

BEFORE THE
BOARD OF COSMETOLOGY AND BARBER EXAMINERS
STATE OF MISSOURI

BOARD OF COSMETOLOGY AND BARBER EXAMINERS,)	
)	
Petitioner,)	
)	No. 17-0242
v:)	
)	
BRANDON PERRY,)	
)	
Respondent.)	

**JOINT MOTION FOR CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,
WAIVER OF HEARING
BEFORE THE BOARD OF COSMETOLOGY AND BARBER EXAMINERS,
AND DISCIPLINARY ORDER**

Respondent Brandon Perry ("Respondent") and Petitioner Board of Cosmetology and Barber Examiners ("Board") enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearing Before the Board of Cosmetology and Barber Examiners, and Disciplinary Order* ("Joint Stipulation") for the purpose of resolving the disciplinary proceeding against Respondent. Pursuant to the terms of § 536.060, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Board pursuant to §§ 328.150.3 and 621.110, RSMo, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that he is aware of and understands the various rights and privileges afforded him by law, including: 1) the right to a hearing of the charges against him; 2) the right to appear and be represented by legal counsel; 3) the right to have all charges against him proven upon the record by competent and substantial evidence; 4) the right to cross-examine any witness appearing at the hearing against him; 5) the right to present evidence on his behalf at the

hearing; 6) the right to a decision upon the record of the hearing by the Board concerning the complaint pending against him; 7) the right to a ruling on questions of law by the Board; 8) the right to seek recovery of attorneys' fees and expenses; and 9) the right to obtain judicial review of this Joint Stipulation. Being aware of these rights provided him by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Respondent further agrees to abide by the terms of this document as they pertain to him.

Respondent acknowledges that he received a copy of the Complaint in this case, which was filed by the Board with the Administrative Hearing Commission ("AHC") on March 2, 2017; the AHC's default decision issued on June 21, 2017; and the Board's notice of disciplinary hearing dated August 10, 2017. Respondent acknowledges that the Board's disciplinary hearing was held on November 13, 2017, and Respondent failed to appear at that hearing. After hearing, in Findings of Fact, Conclusions of Law, and Disciplinary Order dated March 19, 2018, the Board determined to revoke Respondent's barber operator and establishment licenses. On April 16, 2018, Respondent filed a Petition for Judicial Review in the Circuit Court of Boone County, Case No. 18 BA-CV01431, and Respondent obtained an order staying enforcement of the Board's Order revoking Respondent's licenses from the Circuit Court of Boone County on April 17, 2018.

The Board and Respondent hereby stipulate to the withdrawal of the Board's revocation of Respondent's licenses. Respondent stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the Board that his barber operator license (No. 007048) and barber establishment license (No. 003770) are subject to further disciplinary action by the Board in accordance with the provisions of §§ 328.150.3 and 621.110, RSMo.

I. JOINT STIPULATION

Based upon the foregoing, the Board and Respondent jointly stipulate to the following findings of fact and conclusions of law.

FINDINGS OF FACT 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. Respondent holds a barber operator license, license number 007048, which was issued by the Board. Respondent's barber operator license is current and active, but it was expired from on or about September 30, 2015 to on or about June 7, 2016.
3. Respondent operates a barber establishment, doing business as Something New Hair Clinic ("Something New"), license number 003770, located at 416 East Broadway, Columbia, Missouri 65201.
4. Respondent's establishment license expired on or about September 30, 2015 and was not renewed until March 14, 2017.
5. Jurisdiction and venue are proper before the Board pursuant to §§ 328.150.3 and 621.110, RSMo.
6. On or about April 26, 2016, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.
7. At the time of the April 26, 2016 inspection, Respondent's expired barber operator and establishment licenses were posted in public view.

8. The Board's April 26, 2016 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment and operator licenses were expired and with expired establishment and operator licenses posted in violation of § 328.020, RSMo, § 328.115, RSMo, 20 CSR 2085-5.040, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

9. On or about May 12, 2016, the Board sent Respondent a violation notice regarding the April 26, 2016 inspection.

10. On or about June 2, 2016, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.

11. At the time of the June 2, 2016 inspection, Respondent's expired barber operator and establishment licenses were posted in public view.

