

**State of New Hampshire
Barbering, Cosmetology & Esthetics Board
Concord, New Hampshire 03301**

In the Matter of:

Cynthia Cabral

License No. 465, Cosmetology and Esthetics

License No. 21154, Manicuring and Esthetics

(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of barbering, cosmetology and esthetics, the New Hampshire Board of Barbering, Cosmetology & Esthetics (“Board”) and Cynthia Cabral (“Respondent”), a licensee of the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 313-A:22, and Board of Barbering, Cosmetology & Esthetics Rule (“Bar”) 206.01 et seq., the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by licensees. Pursuant to RSA 313-A:8 and Bar 217.02(c), the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. Respondent holds license number 465, Cosmetology and Esthetics, and license number 21154, Manicuring and Esthetics. Respondent owned and operated Visage Day Spa, 5 Kelly Road, Salem, NH, but closed the business on September 1, 2009 and has not practiced under either license since that date.

3. When Respondent submitted a renewal application for her licenses on December 4, 2009, she did not disclose a conviction of class A misdemeanor theft by misapplication on March 16, 2009.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's misdemeanor theft conviction.

The Board's investigation revealed and Respondent freely admits to the following facts:

A. Respondent provided a massage to L.D. in October of 2008. L.D. paid with a credit card. On January 10 and 16, 2009, Respondent caused unauthorized charges in the amounts of \$2,100 and \$1,200, respectively, to be charged to L.D.'s credit card. The Salem Police Department investigated the matter and charged Respondent with a class A felony theft, since the amount was more than \$1,000.

B. Respondent initially denied making the charges, but subsequently admitted to the theft and paid full restitution to L.D. As a result, the prosecutor reduced the level of the offense to a class A misdemeanor. On March 16, 2009, Respondent pleaded guilty to the reduced charge. She received a sentence that included thirty days in the House of Corrections, all suspended for two years, and a \$500 fine.

C. Respondent closed her salon on September 1, 2009. She has not practiced as an esthetician and/or manicurist since that date. When Respondent renewed her licenses on December 4, 2009, she failed to disclose the conviction.

5. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 313-A:22, II(a) and (c).
6. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's licenses to practice as an esthetician and/or manicurist in the State of New Hampshire.
7. Respondent consents to the Board imposing the following discipline, pursuant to RSA 313-A:22, III:
 - A. Respondent is REPRIMANDED.
 - B. Respondent's licenses to practice in the area of Cosmetology and Esthetics and in the area of Manicuring and Esthetics are SUSPENDED for twelve (12) months. The suspensions are retroactive to September 1, 2009, the date that Respondent closed her salon and ceased practicing as an esthetician and/or manicurist. Respondent shall be eligible for licensure on September 1, 2010.
 - C. Respondent is assessed an ADMINISTRATIVE FINE in the amount of \$250. All of the fine is suspended.
 - D. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as an esthetician and/or manicurist or work which requires licenses in Cosmetology and Esthetics or in Manicuring and Esthetics, and to any agency or authority which licenses, certifies or credentials estheticians and/or manicurists with which Respondent is presently affiliated.

- E. For a continuing period of three (3) years from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as an esthetician and/or manicurist or for work in any capacity which requires licenses in Cosmetology and Esthetics or in Manicuring and Esthetics, and to any agency or authority that licenses, certifies or credentials estheticians and/or manicurists to which Respondent may apply for any such professional privileges or recognition.
- F. For a continuing period of three (3) years from the effective date of this agreement, Respondent is prohibited from owning or managing any shop that requires licenses in Cosmetology and Esthetics or in Manicuring and Esthetics.
8. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 313-A:22, II(c), and a separate and sufficient basis for further disciplinary action by the Board.
9. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
10. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.

11. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.
12. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
13. Respondent understands that her action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
14. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with her decision to enter into this agreement.
15. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced her right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
16. Respondent is not under the influence of any drugs or alcohol at the time she signs this *Settlement Agreement*.
17. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal

to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.

18. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date: Sept 25, 2010

Cynthia Cabral
Cynthia Cabral
Respondent

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 10-5-10

Kathryn Wantuck
(Signature)

Kathryn Wantuck
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Barbering, Cosmetology
& Esthetics

/* Board members, recused:
Heather Lummis