

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND MY BLISS NAILS, LLC (DBA: MY BLISS NAILS & SPA)

Come now *My Bliss Nails, LLC (DBA: My Bliss Nails & Spa* (hereafter, "Licensee", "Licensee establishment" and/or "establishment") 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 Licensee establishment's license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ *My Bliss Nails, LLC*, as holder of Licensee's license, hereto waives the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee establishment's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

My Bliss Nails, LLC, as holder of Licensee's license, acknowledges that *My Bliss Nails, LLC*, understands the various rights and privileges afforded the Licensee establishment by law, including the right to a hearing of the charges against the Licensee establishment; the right to appear and be represented by legal counsel; the right to have all charges against Licensee establishment proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against the Licensee establishment; the right to present evidence on Licensee's 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 *My Bliss Nails, LLC*, as holder of Licensee's license, may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee establishment's license. Being aware of these rights provided the Licensee establishment by operation of law, *My Bliss Nails, LLC*, as holder of Licensee's license, 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 the Licensee establishment.

My Bliss Nails, LLC, as holder of Licensee's license, acknowledges that *My Bliss Nails, LLC*, has received a copy of the inspection reports and other documents relied upon by the Board in determining there

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

was cause to discipline the Licensee establishment's license, along with citations to law and/or regulations the Board believes were violated.

For the purpose of settling this dispute, *My Bliss Nails, LLC*, as holder of Licensee's license, stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that the beauty shop establishment license, numbered 2020001765, is 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. *My Bliss Nails, LLC*, is the unlicensed holder of a beauty shop establishment license, license number 2020001765. The beauty shop establishment, *My Bliss Nails & Spa*, is located at 9753 N. Cedar Ave., Kansas City, Missouri 64157. The Board last issued this beauty shop establishment license on September 15, 2023, and the establishment has an expiration date of September 30, 2025.

3. On or about January 16, 2024, the Board's inspector conducted an inspection at the *My Bliss Nails & Spa* establishment. The Board's inspection revealed several violations. Floors, towel warmer, and paraffin machine were not kept clean, and the chair was not in good repair, violations of 20 CSR 2085-11.020(1)(B). Workstations, pedicure chairs, and wax room were not kept clean, violations of 20 CSR 2085-11.020(1)(B). Nail clippings were found on the floor, a violation of 20 CSR 2085-11.020(2)(I). There was no photo attached to Jade Nguyen's posted operator license, a violation of 20 CSR 2085-10.010(3). The restroom was not clean, a violation of 20 CSR 2085-11.020(1)(D). The soiled towels were not in a closeable, leak-proof container, a violation of 20 CSR 2085-11.020(2)(A)3. The drawers were not clean, a violation of 20 CSR 2085-11.020(2)(D). Quynh Bui, Phong Bui and Oanh Tran's expired operator licenses were posted, violations of 20 CSR 2085-10.020(1). No employee reporting form was available, a violation of 20 CSR 2085-10.030(1). On or about January 19, 2024, the Board sent Licensee a violation notice regarding the January 16, 2024, inspection.

4. On or about April 4, 2024, the Board's inspector conducted an inspection at the *My Bliss Nails & Spa* establishment. The Board's inspection revealed several violations. Floors and towel warmer were dirty and not kept clean, violations of 20 CSR 2085-11.020(1)(B). The restroom was not clean, a violation of 20 CSR

2085-11.020(1)(D). There were dirty implements found in the workstations and pedicure carts, a violation of 20 CSR 2085-11.020(2)(D). On or about April 23, 2024, the Board sent Licensee a violation notice regarding the April 4, 2024, inspection.

5. On or about May 22, 2024, the Board's inspector conducted an inspection at the *My Bliss Nails & Spa* establishment. The Board's inspection revealed several violations. Back room sink and counter in the wax room were dirty and not kept clean, violations of 20 CSR 2085-11.020(1)(B). Phong Bui's operator license was not posted, violations of 20 CSR 2085-10.010(3). Tu Cam Thi Tran was performing services within the establishment without a Missouri license, a violation of 20 CSR 2085-10.060(3). On or about May 30, 2024, the Board sent Licensee a violation notice regarding the May 22, 2024, inspection.