12. The Board's June 2, 2016 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment and operator licenses were expired and with expired establishment and operator licenses posted in violation of § 328.020, RSMo, § 328.115, RSMo, 20 CSR 2085-5.040, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

13. On or about June 14, 2016, the Board sent Respondent a violation notice regarding the June 2, 2016 inspection.

14. On or about June 22, 2016, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.

15. At the time of June 22, 2016 inspection, Respondent's expired establishment license was posted in public view.

16. The Board's June 22, 2016 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment license was expired and posted in violation of § 328.115, RSMo, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

17. On or about July 7, 2016, the Board sent Respondent a violation notice regarding the June 2 and June 22, 2016 inspections.

18. On or about July 27, 2016, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.

19. At the time of July 27, 2016 inspection, Respondent's expired establishment license was posted in public view.

20. The Board's July 27, 2016 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment license was expired and posted in violation of § 328.115, RSMo, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

21. On or about August 4, 2016, the Board sent Respondent a violation notice regarding the July 27, 2016 inspection.

22. On or about August 24, 2016, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.

23. At the time of August 24, 2016 inspection, Respondent's expired establishment license was posted in public view.

24. The Board's August 24, 2016 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment license was expired and posted in violation of § 328.115, RSMo, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

25. On or about September 7, 2016, the Board sent Respondent a violation notice regarding the August 24, 2016 inspection.

26. On or about October 13, 2016, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.

27. At the time of October 13, 2016 inspection, Respondent's expired establishment license was posted in public view.

28. The Board's October 13, 2016 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment license was expired and posted in violation of § 328.115, RSMo, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

29. On or about November 14, 2016, the Board sent Respondent a violation notice regarding the October 13, 2016 inspection.

30. On or about December 13, 2016, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.

31. At the time of December 13, 2016 inspection, Respondent's expired establishment license was posted in public view.

32. The Board's December 13, 2016 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment license was expired and posted in violation of § 328.115, RSMo, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

33. On or about January 11, 2017, the Board sent Respondent a violation notice regarding the December 13, 2016 inspection.

34. On or about February 22, 2017, the Board's inspector conducted an inspection at Something New. The establishment was open, and Respondent was present at the time of the inspection.

35. At the time of February 22, 2017 inspection, Respondent's expired establishment license was posted in public view.

36. The Board's February 22, 2017 inspection revealed the following violations: Respondent was providing and/or offering to provide barber services at the establishment while his establishment license was expired and posted in violation of § 328.115, RSMo, 20 CSR 2085-10.010, and 20 CSR 2085-10.060.

37. Respondent engaged in misrepresentation and dishonesty by continuing to practice after receiving multiple inspections and violation reports from the Board stating that both of his licenses were expired. Keeping the establishment open and performing services on patrons knowing that he did not have the proper licensure was dishonest and a misrepresentation to the public. Mr. Perry was representing himself to the public as a barber knowing that his license was expired.

38. Section 328.115.1, RSMo, states, in relevant part:

The owner of every establishment in which the occupation of barbering is practiced shall obtain a license for such establishment issued by the board before barbering is practiced therein[.]

39. Section 328.010(2), RSMo, defines a barber establishment as follows:

“Barber establishment”, that part of any building wherein or whereupon any occupation of barbering is being practiced including any space or barber chair rented within a licensed establishment by a person licensed under this chapter, for the purpose of rendering barbering services[.]

40. Section 328.020, RSMo, states:

It shall be unlawful for any person to practice the occupation of a barber in this state, unless he or she shall have first obtained a license, as provided in this chapter.

41. Regulation 20 CSR 2085-5.040(2)(C) states:

Any licensee who fails to renew shall not perform or offer to perform any act for which a license is required.

42. 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.

(4) Renewals and Reinstatements.

(A) All existing, currently licensed establishments in Missouri shall submit on or before the renewal date, a completed establishment renewal application to the board with the biennial renewal fee. Renewal notices are sent out by the board as a courtesy. It is the responsibility of the holder(s) of the establishment license to renew the license by the expiration date. Failure to receive a renewal notice does not relieve the holder(s) of this responsibility.

(B) Reinstatement of License. The holder(s) of an establishment license which has not been renewed by the renewal date shall be required to submit a late fee in addition to the biennial renewal fee in order to reinstate the license. The holder(s) of the establishment license who continues to operate although the license has not been renewed shall be subject to disciplinary action for operating an unlicensed establishment if the establishment license is not reinstated within fourteen (14) days following the mailing of a notice to the holder(s) or sixty (60) days from the renewal deadline, whichever is later, for operating an establishment without a license.

