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Governor
State of Missouri

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July 9, 2020

Tuan Nguyen
d/b/a Nail Me Good
7915 N. Lindbergh Blvd.
Hazelwood, MO 63042

RE: SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND NAIL ME GOOD, AND TUAN NGUYEN, OWNER

Dear Tuan Nguyen:

Attached is the signed Settlement Agreement between Missouri State Board of Cosmetology and Barber Examiners and Nail Me Good. Tuan Nguyen, owner. Your censure is effective July 9, 2020.

Sincerely,
Board of Cosmetology and Barber Examiners

Brittany Tomblinson

Brittany Tomblinson
Executive Director

Attachment

BT:hh

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND TUAN NGUYEN

Come now Tuan Nguyen ("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 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 Licensee's licenses, 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.

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, number 2014009897, and operator license, number 2007022434, 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. Licensee holds a "Class MO—manicurist" operator license, license number 2007022434, which was issued by the Board. Licensee's "Class MO—manicurist" license is current and active.

3. Licensee operates a cosmetology establishment doing business as Nail Me Good ("Nail Me Good") located at 7915 N. Lindbergh Blvd., Hazelwood, Missouri 63042. Licensee holds establishment license number 2014009897 for this location, and the establishment 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 January 25, 2018, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

6. The Board's January 25, 2018 inspection revealed the following: the establishment is licensed for three operators but seven operator licenses were posted; pedicure bowl jet covers were dirty; floors had nail dust; workstations had nail dust; nail clipping waste receptacles did not have lids; the operator license of Tuyet Trinh Nguyen was posted without a photo attached; three unidentified

operators ran out the back door upon the Board's inspector's arrival; and clean towels were not on the manicuring tables when in use.

7. On or about February 23, 2018, the Board sent Licensee a violation notice regarding the January 25, 2018 inspection.

8. On or about March 8, 2018, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

9. The Board's March 8, 2018 inspection revealed the following: the establishment is licensed for three operators but seven operator licenses were posted; nail clipping waste receptacles did not have lids; and clean towels were not on the manicuring tables when in use.

10. On or about April 11, 2018, the Board sent Licensee a violation notice regarding the March 8, 2018 inspection.

11. On or about May 10, 2018, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

12. The Board's May 10, 2018 inspection revealed the following: the operator license of Mylinh Nguyen was posted without a photo attached; nail clipping waste receptacles did not have lids; the photo on the posted license of Thuy Thi Thu Nguyen did not match the photo in the Board's file; and Thuy Thi Thu Nguyen failed and refused to produce an acceptable form of identification while performing services at the time of the inspection and when requested by the Board's inspector.

13. On or about June 1, 2018, the Board sent Licensee a violation notice regarding the May 10, 2018 inspection.

14. On or about June 21, 2018, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

15. The Board's June 21, 2018 inspection revealed the following: there were two unidentified individuals performing services without a Missouri license—one left a client and ran out

the back door, while the other continued working on a client after admitting to not having a license; Tu Thanh Truong refused to produce identification upon the Board's inspector's request; there was no EPA registered disinfectant available within the establishment; implements were not being stored properly or cleansed after each use; there were no lids on disinfected implements; there was excessive nail dust in drawers and on used files; nail clipping waste receptacles did not have lids; there was nail dust on workstations, floors and all areas of the establishment; clean towels were not in a closed cabinet or drawer; there were strong fumes and insufficient ventilation within the establishment; and no bandages, liquid or spray styptic/antiseptic was available.

16. On or about July 6, 2018, the Board sent Licensee a violation notice regarding the June 21, 2018 inspection.

17. On or about August 15, 2018, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

18. The Board's August 15, 2018 inspection revealed the following: there were two unidentified unlicensed individuals performing services, who ran out the back door when the Board's inspector entered the establishment; implements were not being properly stored when not in use; there were implements and nail clippings left on the table; soiled towels were left at workstations and were not in a closeable, leakproof container; there were dirty files in drawers; and there was insufficient ventilation to dispel odors.

