

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND Z NAILS LLC, AND TUNG VAN DINH, OWNER/OPERATOR

Come now Z Nails, LLC, and Tung Van Dinh, Owner/Operator (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 Licensee's cosmetology establishment license and "Class MO – manicurist" 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 was 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

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

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2016044809, operator license, numbered 2016039426 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 Tung Van Dinh holds a cosmetology establishment license issued by the Board on or about December 28, 2016, license number 2016044809, for Z Nails, LLC, located at 104 S. Forrest Avenue, Liberty, Missouri 64068. Licensee Tung Van Dinh also holds a "Class MO – manicurist" operator, license number 2016039426, originally issued by the Board on November 2, 2016. Both licenses are active and not expired.

3. On or about November 29, 2018, the Board conducted an inspection at Z Nails, LLC. The inspection revealed the following violations: there was no EPA registered disinfectant available within the establishment; the floors, wax room, backroom, hallway, contents and equipment have not been kept clean, some of the pedicure chairs were found not in good repair and; the clean towels are not being kept in a closed cabinet or drawer, all violations of 20 CSR 2085-11.020. On or about January 25, 2019, the Board sent Licensee a violation notice following the November 29, 2018 inspection.

4. On or about March 14, 2019, the Board conducted an inspection at Z Nails, LLC. The inspection revealed the following violations: the waxpot is dirty, several pedicure tubs were dirty, the towel warmer was dirty, several chairs at the manicure tables are torn, there were nail clippings under the manicure tables, all violations of 20 CSR 2085-11.020. On or about April 11, 2019, the Board sent Licensee a violation notice following the March 14, 2019 inspection.

5. On or about May 7, 2019, the Board conducted an inspection at Z Nails, LLC. The inspection revealed the following violation: the equipment was not in good repair, a violations of 20 CSR 2085-11.020. On or about May 15, 2019, the Board sent Licensee a violation notice following the May 7, 2019 inspection.

6. 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.

(2) Sanitation Requirements.

(A) Protection of the Patron.

2. Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens.

(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.

(I) Covered Waste Receptacles. Any barber establishment or school shall be required to have covered waste receptacles for the disposal of hair. Hair clippings shall be swept up and disposed of in a covered waste receptacle after each patron[.]

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 license under § 329.140.2(6), 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:

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(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;

(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 § 621.045.3, RSMo:

9. The terms of discipline shall include that the establishment license, numbered 2016044809, operator license, numbered 2016039426, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During the disciplinary period, Licensee shall be entitled to operate an establishment 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.

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- 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.**

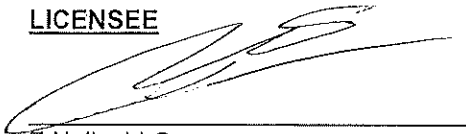
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14. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's licenses and issue findings of act and conclusions 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.

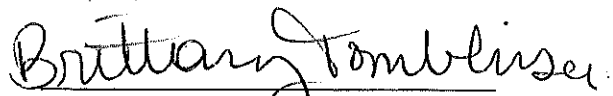
LICENSEE



Z Nails, LLC
Tung Van Dinh, Owner/Operator

Date 10/30/2019

BOARD



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

Date 11/12/2019



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