

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND AVERY'S AND AVERY WESLEY, OWNER/OPERATOR

Come now Avery's and Avery Wesley, Owner/Operator ("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 operator and establishment licenses 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 license, 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 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 Licensee 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 Licensee's barber shop license, numbered

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

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2017037279, and Licensee's barber operator license numbered 2012013539 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621, 328, 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 holds a barber operator license, license number 2012013539. The Board originally issued Licensee's barber operator license on May 1, 2012. Licensee's barber operator license is active and not expired.

3. Licensee also holds a barber shop license, license number 2017037279. Licensee's barber establishment, Avery's, is located at 13912 E. Noland Court, Unit F, Independence, Missouri 64055. The Board originally issued Licensee's barber shop license on October 17, 2017. Licensee's barbershop license is active and not expired.

4. On or about October 5, 2018, the Board's inspector conducted an inspection at the licensed establishment. The shop was open for business and Licensee was present. The Board's inspection revealed the following violations: the operator license was expired, in violation of 20 CSR 2085-5.050. On or about November 16, 2018, the Board sent Licensee a violation notice regarding the October 5, 2018 inspection.

5. On or about January 17, 2019, the Board's inspector conducted an inspection at the licensed establishment. The shop was open for business and Licensee was present. The Board's inspection revealed the following violations: the operator license was expired, in violation of 20 CSR 2085-5.050. On or about February 25, 2019, the Board sent Licensee a violation notice regarding the January 17, 2019 inspection.

6. On or about March 28, 2019, the Board's inspector conducted an inspection at the licensed establishment. The shop was open for business and Licensee was present. The Board's inspection revealed the following violations: the operator license was expired, in violation of 20 CSR 2085-5.040. On or about April 22, 2019, the Board sent Licensee a violation notice regarding the March 28, 2019 inspection.

7. Regulation 20 CSR 2085-5.040 states, in relevant part:

...

(2) Renewals. Every two (2) years (biennially) the renewal application for active licensees must be completed, signed, accompanied by the

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appropriate renewal fee, and returned to the board office prior to the expiration date of the license. All licenses shall expire on September 30 of each odd-numbered year. Any application postmarked after September 30 will be returned and the applicant will be required to reinstate.

(A) Any barber whose license has expired who wishes to restore the license shall make application to the board by submitting the following within two (2) years of the license renewal date:

1. An application for renewal of licensure; and
2. The current renewal fee and the reinstatement fee, as set forth in 20 CSR 2085-3.010.

8. Regulation 20 CSR 2085-5.050 states, in relevant part:

...

(3) Any person who has allowed his/her license to practice barbering to expire for a period of more than five (5) years may submit an application to the board to reinstate that license by examination. However, applicants for reinstatement must pass both portions of the barber licensure examination. Applicants for reinstatement by examination pursuant to this subsection shall be governed by 20 CSR 2085-5.010.

9. As a result of the violations, as described above in paragraphs 4 through 6, Licensee violated Chapter 328, RSMo, and lawful regulations adopted pursuant to Chapter 328, RSMo, as described above in paragraphs 7 through 8 for which the Board has cause to take disciplinary action against Licensee's barber operator and establishment licenses.

10. Cause exists for the Board to take disciplinary action against Licensee's barber operator and establishment licenses under § 328.150.2(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 certificate or license if so required by this chapter or any rule promulgated hereunder[.]

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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:

11. The terms of discipline shall include that Licensee's barber operator license, numbered 2012013539, and Licensee's barber shop license numbered 2017037279, be placed on **PROBATION** for a period of three (3) years. During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of barbering and operate a barber establishment under Chapter 328, RSMo, provided Licensee adhere to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

- A. Licensee shall correct all violations 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 his 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, 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 the subject licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain the subject 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, RSMo, or fails to advise the Board of his current place of business and residence, the time of Licensee's absence, unlicensed status of the subject licenses, or Licensee's 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 to Licensee's establishment by 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).

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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 Licensee not specifically mentioned in this document.

12. 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.

13. 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.

14. Licensees, 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.

15. 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.

16. If Licensee has requested a review, Licensee and the Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining

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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

Avery Wesley
Avery Wesley, Operator/Owner
Avery's
Date 08/15/19

BOARD

Brittany Tomblinson
Brittany Tomblinson,
Executive Director
Missouri Board of Cosmetology and
Barber Examiners
Date 8-22-19



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