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

In the Matter of:
Joshua Smith
License No.: 16240
(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 Joshua Smith ("Mr. Smith" or "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, RSA 541-A and Board of Barbering, Cosmetology & Esthetics Administrative Rule ("Bar") 206.01 et seq., the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by the Board's 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. The Board first granted Respondent a license to practice in the State of New Hampshire on June 16, 2005. Respondent holds license number 16240.
3. In response to information reported in the Manchester Union Leader, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's arrest for resisting detention, resisting arrest, disorderly conduct, criminal

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trespass and criminal threatening and his subsequent conviction for criminal threatening, criminal trespass, and resisting arrest.

4. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove the following facts:

   A. On or about January 21, 2010, Respondent reported to work at Styling Souls and after working for a period of time, left work for lunch at a nearby bar.

   B. Respondent drank alcohol during his lunch break on or about January 21, 2010.

   C. When Respondent returned to work, his employer, Christine Lavalley, terminated him from Styling Souls.

   D. Respondent became angry and began yelling and swearing at Ms. Lavalley.

   E. Respondent also threatened Ms. Lavalley and other employees by yelling, "You're done. You're all done!"

   F. After being terminated, Respondent refused to leave the premises until forced to leave with his friends who were at the salon at the time.

   G. When police arrived, Respondent resisted arrest.

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 (c) and/or Bar 501.02 (d).

6. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a barber in the State of New Hampshire.

7. Respondent consents to the Board imposing the following discipline, pursuant to RSA 313-A:22, III:

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A. Respondent's license to practice as a licensed master barber is CONDITIONED and subject to a period of PROBATION for two (2) years.

B. Respondent shall, at his own expense, meaningfully participate in, without interruption, such care and treatment as may be recommended to him by a Board-approved mental health professional.

1. Within 20 days of the effective date of this *Settlement Agreement*, Respondent shall submit to the Board a list of licensed mental health professionals willing to provide mental health services to Respondent. Respondent shall provide each prospective mental health professional with a copy of the *Settlement Agreement*.

2. Respondent and the mental health professional shall address what stressors lead to Respondent's decompensation outlined in this *Settlement Agreement* and Respondent's insight into the causes and consequences. Respondent and the mental health professional shall also address how to manage these stressors in the future.

3. The mental health professional shall file quarterly reports, under seal, with the Board, outlining Respondent's attendance and providing a general statement of Respondent's progress.

4. Said mental health services shall commence within thirty (30) days of this *Settlement Agreement* and continue for twenty-four (24) months following the initiation of treatment.

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C. Respondent shall bear all costs of the treatment, evaluation, and reporting required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.

D. Respondent shall **submit to at least six (6) random drug tests per year, during the probation of his master barbering license.** Said tests shall have been conducted and scheduled by a laboratory under conditions acceptable to the Board; the Board appoints the Executive Director to determine the plan for testing using Board guidelines.

E. 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 master barbering services or work which requires a license in Barbering, Cosmetology and Esthetics, and to any agency or authority which licenses, certifies or credentials master barbers/barbers with which Respondent is presently affiliated.

F. Respondent is required to provide written notification to the New Hampshire Board of Barbering, Cosmetology & Esthetics within 10 days of termination or change in role of any employment while the probation is in effect.

G. Respondent is required, within one month of beginning employment while the probation is in effect, to provide a written report from his employer setting forth the following information:

1. The name and address of the Respondent's employer;
2. The duties and responsibilities to be performed by the Respondent;

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3. An acknowledgement by the employer that he/she has read this *Settlement Agreement* and understands the role of the employer.

H. Respondent is required, on a quarterly basis, to submit to the New Hampshire Board of Barbering, Cosmetology & Esthetics work performance evaluations from his employer. The evaluation shall include the following information:

1. Name and address of Respondent;
2. Number and times of hours worked;
3. Quality and safety of Barbering, Cosmetology & Esthetics care;
4. Adherence or failure to adhere to the conditions and restrictions set by the New Hampshire Board of Barbering, Cosmetology & Esthetics.

I. The Board may consider Respondent's compliance with the terms and conditions herein and with the recommendations of the treating mental health professional in any subsequent proceeding before the Board regarding Respondent's license.

J. For a continuing period of two (2) 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 a master barber, and to any agency or authority that licenses, certifies or credentials master barbers/barbers, to which Respondent may apply for any such professional privileges or recognition.

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.

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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 him 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 his 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 his choosing in connection with his 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 his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.

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16. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.

17. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his 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*, he 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: 12-6-10

Joshua Smith
Respondent

Date: _____

Counsel for Respondent

FOR THE BOARD

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

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Date: 12/15/10

Kathryn Wantuck
(Signature)

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

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Before the
N. H. Board of Barbering, Cosmetology and Esthetics
Concord, New Hampshire

In the matter of:

Josh Smith Personal Master Barber License #10841
(Order to Extend Effective Dates)

ORDER TO EXTEND SETTLEMENT AGREEMENT EFFECTIVE DATES

BACKGROUND

On December 12, 2010 the Board approved a Settlement Agreement for Joshua Smith ("Mr. Smith" or "Respondent"). At its regularly scheduled meeting on February 13, 2012, the Board reviewed a petition by the Respondent to extend the time to comply with paragraph D of the Settlement Agreement.

ACTION

The Board approves the petition as follows:

1.) The Respondent shall submit to six (6) random drug tests per year for the next two (2) years from the effective date of this order. This order also extends the probationary period on the Respondent's Master Barber license. All other requirements of the Settlement Agreement are applicable herein.

2.) Respondent must provide the Board with a current, dated letter from the supervising Parole/Probation Officer confirming the dates and terms of Respondent's probation within 30 days of the effective date of this order.

ORDER

THEREFORE IS IT ORDERED, that the Respondent's petition is approved.

IT IS FURTHER ORDERED, that the Respondent's failure to comply with any terms imposed by this Order shall constitute a basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED, that this Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date 3/6/12

Kathryn Wantuck, Executive Director
Authorized Representative
Board of Barbering, Cosmetology, and Esthetics