

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND DAVID MCCABE AND FULLERS BARBERSHOP

Come now David McCabe and Fullers Barbershop (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 barber establishment license and barber operator license 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.

Licensee acknowledges that Licensee understand 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 enter into this Settlement Agreement and agree to abide by the terms of this document, as they pertain to Licensee.

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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 were violated.

Missouri Board of Cosmetology
Barber Examiners

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulate with the Board that Licensee's barber establishment license,

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

numbered 2021040153, and barber operator license, numbered 2018007005, are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621, 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, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Bryant Williams holds a barber operator license, license number 2018007005. The Board originally issued Licensee's barber operator license on February 27, 2018. Licensee's barber operator license was last renewed on September 6, 2023, and has an expiration date of September 30, 2025.

3. Bryant Williams operates a barber establishment, located at 202 N. Rubey, Macon, Missouri 63552. Licensee's establishment license number 2021040153 was initially issued on September 30, 2021. Licensee's establishment license was last renewed on September 20, 2023, and has an expiration date of September 30, 2025.

4. On or about June 18, 2024, an inspection revealed David McCabe's sink located at his station was not clean as it was filled with accumulated hair clippings at the time of inspection. David McCabe's workstation was not clean at the time of inspection as it was covered in accumulated hair clippings. Receptacles used for hair clippings was not covered at the time of inspection. The floor was not free of accumulated hair clippings at the time of inspection. David McCabe's posted operator license at the time of inspection was not current as it expired on September 30, 2023. On or about June 24, 2024, a violation notice was mailed.

5. On or about July 17, 2024, an inspection revealed David McCabe's sink at his station was covered in accumulated hair. David McCabe's workstation was covered in hair, where implements were stored. David McCabe's workstation was visibly dirty. On or about July 29, 2024, a violation notice was mailed.

6. On or about August 28, 2024, an inspection revealed the sink at David McCabe's station was visibly dirty. The floor in the establishment was covered in hair. David McCabe's workstation was not clean. David McCabe refused to sign the inspection report. On or about September 17, 2024, a violation notice was mailed.

7. On or about October 24, 2024, David McCabe's workstation was dirty at the time of inspection. Receptacles used for hair clippings are not covered at the time of inspection. On or about November 12, 2024, a violation letter was mailed.

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.

9. Regulation 20 CSR 2085-11.010 states, in relevant part:

(1) Physical facilities of barber establishments and schools shall consist of the following:

(A) Floors, Walls, Ceilings, Windows, Equipment and Contents. All floors, walls, ceilings, windows, equipment and contents shall be kept clean and in good repair. Use of cloth or plush-covered barber chairs is strictly prohibited;

(2) All barber establishments and schools shall comply with:

(B) Covered Waste Receptacles. Every barber establishment or school shall be required to have a covered waste receptacle for the disposal of hair and debris, and a covered waste receptacle for soiled towels. Hair clippings shall be swept up and disposed of in a covered receptacle after each patron.

(D) Storage and Use of Products. All containers shall be covered when not in use and shall be clearly and correctly labeled to show the nature and intended use of the contents. Preparations used in barbering whose containers do not incorporate a dispensing mechanism shall be removed from their containers by using a new disposable device or a sanitized device, such as a spatula, spoon, or similar instrument, and shall not be removed by the use of the hands. Styptic pencils shall not be used in barbering[.]

10. As a result of the violations, as described above in paragraphs 4 through 6, Licensees violated chapter 328, RSMo, and lawful regulations adopted pursuant to chapters 328 and 329, RSMo, as described above in paragraphs 7 through 8, for which the Board has cause to take disciplinary action against Licensees' barber establishment license and barber operator license.

11. Cause exists for the Board to take disciplinary action against Licensees' barber operator license and barber establishment license under § 328.150.2(6) and, (15), RSMo, which states in pertinent part:

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JAN 27 2025

Missouri Board of Cosmetology
Barber Examiners

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, RSMo:

12. The terms of discipline shall include that Licensees' barber establishment license, numbered 2021040153, and barber operator license, numbered 2018007005, be placed on **PROBATION** for a period of three (3) years. During Licensee's probation, Licensees shall be entitled to offer and engage in the practice of barbering under Chapter 328, RSMo, provided Licensees adhere to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

Licensee shall correct all violations noted in paragraphs 4 through 7 above within thirty (30) days of the effective date 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 keep the Board apprised of Licensees' 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 his operator and establishment licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain his licenses in a current and active state.
- E. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapters 328 and 329, RSMo, or fails to advise the Board of his 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 § 328.150, RSMo.
- F. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor 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 Chapters 328 and 329, RSMo, by Licensees not specifically mentioned in this document.

13. 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.

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 § 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.

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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 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.

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 licenses and

issue findings of fact 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



David McCabe (owner/operator)

Date 1-22-25

BOARD



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

Date 1-31-2025