43. 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.

- (2) License Posted. Every licensed barber and cosmetologist shall post a current license issued by the board in front of the barber's working chair or the cosmetologist's work station where it shall be readily seen by all patrons.
- (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[.]

44. Respondent's conduct constitutes a violation of Chapter 328, RSMo, and lawful regulations adopted pursuant to Chapter 328, RSMo, including § 328.115, RSMo, § 328.020, RSMo, 20 CSR 2085-5.040, 20 CSR 2085-10.010, and 20 CSR 2085-10.060, for which the Board has cause to take disciplinary action against Respondent's barber operator and establishment licenses pursuant to § 328.150.2(6), RSMo.

45. Respondent's conduct constitutes misconduct, misrepresentation and/or dishonesty in the performance of the functions and/or duties of a barber for which the Board has cause to take disciplinary action against Respondent's barber operator and establishment licenses pursuant to § 328.150.2(5), RSMo.

46. Respondent's conduct constitutes a violation of a professional trust and/or confidence for which the Board has cause to take disciplinary action against Respondent's barber operator and establishment licenses pursuant to § 328.150.2(13), RSMo.

47. By providing and/or offering to provide barber services at Something New while his establishment and operator licenses were expired and with expired establishment and operator licenses posted, Respondent is subject to disciplinary action against Respondent's barber operator and establishment licenses pursuant to § 328.150.2(12), RSMo.

48. Cause exists for the Board to take disciplinary action against Respondent's barber operator and establishment licenses under § 328.150.2(5), (6), (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 his certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(5) Incompetency, 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 certificate or license if so required by this chapter or any rule promulgated hereunder;

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

II. JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the Order regarding discipline of Respondent's barber operator and establishment

licenses, subject to the following terms and conditions, and entered by the Board in this matter under the authority of §§ 328.150.3 and 621.110, RSMo. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Board without further action by either party:

1. Probation. Respondent's barber operator license (No. 007048) and barber establishment license (No. 003770) are hereby placed on PROBATION for FIVE (5) YEARS. The period of probation is referred to hereinafter as "the disciplinary period." During the disciplinary period, Respondent shall be entitled to practice as a barber operator and establishment provided he pays all required fees, maintains his licenses current and active, and adheres to all the terms stated herein. During the disciplinary period:

- A. Respondent 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. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. Respondent shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- C. Respondent shall comply with all provisions of 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, Respondent shall timely renew his licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Respondent's licenses in a current and active state.

E. If at any time during the disciplinary period, Respondent removes from the state of Missouri, ceases to be currently licensed under provisions of Chapter 328, or fails to advise the Board of Respondent's current place of business and residence, the time of Respondent's 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 § 328.150.3, RSMo.

F. During the disciplinary period, Respondent shall accept and comply with unannounced visits from the Board's representatives to monitor Respondent's compliance with the terms and conditions of this Joint Stipulation.

2. Upon the expiration of the disciplinary period, the licenses of Respondent shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Joint Stipulation, the Board may, in its discretion, vacate and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate, including imposition of revocation.

3. No additional discipline shall be imposed by the Board pursuant to the preceding paragraph of this Joint Stipulation without notice and opportunity for hearing before the Board as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this Joint Stipulation occurs during the disciplinary period, the Board may choose to conduct a hearing before it to determine whether, in fact, a violation occurred and may impose further discipline.

4. This Joint Stipulation does not bind the Board or restrict the remedies available to it concerning any future violations by Respondent of Chapters 328 and 329, RSMo, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

5. This Joint Stipulation does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the Board or may be discovered.
6. If any alleged violation of this Joint Stipulation occurs during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether, in fact, a violation occurred and, if so, may impose further disciplinary action. Respondent agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.
7. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement. Respondent waives any claim to attorney fees under Section 536.087, RSMo.
8. Respondent agrees to dismiss with prejudice the Petition for Judicial Review, filed in the Circuit Court of Boone County, No. 18BA-CV01431, within five (5) days after the effective date of this Stipulation.
9. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation 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.
10. The parties to this Joint Stipulation understand that the Board will maintain this Joint Stipulation as an open record as required by Chapters 324, 328, and 610, RSMo.

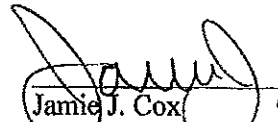
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