

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND PRO NAILS, DON PHAM AND LANNA PHAM, OWNERS/OPERATORS

Come now Pro Nails, Don Pham and Lanna Pham (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 the cosmetology establishment license, the "Class MO – manicurist" license, "Class E – estheticians" license, and "Class CA – hairdressing and manicuring" 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 2000.

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.

Licensee acknowledges that Licensees had the opportunity to review 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.

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 the establishment license, numbered 052285,

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

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operator license, numbered 105159, operator license, numbered 2009020255, and operator license, numbered 2007004115, are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 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. Licensee Don Pham and Licensee Lanna Pham hold a cosmetology establishment license issued by the Board on or about October 4, 1996, license number 052285, for Pro Nails, located at 8450 N Lindbergh Blvd, Florissant, Missouri 63031. Licensee Dom Pham also holds a "Class MO – manicurist" operator, license number 105159, originally issued by the Board on October 17, 1996 and Licensee Lanna Pham also holds a "Class E – estheticians" license, license number 2009020255, originally issued by the Board on July 14, 2009. "Class CA – hairdressing and manicuring" license, license number 2007004115, originally issued by the Board on February 14, 2007. The referenced Missouri operator licenses are active and not expired. The referenced establishment license is active and not expired.
3. On or about July 19, 2017, the Board conducted a routine inspection at Pro Nails. The inspection revealed the following violation: there were three (3) individuals performing services within the establishment without a Missouri License, a violation of 20 CSR 2085-10.060. On or about August 3, 2017, the Board sent Licensee a violation notice following the July 19, 2017 inspection.
4. On or about February 5, 2019, the Board conducted a routine inspection at Pro Nails. The inspection revealed the following violation: there was an unlicensed female performing services within the establishment without a Missouri License, a violation of 20 CSR 2085-10.060. On or about February 26, 2019, the Board sent Licensee a violation notice following the February 5, 2019 inspection.
5. On or about March 25, 2019, the Board conducted a routine inspection at Pro Nails. The inspection revealed the following violation: there was an unlicensed female performing services within the establishment without a Missouri License, a violation of 20 CSR 2085-10.060. On or about April 11, 2019, the Board sent Licensee a violation notice following the March 25, 2019 inspection.
6. Regulation 20 CSR 2085-10.060 states, in relevant part:

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(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.

7. As a result of the violations, as described above in paragraphs 3 through 5, in violation of the statutes and regulations contained in paragraph 6, Licensee violated lawful regulations adopted pursuant to Chapter 329, RSMo, for which the Board has cause to take disciplinary action against the subject establishment license and operator licenses.

8. Cause exists for the Board to take disciplinary action against the subject establishment license and operator licenses under § 329.140.2(6), and (12), 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 license if so required by this chapter or any rule promulgated hereunder[.]

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 § 621.045.3, RSMo:

9. The terms of discipline shall include that the cosmetology establishment license, number 052285, operator license, number 105159; operator license, number 2009020255, and operator license, number 2007004115, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During the disciplinary period, Licensee Don Pham and Licensee Lanna Pham shall be entitled to operate an establishment

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and, offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. GENERAL REQUIREMENTS

- A. Licensee shall correct all noted violations within thirty days of the effective date of this settlement agreement.
- B. 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.
- C. Licensee shall keep the Board apprised of Licensee's 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.
- D. Licensee shall comply 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.
- E. During the disciplinary period, Licensee shall timely renew Licensee's licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.
- F. If at any time during the disciplinary period, Licensee moves from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee'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 § 329.140, RSMo.
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.
- H. 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).
- 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 Licensee not specifically mentioned in this document.

10. 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 329, 610 and 324, RSMo.

11. 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.

12. 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.

13. 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. 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.

14. 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 license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

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LICENSEE

Don Pham

Pro Nails
Don Pham, Owner/Operator

Date July 6, 2019

Pham Lanna

Pro Nails
Lanna Pham, Owner/Operator

Date July 10/2019

BOARD

Brittany Tomblinson

Brittany Tomblinson, Executive Director
Missouri Board of Cosmetology and Barber Examiners

Date 7/16/19



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