

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND BAO DUONG AND LUXURY NAILS & SPA LLC

Come now Bao Duong and Luxury Nails & Spa LLC (“Licensees”) 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 Licensees’ cosmetology establishment license and “Class MO – Manicurist” operator license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo, the parties waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri (“AHC”) regarding cause to discipline Licensees’ licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensees acknowledge that Licensees understand the various rights and privileges afforded Licensees by law, including the right to a hearing of the charges against Licensees; the right to appear and be represented by legal counsel; the right to have all charges against Licensees proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensees; the right to present evidence on Licensees’ 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 Licensees and, subsequently, the right to a disciplinary hearing before the Board at which time Licensees may present evidence in mitigation of discipline; and the right to recover attorney’s fees incurred in defending this action against Licensees’ licenses. Being aware of these rights provided Licensees by operation of law, Licensees knowingly and voluntarily waive each and every one of these rights and freely enter into this settlement agreement and agree to abide by the terms of this document, as they pertain to Licensees.

For the purpose of settling this dispute, Licensees stipulate that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensees’ cosmetology



establishment license, license number 2017029971, and “Class MO – Manicurist” operator license, license number 2013009473, are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

Joint Stipulation of Facts and Conclusions of Law

1. The Board of Cosmetology and Barber Examiners is an agency of the State of Missouri created and established pursuant to § 329.015, RSMo, and § 328.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.
2. Luxury Nails & Spa LLC holds a cosmetology establishment license, license number 2017029971, located in Osage Beach, Missouri. The establishment license is current and active.
3. Bao Duong holds a “Class MO – Manicurist” operator license, license number 2013009473, which was issued by the Board. The “Class MO – Manicurist” license is current and active.
4. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to Chapter 621, RSMo, and § 329.140, RSMo.
5. On or about December 5, 2018, the Board’s inspector conducted an inspection of the establishment.
6. The Board’s inspection revealed a male performing services within the establishment without a Missouri license in violation of 20 CSR 2085-10.060(3) and Section 329.030, RSMo. Additionally, used files and blocks were found in workstations and clean nailbrushes were not properly stored, each in violation of 20 CSR 2085-11.020(2)(D).
7. On or about December 31, 2018, the Board sent Licensees a violation notice regarding the December 5, 2018 inspection.
8. On or about March 21, 2019, the Board’s inspector conducted an inspection of the establishment.

9. The Board's inspection revealed that Kevin Minh was performing services within the establishment without a Missouri license, in violation of 20 CSR 2085-10.060(3) and Section 329.030, RSMo.

10. On or about April 12, 2019, the Board sent Licensees a violation notice regarding the March 21, 2019 inspection.

11. On or about October 15, 2019, the Board's inspector conducted an inspection of the establishment.

12. The Board's inspection revealed that Anh Pham was performing services within the establishment without a Missouri license, in violation of 20 CSR 2085-10.060(3) and Section 329.030, RSMo.

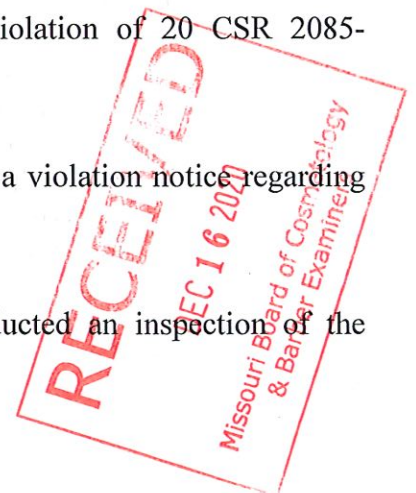
13. On or about October 23, 2019, the Board sent Licensees a violation notice regarding the October 15, 2019 inspection.

14. On or about November 21, 2019, the Board's inspector conducted an inspection of the establishment.

15. The Board's inspection revealed that Thi Hai Yen Nguyen was performing services within the establishment without a Missouri license, in violation of 20 CSR 2085-10.060(3) and Section 329.030, RSMo. Additionally, the Board's inspection revealed a large amount of nail dust accumulated on the floor of the establishment in violation of 20 CSR 2085-11.020(1)(B), and multiple credo (razor-type) blades found hidden in a box of trash bags in violation of 20 CSR 2085-11.020(2)(L).

16. On or about December 5, 2019, the Board sent Licensees a violation notice regarding the November 21, 2019 inspection.

17. On or about July 22, 2020, the Board's inspector conducted an inspection of the establishment.



18. The Board's inspection revealed that Thi Hai Yen Nguyen's posted temporary permit did not have a photo attached in violation of 20 CSR 2085-10.010(3).

19. On or about July 24, 2020, the Board sent Licensees a violation notice regarding the July 22, 2020 inspection.

20. On or about October 8, 2020, the Board's inspector conducted an inspection of the establishment.

21. The Board's inspection revealed that at the time of inspection, the establishment was licensed for three (3) operators and had five (5) operator licenses posted in violation of 20 CSR 2085-10.050(1) and Section 329.045, RSMo.

22. On or about October 22, 2020, the Board sent Licensees a violation notice regarding the October 8, 2020 inspection.

23. Section 329.045, RSMo, states, in relevant part:

1. Every establishment in which the occupation of cosmetology is practiced shall be required to obtain a license from the board. Every establishment required to be licensed shall pay to the board an establishment fee for the first three licensed cosmetologists esthetician and/or apprentices and an additional fee for each additional licensee.

24. Regulation 20 CSR 2085-10.050(1) states:

(1) The minimum biennial fee for a cosmetology establishment shall license the establishment for up to three 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.

