

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND DINH VAN NGUYEN, OWNER/OPERATOR AND REGAL NAILS SALON & SPA, ESTABLISHMENT

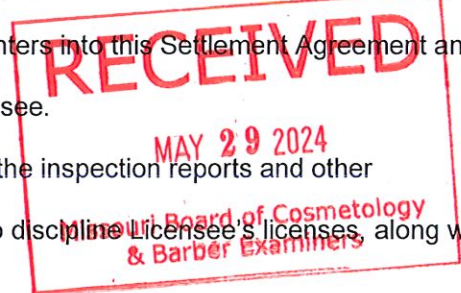
Come now Dinh Van Nguyen, Owner/Operator and Regal Nails Salon & Spa, establishment, (collectively, "Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this Settlement Agreement for the purpose of resolving the question of whether the cosmetology establishment license and the "Class CA – hairdressing and manicuring" license held by Licensee 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 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 establishment license, numbered



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

2015017678, and the operator license, numbered 2012002745, 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. The Board issued a cosmetology establishment license for Regal Nails Salon & Spa, on or about January 26, 2012, license number, 2015017678, located at 11601E US Hwy 40, Kansas City, Missouri. Licensee Dinh Van Nguyen owns/operates Regal Nails Salon & Spa and holds the license for the establishment. Licensee Dinh Van Nguyen also holds a "Class CA – hairdressing and manicuring" operator, license number 2012002745, originally issued by the Board on June 8, 2015. Licensee's licenses were current and active at all times.
3. On or about August 2, 2023, the Board received a complaint about Licensee. The complainant alleged she got an infection after receiving services at Regal Nails Salon & Spa. The complainant stated the first services were in 2020 and as of the date of the complaint, she was still treating with several medications. She stated her big toenails had to be removed and her "entire feet, hands and eyebrows" were "severely infected for years, caused by this salon." As a result of the complaint, the Board requested an inspection of Regal Nails Salon & Spa.
4. On or about August 28, 2023, the Board conducted an inspection at Regal Nails Salon & Spa establishment. The inspection revealed the following violations: the workstations and backbars were dirty and not kept clean in violation of 20 CSR 2085-11.020(1)(B); the clean towels were not in a closed cabinet or drawer in violation of 20 CSR 2085-11.020(2)(A)(2); and there was no employee reporting form at the time of the inspection in violation of 20 CSR 2085-10.030(1). On or about September 5, 2023, the Board sent Licensee a violation notice following the August 23, 2023, inspection.
5. On or about October 25, 2023, the Board conducted an inspection at Regal Nails Salon & Spa establishment. The inspection revealed the following violations: expired establishment and operator licenses were posted in violation of 20 CSR 2085-10.060(1); and there was no employee reporting form in violation of 20

CSR 2085-10.030(1). On or about December 18, 2023, the Board sent Licensee a violation notice following the October 25, 2023, inspection.

6. On or about January 17, 2024, the Board conducted an inspection at Regal Nails Salon & Spa establishment. The inspection revealed no violations.

7. On or about March 15, 2023, the Board conducted an inspection at Regal Nails Salon & Spa establishment. The inspection revealed the following violations: three individuals were present and performing services without a current and active manicurist operator license in violation of 20 CSR 2085-10.060(3).

8. 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 kept clean and in good repair at all times. Commercial-type carpet may be used.

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(2) Sanitation Requirements.

(A) Protection of the Patron.

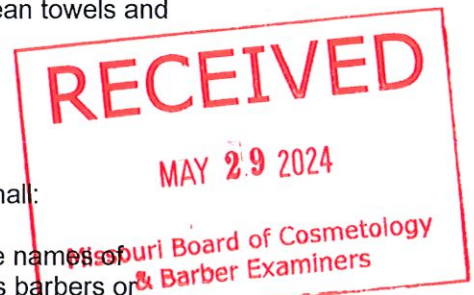
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(2) Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens.

9. Regulation 20 CSR 2085-10.030 states, in relevant part:

(1) All barber and cosmetology establishment licensees shall:

(A) Designate on a form provided by the board the names of employees practicing, or authorized to practice, as barbers or cosmetologists at the licensed establishment. The form shall remain current at all times and shall be signed by each employee as designated by the board. The form required by this section shall be maintained on the premises of the licensed establishment and shall be available to the board, its inspector or other designee upon request; and



(B) Maintain records which verify that an employment relationship exists with any barber or cosmetologist designated as an employee pursuant to subsection (1)(A) of this rule. Records verifying an employment relationship may include, but are not limited to, payroll records, a signed employment contract or agreement or any record verifying federal or state tax withholdings, such as the Missouri Employee's Withholding Allowance Certificate (MO W-4), as amended and promulgated by the Missouri Department of Revenue, or the Quarterly Contribution Wage Report (MODES 4-7), as amended and promulgated by the Missouri Department of Labor and Industrial Relations. Records verifying an employment relationship shall be produced to the board within ten (10) days of the request by the board, its inspector or other designee.

10. 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[.]

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11. As a result of the violations, as described above in paragraphs 3 through 7, in violation of the statutes and regulations contained in paragraphs 8 through 10, Licensee violated lawful regulations adopted pursuant to Chapter 329, RSMo, for which the Board has cause to take disciplinary action against Licensee's establishment and operator licenses.

12. Cause exists for the Board to take disciplinary action against Licensee's establishment and operator licenses under § 329.140.2(6), 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[.]

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 Licensee's establishment license, numbered 2015017678, and the operator license, numbered 2012002745, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to operate an establishment and offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. Licensee shall correct all violations indicated in the Findings of Fact and Conclusions of Law above, specifically Licensee shall correct all sanitation violations. Licensee shall provide the Board written notification of Licensee's within thirty (30) days of the effective date of this Order.

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 keep the Board apprised of Licensee's current home and work addresses, telephone numbers and email address(es). Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- C. 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.
- D. 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.
- E. If at any time during the disciplinary period, Licensee moves 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, RSMo.
- F. 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.



- G. 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).
- H. 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 licenses of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: **Administrative Hearing Commission, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.**


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 licenses and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's licenses. Effective the date the Administrative Hearing Commission determines that the Agreement sets forth cause for disciplining Licensee's licenses, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

BOARD



Regal Nails Salon & Spa
Dinh Van Nguyen, Owner/Operator



Karla Johansen, Executive Director
Missouri Board of Cosmetology and Barber Examiners



Dinh Van Nguyen

Date 5/22/24

Date 6/3/2024

