

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND DAI TRAN AND LEE NAILS AND SPA, INC., DAI NGUYEN, OWNER

Come now Dai Tran and Lee Nails and Spa, Inc., Dai Tran 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 Class MO-Manicurist and cosmetology establishment licenses 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 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 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 Class MO- Manicurist license,

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

numbered 2022046416 and Licensee's cosmetology establishment license, numbered 2023013279 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 Class MO- Manicurist license issued by the Board, license number 2022046416. Licensee's Class MO-Manicurist license is current and active. Licensee also holds a cosmetology establishment license issued by the Board, license number 2023013279 for Lee Nails and Spa, Inc.. Lee Nails and Spa, Inc. is located at 2111 Missouri Blvd, Suite F, Jefferson City, Missouri. Licensee's cosmetology establishment license is current and active.

3. On or about July 31, 2023, the Board's inspector conducted an inspection of Lee Nails and Spa. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: there was no photo attached to a licensee's posted operator license in violation of 20 CSR 2085-10.010(3); an individual was performing services within the establishment without a valid Missouri license in violation of 20 CSR 2085-10.060(3); and there were razor type implements in the establishment at the time of inspection in violation of 20 CSR 2085-11.020(2)(L). On July 28, 2023, the Board sent Licensee a violation notice regarding the July 31, 2023 inspection.

4. On or about October 12, 2023, the Board's inspector conducted an inspection of Lee Nails and Spa. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: dirty implements were not kept separate from clean implements in violation of 20 CSR 2085-11.020(2)(D); workstations were dirty and not kept clean in violation of 20 CSR 2085-11.020(1)(B); there were nail clippings on the floor, not being swept up in violation of 20 CSR 2085-11.020(2)(I); there were razor type implements in the establishment at the time of inspection in violation of 20 CSR 2085-11.020(2)(L); an operator's expired license was posted in violation of 20 CSR 2085-10.060(1);); there were no employee reporting forms available in violation of 20 CSR 2085-10.030(1); and the establishment is licensed for three operators and there were 9 licenses posted at the time of the inspection in violation of 20 CSR 2085-10.050(1). On October 30, 2023, the Board sent Licensee a violation notice regarding the October 12, 2023 inspection.

5. On or about January 2, 2024, the Board's inspector conducted an inspection of Lee Nails and Spa. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: workstations were dirty and not kept clean in violation of 20 CSR 2085-11.020(1)(B); there were nail clippings on the floor, not being swept up in violation of 20 CSR 2085-11.020(2)(I); there were no employee reporting forms available in violation of 20 CSR 2085-10.030(1); and the establishment is licensed for three operators and there were 11 licenses posted at the time of the inspection in violation of 20 CSR 2085-10.050(1). On January 9, 2024, the Board sent Licensee a violation notice regarding the March 7, 2024 inspection.

6. On or about March 7, 2024, the Board's inspector conducted an inspection of Lee Nails and Spa. The shop was open and offering services at the time of the inspection. The Board's inspection revealed the following violations: workstations were dirty and not kept clean in violation of 20 CSR 2085-11.020(1)(B); drawers were covered in nail dust in violation of 20 CSR 2085-11.020(2)(D); there were razor type implements in the establishment at the time of inspection in violation of 20 CSR 2085-11.020(2)(L); and the establishment is licensed for three operators but there were ten licenses posted at the time of inspection in violation of 20 CSR 2085-10.050(1). On March 19, 2024, the Board sent Licensee a violation notice regarding the March 7, 2024 inspection.

7. 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

8. 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.

9. Regulation 20 CSR 2085-10.050 states, in relevant part:

(1) The minimum biennial fee for a cosmetology establishment shall license the establishment for up to three (3) operators, including apprentices, students with temporary permits, or both. An additional fee is required for each additional operator working in the establishment. If at any time during the license period the number of operators working in the establishment exceeds the number of operators for which the establishment is licensed, it is the responsibility of the holder(s) of the establishment license to submit written notification to the board along with the fee for each additional operator.

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.

11. 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.

...

(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 a 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.

...

(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 similar instrument. Any licensee using a razor-type callus shaver prohibited by this rule at a licensed cosmetology establishment or in the course 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 razor-type callus shavers are not located or used on the premises of the cosmetology establishment[.]

12. As a result of the violations, as described above in paragraphs 3 through 6, Licensee violated chapter 329, RSMo, and lawful regulations adopted pursuant to chapter 329, RSMo, as described above in paragraphs 6 through 11, for which the Board has cause to take disciplinary action against Licensee's Class MO-Manicurist and establishment licenses.

13. Cause exists for the Board to take disciplinary action against Licensee's Class MO-Manicurist and establishment 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:

14. The terms of discipline shall include that the Class MO-Manicurist license, license number 2022046416 and cosmetology establishment license, license number 2023013279, 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.

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 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.
- C. 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.
- D. 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 licenses in a current and active state.
- E. 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.
- F. 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).
- G. 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.

15. 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.

16. 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.

17. 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.

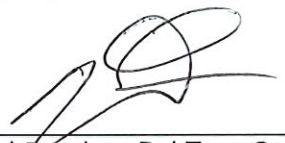
18. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the 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, United States Post Office Building, P.O. Box 1557, 131 West High St., Jefferson City, MO 65102-1557.

19. 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



Dai Tran



Lee Nails and Spa, Inc., Dai Tran, Owner

BOARD



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

Date 5-7-24

Date 5/7/2024