19. On or about September 4, 2018, the Board sent Licensee a violation notice regarding the August 15, 2018 inspection.

20. On or about March 7, 2019, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

21. The Board's March 7, 2019 inspection revealed the following: there was one unidentified unlicensed individual performing services; implements were not being cleaned after each

use; there was nail dust on the manicuring tables and in the drawers; and there were nail tips and clippings on the floor.

22. On or about March 18, 2019, the Board sent Licensee a violation notice regarding the March 7, 2019 inspection.

23. On or about April 8, 2019, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

24. The Board's April 8, 2019 inspection revealed the following: implements were not being cleaned after each use; there was nail dust on the manicuring tables and in the drawers; and there was nail dust and nail clippings on the floor.

25. On or about April 22, 2019, the Board sent Licensee a violation notice regarding the April 8, 2019 inspection.

26. On or about June 24, 2019, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

27. The Board's June 24, 2019 inspection revealed the following: waxing sticks and strips were not in a closed container; nail files were full of nail dust; the floor was covered in nail dust and clippings; all manicuring tables were full of nail dust; and all drawers in manicuring tables were full of nail dust.

28. On or about July 8, 2019, the Board sent Licensee a violation notice regarding the June 24, 2019 inspection.

29. On or about August 2, 2019, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

30. The Board's August 2, 2019 inspection revealed the following: nail files were full of nail dust; the floor was covered in nail dust and clippings; waxing supplies were not in a covered

container; and one unlicensed female performing a pedicure walked out the back door when the inspector entered the establishment.

31. On or about August 15, 2019, the Board sent Licensee a violation notice regarding the August 2, 2019 inspection.

32. On or about September 24, 2019, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

33. The Board's September 24, 2019 inspection revealed the following: waxing sticks and strips were not in a closed container.

34. On or about September 25, 2019, the Board sent Licensee a violation notice regarding the September 24, 2019 inspection.

35. On or about October 28, 2019, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

36. The Board's October 28, 2019 inspection revealed the following: the establishment was licensed for three operators, but there were seven operator licenses posted.

37. On or about March 10, 2020, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

38. The Board's March 10, 2020 inspection revealed the following: manicuring tables were covered in nail dust; the floor was covered in nail dust and clippings; and one unlicensed female was performing a service at a pedicure chair.

39. On or about March 12, 2020, the Board sent Licensee a violation notice regarding the March 10, 2020 inspection.

40. On or about June 8, 2020, the Board's inspector conducted an inspection at Nail Me Good. Licensee was present during the inspection.

41. The Board's June 8, 2020 inspection revealed no violations.

42. Regulation 20 CSR 2085-4.040 states:

(1) All licensees must possess or obtain one (1) of two (2) forms of state identification.
(A) The first acceptable form of identification is an automobile driver's license from any state; or
(B) The second acceptable form of identification is a Missouri state identification card. Missouri state identification cards may be obtained from the Missouri Department of Revenue's offices throughout the state.
(2) All licensees must carry one (1) of these forms of identification with them at all times when providing any professional barber or cosmetology services. Licensees must immediately produce one (1) of these forms of identification upon demand to any board inspector, to the board or its representative.

43. 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" × 2") photograph taken within the last five (5) years shall be attached to operator licenses. A two inch square (2" × 2") photograph taken within the last five (5) years shall be attached to apprentice licenses and student temporary permits.

44. Regulation 20 CSR 2085-10.050 states:

(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.

45. 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[.]

