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BEFORE THE BOARD OF BARBERS AND COMETOLOGY
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Rosalia Ervin,
Cutting Edge Hair Salon, EST10667

Case No. BC-19-84-INS

Respondent.

SETTLEMENT AGREEMENT
PROPOSED PRIOR TO REFERRAL FOR ADMINSTRATIVE PROSECUTION

WHEREAS, Rosalia Ervin, (hereafter, "Respondent") is licensed in New Mexico under the Barbers and Cosmetology, NMSA 1978, Sections 61-17A-7(12) and 61-17A-2 ("the Act"), and is therefore subject to the jurisdiction of the New Mexico of Barbers and Cosmetology ("Board"); and

WHEREAS, the Board has received a formal complaint alleging that Respondent has violated the Act; and

WHEREAS, Respondent wishes to resolve this matter before the complaint is reviewed and possibly referred to the Board's administrative prosecutor at the Office of the Attorney General for the issuance of formal charges through the issuance of a Notice of Contemplated Action ("NCA"); and

WHEREAS, this Settlement Agreement ("Agreement") is entered into voluntarily; and

WHEREAS, Board staff or committee of the Board believe a settlement agreement would be in the best interest of the Board; and

WHEREAS, if the Agreement is rejected by Respondent or not accepted by the Board, the formal complaint in this matter will be forwarded to the Board for further consideration, which may include referral to the Office of the Attorney General for issuance of an NCA, and initiation of a formal disciplinary action, which could result in discipline by the Board up to and including revocation of the license; and

WHEREAS, Respondent is willing to resolve this matter without the need for, and time and expense of, a formal hearing that may occur if the matter is referred for administrative prosecution and an NCA is issued.

THEREFORE, IT IS AGREED AS FOLLOWS:

1. Jurisdiction: Respondent is licensed by the Board or otherwise subject to the Act and jurisdiction of the Board.

2. Voluntary Agreement: Respondent enters into this Agreement knowingly and voluntarily, without duress or coercion, and after a full opportunity to consult an attorney. Respondent understands that the Board has not, at this time, taken any formal disciplinary action against Respondent, and that if Respondent rejects this agreement there is no certainty that the matter will be referred for prosecution or that any disciplinary action will occur.

3. Board Approval: This Agreement requires Board approval. If the Board rejects this Agreement, the matter will be further investigated and may be referred to the Board for additional disciplinary proceedings, including a request for the issuance of a Notice of Contemplated Action by the Board's administrative prosecutor at the Office of the Attorney General and a full evidentiary hearing on the matter. If the Board rejects this Agreement, the terms of this Agreement or statements made by Respondent in support of this Agreement shall not be used against Respondent in a subsequent hearing. The approval shall be effective the date this Agreement is signed by the Board or its designee.

4. Waivers: If this Agreement is accepted by the Board, Respondent agrees to waive any and all rights under the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017), including but not limited to the right to an evidentiary hearing, the right to discovery, the right to present evidence, the right to call and cross examine witnesses, and the right to judicial review.

5. Violations: Respondent admits to the following violation(s) of the Act or Board's rules:

    a. NMAC 16.34.7.9(A)(1-3, 18-29, 35-38)- All bottles in salon must be properly labeled.
    b. NMAC 16.34.7.9(B)(1)- One-time use files and buffers must be disposed of after each use.
    c. NMAC 16.34.7.9(A)(32, 33)- Disinfected combs and brushes at hair stations must be enclosed in containers or drawers, marked clean or dirty and kept separate from used and soiled items.
    d. NMAC 16.34.7.9(A)(30, 31)- Disinfected implements must be stored in covered containers marked clean or dirty.
    e. NMAC 16.34.7.9- Client storage of files and buffers for client reuse is prohibited.

6. Sanctions and Conditions: Respondent agrees to the following disciplinary sanctions and conditions:

    a. Fine: Respondent shall pay to the Board seven hundred and fifty dollars ($750.00) within sixty (60) days from the date this Agreement is accepted by the Board.

    b. Respondent will clean up all the violations listed in the settlement agreement.

7. Reportable Discipline: Respondent understands that this Agreement DOES constitute formal disciplinary action by the Board. If this Agreement does constitute formal discipline, the Board will report the action to the applicable professional licensing national database, if any.

8. Non-Compliance: Respondent understands and agrees that failure to comply with the terms of this Agreement will result in further Board action. Any violation of this Agreement will result in the immediate, automatic filing of an administrative Notice of Non-Compliance by Board staff. Upon the filing of a Notice of Non-Compliance, the matter shall be scheduled for the next public meeting of the Board, at which time the Board shall hear from Board staff regarding the alleged non-compliance. Respondent shall have the opportunity to address the allegations or offer any other relevant argument or evidence regarding the reasons for non-compliance. Such argument or evidence may be provided in writing prior to the meeting or in person at the Board meeting. Any presentation regarding the Notice of Non-Compliance shall be limited to evidence surrounding Respondent's alleged failure to comply with the Agreement. Upon finding such violation occurred, the Board may suspend Respondent's license(s), provided that this suspension may only remain in effect until such time as the Respondent has complied with the terms of this agreement, or take other enforcement action as permitted by law. If Respondent's non-compliance constitutes acts that are prohibited under the Board's statute or rules, the Board may also initiate a new disciplinary action and refer that matter for administrative prosecution.

9. Contact Information: Respondent shall notify the Board within ten (10) calendar days if there is a change in employment or home address during the term of discipline or prior to completion of any conditions stated herein.

10. Public Record: This Agreement and the original complaint are public records and may be provided for inspection if requested, pursuant to the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). The Board may also publish this Agreement or a summary of the Agreement to the public, which may include posting to the Board's website.

11. Full Compliance and Final Disposition: Upon Respondent's satisfactory completion of the terms of this agreement, the case will be deemed closed for administrative purposes without the filing of an order or official vote of the Board. However, this matter may still constitute disciplinary action as provided herein for purposes of Respondent's record with the Board.

I understand and have read this document and hereby agree to the terms of this Agreement freely and voluntarily. I understand that by entering into this Agreement I am giving up my rights under the Uniform Licensing Act, including my right to an evidentiary hearing on the merits of the alleged violations.

I understand that if the Board accepts this Agreement, I am required to comply with the terms stated herein, and that failure to comply with the Agreement may subject me to further discipline, including temporary suspension of my license(s).

Respondent — Date: March 4, 2020

Respondent's Attorney (if any) — Date

ORDER

This document is not valid unless it is accepted by vote of the Board. Having come before the Board during a properly scheduled public meeting, with a quorum present and majority voting in the affirmative, this Agreement is:

__X__ ACCEPTED

IT IS SO ORDERED.

/s/ Amanda Montelongo — Date: 8/12/2020

[redacted]
Barbers and Cosmetology
Amanda Montelongo
Vice Chair