6. 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 workstation.

7. Regulation 20 CSR 2085-10.030 states:

(1) All barber and cosmetology establishment licensees shall:

(A) Designate on a form approved by the board the names of any 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 and 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.

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

(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.

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

(1) Physical Facilities.

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(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. Commercial-type carpet may be used.

(D) Restrooms. All cosmetology establishments shall provide adequate and conveniently located restrooms, for use by patrons and operators. All schools shall provide two (2) or more restrooms to separately accommodate male and female students. All restrooms shall be provided with, at least, an operating toilet, a functional sink with hot and cold running water, soap (liquid or powder), and individual towels. Floors, walls, ceilings, and fixtures shall be made of washable materials and kept clean and in good repair at all times

(2) Sanitation Requirements.

(A) Protection of the Patron.

3. Soiled towels shall be placed in a closeable, leakproof container immediately upon completion of use.

(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.

10. As a result of the violations, as described above in paragraphs 2 through 5, the establishment violated Chapter 328, RSMo, and lawful regulations adopted pursuant to Chapter 328, RSMo, as described above in paragraphs 6 through 9, for which the Board has cause to take disciplinary action against the establishment's license numbered 2020001765.

11. Cause exists for the Board to take disciplinary action against the license of the Licensee establishment under § 328.140.2(6), (12) 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;

...

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

...

(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 the establishment license, numbered 2020001765, be placed on **PROBATION** for a period of three (3) years. During the establishment's probation, the establishment shall be entitled to operate as a beauty shop establishment under Chapter 329, RSMo, provided Custom Cuts, Inc., as holder of Licensee's license, adheres to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. *My Bliss Nails, LLC*, as holder of Licensee's license, shall correct all violations noted within this Settlement Agreement within thirty-(30) days of the effective date of this Settlement Agreement.

II. GENERAL REQUIREMENTS

A. *My Bliss Nails, LLC*, as holder of Licensee's license, 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. *My Bliss Nails, LLC*, as holder of Licensee's license, shall keep the Board apprised of his current home and work addresses and telephone numbers. *My Bliss Nails, LLC*, shall inform the Board within ten days of any change of address and telephone number.

C. *My Bliss Nails, LLC*, as holder of Licensee's license, shall ensure Licensee's compliance 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, *My Bliss Nails, LLC*, as holder of Licensee's license, shall timely renew the subject license and timely pay all fees required for licensing and comply with all other Board requirements necessary to maintain the subject license in a current and active state.

E. If at any time during the disciplinary period, *My Bliss Nails, LLC*, as holder of Licensee's license, ceases to keep Licensee currently licensed under provisions of Chapter 329, RSMo, the time of unlicensed status of the subject license, 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, *My Bliss Nails, LLC*, as holder of Licensee's license, shall accept and comply with unannounced visits to licensed establishment by the Board's representatives to monitor compliance with the terms and conditions of this Settlement Agreement.

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- G. If *My Bliss Nails, LLC*, as holder of Licensee's license, 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 328, RSMo, by *My Bliss Nails, LLC*, as holder of Licensee's license, 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. *My Bliss Nails, LLC*, as holder of Licensee's license, 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.

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 establishment. If Iris Corporation, as holder of Licensee's license, 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 *My Bliss Nails, LLC*, as holder of Licensee's license, has requested a review, *My Bliss Nails, LLC*, as holder of Licensee's license, and the Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining the Licensee establishment's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining the Licensee establishment's license. Effective the date the Administrative Hearing Commission determines that the Agreement sets forth cause for disciplining the Licensee establishment's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Oanh Tran

Designated Representative
My Bliss Nails, LLC, Owner/License Holder
My Bliss Nails & Spa

Date 10/01/2024

BOARD

Karla Johansen

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

Date 10/17/24