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

(1) Physical Facilities.
(A) Lighting and Ventilation. A minimum of thirty (30) footcandles light intensity shall be provided in all areas where all classified occupations of cosmetology are practiced. A minimum of five (5) footcandles must be provided in areas used for waiting rooms, storage, corridors, etc. For all physical facilities and retail cosmetic sales counters, sufficient ventilation shall be provided to dispel odors, condensates, and vapors. For this purpose, ventilating equipment, such as individual fans, vents and hoods, shall be provided where needed.
(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...
(2) Sanitation Requirements.
(A) Protection of the Patron.
1. Headrests shall be covered with a clean towel or paper protector for each usage.
2. Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens.
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...

(F) Blood Spill Procedures. If a cut is sustained or a blood spill should occur, the following steps must be followed by the licensee, apprentice, or salesperson:

1. Licensee, apprentice, student, or salesperson cut/blood spill procedure:

A. Licensee, apprentice, student, or salesperson must stop service immediately;

B. Clean cut area with soap (liquid or powder) and water and apply antiseptic. If necessary, liquid, spray, or powder styptic may be applied to stop bleeding. Note: Do not allow containers, brushes, or nozzles to touch or contact the wound—use an applicator as appropriate;

C. Cover injury with adhesive bandage;

D. If work area and/or equipment are soiled with blood, the licensee, student, apprentice, or salesperson shall place disposable gloves or a finger guard on their hands and clean/disinfect the area and soiled objects;

E. Dispose of all contaminated objects and disposable gloves in a covered waste receptacle and clean hands with an antimicrobial cleanser; and

F. Place a clean disposable glove on if cut is sustained on the hand.

2. Patron cut/blood spill procedure.

A. Licensee or student must stop service immediately;

B. Licensee or student must place disposable gloves on hands;

C. Cleanse cut area of patron, apply antiseptic and/or liquid styptic or spray styptic, as necessary. Note: Do not allow container or nozzles to touch or contact the wound; use an applicator as appropriate;

D. Cover cut area with adhesive bandage as indicated;

E. If work area and/or equipment are soiled with blood, licensee or student cosmetologist shall disinfect work area and/or blood spill area and dispose of or disinfect all contaminated objects; and

F. Remove and dispose of all contaminated objects and disposable gloves and clean hands with an antimicrobial cleanser...

(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[.]

47. Licensee's conduct, as set forth above, constitutes incompetence, misconduct, gross negligence, misrepresentation, and dishonesty for which the Board has cause to take disciplinary action against Licensee's cosmetologist operator and establishment licenses pursuant to § 329.140.2(5), RSMo.

48. Licensee's conduct, as set forth above, constitutes a violation of and/or assisting or enabling another to violate 20 CSR 2085-4.040, 20 CSR 2085-10.010, 20 CSR 2085-10.060, 20 CSR 2085-11.020, and 20 CSR 2085-10.050, for which the Board has cause to take disciplinary action against Licensee's cosmetologist operator and establishment licenses pursuant to § 329.140.2(6), RSMo.

49. Licensee's 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 Licensee's cosmetologist operator and establishment licenses pursuant to § 329.140.2(12), RSMo.

50. Licensee's 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 Licensee's cosmetologist operator and establishment licenses pursuant to § 329.140.2(13), RSMo.

51. Licensee's conduct, as set forth above, constitutes the failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof, for which the Board has cause to take disciplinary action against Licensee's cosmetologist operator and establishment licenses pursuant to § 329.140.2(15), RSMo.

52. Cause exists for the Board to take disciplinary action against Licensee's cosmetologist operator and establishment licenses under § 329.140.2(5), (6), (12), (13), 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:
>
> ...
>
> (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;
>
> ...
>
> (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;
>
> ...
>
> (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 Chapters 621 and 329, RSMo:

1. Licensee's cosmetology establishment license, number 2014009897, and operator license, number 2007022434, are hereby **PUBLICLY CENSURED**.

2. 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.

3. 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.

4. 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.

5. This settlement agreement shall go into effect on the date it is signed by the Executive Director of the Board.

LICENSEE

Tuan Nguyen

Date 06/28/2020

BOARD

Brittany Tomblinson, Executive Director

Date 7/9/2020