25. Regulation 20 CSR 2085-10.010(3) states:

(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 are 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.

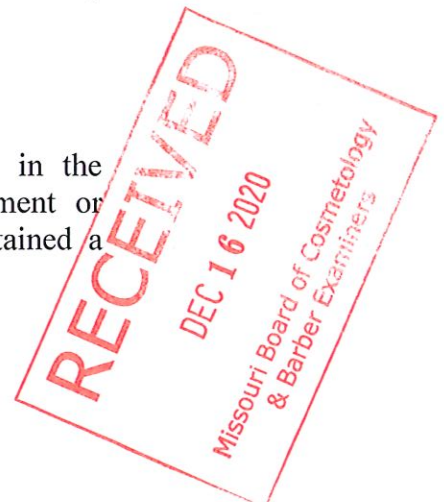
26. Regulation 20 CSR 2085-10.060 states, in relevant part:

(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...

27. 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.



28. Licensees' conduct, as set forth above, constitutes misconduct, misrepresentation, and/or dishonesty in the performance of the functions or duties of a cosmetology establishment and manicurist for which the Board has cause to take disciplinary action against Licensees' cosmetology establishment license and "Class MO – Manicurist" operator license pursuant to § 329.140.2(5), RSMo.

29. Licensees' conduct, as set forth above, constitutes a violation of Chapter 329, RSMo, and lawful regulations adopted pursuant to Chapter 329, RSMo, for which the Board has cause to take disciplinary action against Licensees' cosmetology establishment license and "Class MO – Manicurist" operator license pursuant to § 329.140.2(6), RSMo.

30. Licensees' conduct, as set forth above, constitutes the assisting or enabling of an unlicensed and ineligible person to practice any profession licensed and regulated by Chapter 329, RSMo, in violation of Chapter 329, RSMo and lawful regulations adopted pursuant thereto, for which the Board has cause to take disciplinary action against Licensees' cosmetology establishment license and "Class MO – Manicurist" operator license pursuant to § 329.140.2(10), RSMo.

31. Licensees' conduct, as set forth above, constitutes the failure to display a valid license required by Chapter 329, RSMo, for which the Board has cause to take disciplinary action against Licensees' cosmetology establishment license and "Class MO – Manicurist" operator license pursuant to § 329.140.2(12), RSMo.

32. Licensees' conduct, as set forth above, constitutes a violation of a professional trust and/or confidence for which the Board has cause to take disciplinary action against Licensees' cosmetology establishment license and "Class MO – Manicurist" operator license pursuant to § 329.140.2(13), RSMo.

33: Cause exists for the Board to take disciplinary action against Licensees' cosmetology establishment and "Class MO – Manicurist" operator licenses under § 329.140.2(5), (6), (10), (12), and (13), 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:

...

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(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;

...

(12) Failure to display a valid license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence[.]



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 Chapters 621 and 329, RSMo:

1. Licensees' cosmetology establishment license and "Class MO – Manicurist" operator license shall be placed on **PROBATION** for a period of three (3) years. During Licensees' probation, Licensees shall be entitled to engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensees adhere to all of the terms of this settlement agreement.

2. REQUIREMENTS

- A. Licensees shall correct all noted violations and become compliant with the noted state regulations within thirty days of the effective date of this Settlement Agreement.
- B. Licensees shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- C. Licensees shall keep the Board apprised of Licensees' current home and work addresses and telephone numbers. Licensees shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. Licensees shall comply with all provisions of Chapter 329, RSMo, and all Board regulations; 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, Licensees shall timely renew all license(s) and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensees' license(s) in a current and active state.
- F. If at any time during the disciplinary period, Licensees move from the state of Missouri, cease to be currently licensed under the provisions of Chapter 329, or fail to advise the Board of Licensees' current place of business and residence, the time of Licensees' 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.
- G. During the disciplinary period, Licensees shall accept and comply with unannounced visits from the Board's representatives to monitor Licensees' compliance with the terms and conditions of this Settlement Agreement.

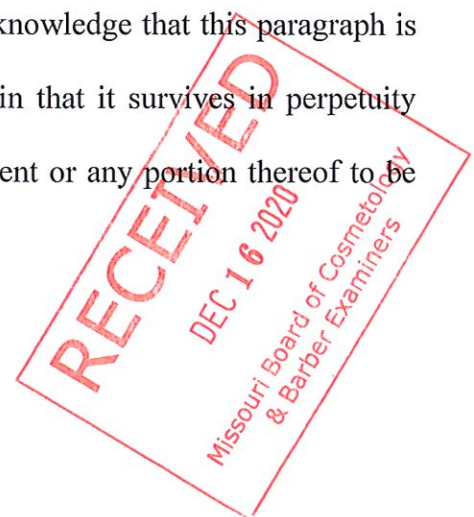
H. If Licensees fail to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, including revocation.

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 Licensees not specifically mentioned in this document.

3. 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.

4. 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.

5. Licensees, together with Licensees' heirs and assigns, and Licensees' 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.



6. Licensees understand that Licensees may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensees' licenses. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit their request to: Administrative Hearing Commission, United States Post Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

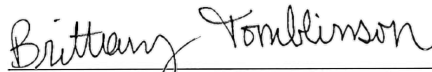
7. If Licensees request review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensees' licenses. If Licensees do not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEES



Bao Duong
Operator License #2013009473
Cosmetology Establishment License #2017029971

BOARD



Brittany Tomblinson, Executive Director
Board of Cosmetology and Barber Examiners

Date

12/14/20

Date

12/18/2020