020;
- b. The clippers, guards and blades were dirty and full of clippings in violation of 20 CSR 2085-11.020;
- c. The workstations all needed to be cleaned inside and out as they were not clean in violation of 20 CSR 2085-11.020;
- d. The receptacles for hair disposal were not covered in violation of 20 CSR 2085-11.020; and
- e. Operator Sheena Walker's license was not current and active or posted in violation of 20 CSR 2085-10.010.

On or about May 17, 2013, the Board sent Licensee a violation notice following the May 1, 2013 inspection.

4. On or about June 18, 2013, the Board conducted an inspection of Supercuts #9403. Supercuts #9403 was open and offering services. The Board's inspection noted the following violations:

- a. The clippers, guards and blades were dirty and full of clippings both in the drawer and on the work station in violation of 20 CSR 2085-11.020;
- b. The workstations all needed to be cleaned inside and out as they were not clean in violation of 20 CSR 2085-11.020;
- c. The water dispenser tray was dirty in violation of 20 CSR 2085-11.020;

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FEB 28 2014

- d. The wallpaper in the hallway to the shampoo bowls needed to be repaired or replaced and one shampoo bowl had a leaking drain and needed to be repaired or replaced in violation of 20 CSR 2085-11.020;
- e. Operator Desiree Sherpa did not have a photo posted on her license in violation of 20 CSR 2085-10.010; and
- f. Operator Sheena Walker's license was not current and active or posted in violation of 20 CSR 2085-10.010. The inspection report instructed her to cease and desist practicing until she received the reinstatement of her license.

On or about July 16, 2013, the Board sent Licensee a violation notice following the June 18, 2013 Inspection.

- 5. On or about September 4, 2013, the Board conducted an inspection of Supercuts #9403.

Supercuts #9403 was open and offering services. The Board's inspection noted the following violations:

- a. The clippers were put away with hair in them and the blades and guards were put in a drawer with a hair towel in violation of 20 CSR 2085-11.020;
- b. The floor ramp to the shampoo area was cracked and soft, the wallpaper was loose and the faucet in the men's restroom would not shut off in violation of 20 CSR 2085-11.020;
- c. The three stations on the right side were dirty and needed to be cleaned inside and out and the other four were dirty and needed to be wiped clean in violation of 20 CSR 3085-11.020;
- d. Operator Marie Schoeck did not have a large license with a photo posted in violation of 20 CSR 2085-10.010; and
- e. The men's restroom was dirty and unsanitary and needed paper towels or a hand dryer in violation of 20 CSR 2085-11.020.

On or about September 23, 2013, the Board sent Licensee a violation notice following the September 4, 2013 Inspection.

- 6. Regulation 20 CSR 2086-7.040(2) 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.

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FEB 28 2014

(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.

7. Regulation 20 CSR 2085-10.030(3) 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.

8. 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.

(2) License posted. Every licensed barber and cosmetologist shall post a current license issued by the board in front of the barber's working chair or the cosmetologist's work station where it shall be readily seen by all patrons.

(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.

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

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FEB 28 2014

Missouri Board of Cosmetology
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(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.

...

(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.

...

(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[.]

10. As a result of the sanitation violations, as described above in paragraphs 3 through 5, in violation of the regulations contained in paragraphs 6 through 9, Supercuts #9403 violated lawful regulations adopted pursuant to chapter 329, RSMo, and failed to properly guard against contagious, infectious or communicable diseases or the spread thereof for which the Board has cause to take disciplinary action against Licensee's license.

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

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:

12. The terms of discipline shall include that the cosmetology establishment license, license number 046221, 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 he adheres to all of the terms of this Settlement Agreement.

I. **SPECIFIC REQUIREMENTS**

A. Licensee shall correct all sanitation violations from the May 1, 2013, June 18, 2013 and September 4, 2013 inspections 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 July 1, 2014.
- 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.

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FEB 28 2014

- 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 license(s) and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license(s) 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.
- 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.

13. 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.

14. 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.

15. 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 § 538.087, 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

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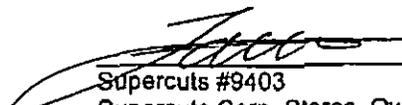
FEB 28 2014

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.

16. 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.

17. 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



Supercuts #9403
Supercuts Corp. Stores, Owner

Date 2/27/14

BOARD



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

Date 3/4/2014

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