BEFORE THE STATE OF WEST VIRGINIA
BOARD OF BARBERS AND COSMETOLOGISTS

STATE OF WEST VIRGINIA
BOARD OF BARBERS and
COSMETOLOGISTS,

Complainant

FORMAL COMPLAINT NO. 2020-09

v.

J. C. PENNEY STYLING SALON,

Respondent

CONSENT DECREE

Now comes a Representative of J. C. Penney Styling Salon (hereinafter "Respondent"), and the West Virginia Board of Barbers and Cosmetologists (hereinafter "Board") for resolving a complaint filed against Respondent. Pursuant to W. Va. Code § 30-27-20(d) the Board may enter into a Consent Decree. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact and Conclusions of Law and the proper disposition of this matter. The Board, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. The Board is a state entity and is charged with the responsibility to protect the health, safety and welfare of the public through its regulation of the practice of barbering and cosmetology. *See W. Va. Code § 30-27-1 et seq.*

2. Respondent is a representative of J. C. Penney Styling Salon (salon license no. 006209) located at 200 Grand Central Avenue, Parkersburg, West Virginia.

3. This matter arose after the Board determined that the Respondent's salon license was issued a 4th offense for citation 2.40; "Failing to discard a disposable emery board, sponge, buffer, or orangewood stick after use on a client or to give the emery board, sponge, buffer, or orangewood stick to the client."

4. Respondent's salon license (license no. 006209) was issued a 1st offense for citation 2.40; "Failing to discard a disposable emery board, sponge, buffer, or orangewood stick after use on a client or to give the emery board, sponge, buffer, or orangewood stick to the client" on or about 8/9/2019. Respondent was issued a warning per Series 7 of the Rules and Regulations of the Board.

5. Respondent's salon license (license no. 006209) was issued a 2nd offense for citation 2.40; "Failing to discard a disposable emery board, sponge, buffer, or orangewood stick after use on

a client or to give the emery board, sponge, buffer, or orangewood stick to the client" on or about 8/9/2019. Respondent was issued a $100.00 fine per Series 7 of the Rules and Regulations of the Board.

6. Respondent's salon license (license no. 006209) was issued a 3rd offense for citation 2.40; "Failing to discard a disposable emery board, sponge, buffer, or orangewood stick after use on a client or to give the emery board, sponge, buffer, or orangewood stick to the client" on or about 8/9/2019. Respondent was issued a $300.00 fine per Series 7 of the Rules and Regulations of the Board.

7. Respondent's salon license (license no. 006209) was issued a 4th offense for citation 2.40; "Failing to discard a disposable emery board, sponge, buffer, or orangewood stick after use on a client or to give the emery board, sponge, buffer, or orangewood stick to the client" on or about 8/9/2019. Respondent was not issued a fine at that time.

8. Respondent has been fined a total of $400.00 in connection to the citations mentioned within this Order.

9. Respondent has paid $400.00 of the $400.00 for administrative fines issued in connection to the citations mentioned with this Order.

CONCLUSIONS OF LAW

1. The Board has the authority and responsibility to regulate the profession of barbering and cosmetology in the State of West Virginia. *See W. Va. Code § 30-27-1 et seq.*

2. The Board has jurisdiction to conduct investigations into complaints to determine if probable cause existed that the licensee was in violation West Virginia Code § 30-27-20(c) or any rule in West Virginia Code R. § 3-1-1 *et seq.*

3. The Board's authority to discipline licensees is found at West Virginia Code § 30-27-20.

4. The Board has jurisdiction to conduct disciplinary hearings and issue orders. *See W. Va. Code § 30-27-5(14).*

5. Disciplinary action can include reprimand, probation, administrative fine not to exceed $1,000.00 per day per violation, mandatory attendance at continuing education seminars or other training, practicing under supervision or other restriction, requiring licensee to report to the board for periodic interviews for a specified period of time, or other corrective action considered by the board to be necessary to protect the public. *See W. Va. Code § 30-27-20(h).*

6. The Board is authorized to enter into a Consent Decree to resolve a complaint without further adjudication. *See W. Va. Code § 30-27-20(d) and W. Va. Code R. §3-9-2.11.*

7. The Board has the authority to assess administrative costs incurred. *See W. Va.*

Code § 30-1-8(a).

CONSENT

1. By signing below Respondent agrees that he or she has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and is mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein.

2. Respondent acknowledges that he or she may pursue this matter through appropriate administrative and/or court proceedings and is aware of his or her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

3. Respondent accepts the findings set forth above.

4. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate. Should the Board not approve this Consent Decree, Respondent waives any objections to the Board or any of its members participating in the adjudication of this matter.

5. Respondent understands that this Consent Decree and the underlying complaint are public records and agrees that the sum and substance of the complaint and this agreement in part or

in their entirety may be set forth in Board publications and placements deemed appropriate by the Board.

6. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this Consent Decree, the reinstatement of the complaint, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia law as it pertains to the practice.

ORDER

1. On the basis of the forgoing, and upon entry of this Consent Decree by this tribunal, the Board hereby **ORDERS** that this Consent Decree shall serve as an informal settlement of this complaint pursuant to W. Va. Code § 30-1-8(a).

2. This Consent Decree is executed by Respondent for the purpose of avoiding further administrative action with respect to this case. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning the Respondent prior to or in conjunction with consideration of this Consent Decree. Furthermore, should this Consent Decree not be accepted by the Board, it is agreed that it shall not preclude the Board or any of its members from further participation, consideration, or resolution of these proceedings.

3. The Board **ORDERS** Respondent to pay administrative fines in the amount of $600.00.

4. The administrative fines imposed herein in the amount of $300.00 must be paid within thirty (30) days of the date Respondent receives Notice of Entry of this agreement by the Board, with such amount made payable to WVBBC (Administrative Fines). The remaining balance of $300.00 can be paid in 6 monthly installments of $50.00 per month. Failure to remit payment of these administrative fines will result in further disciplinary action by the Board.

5. The Board **ORDERS** Respondent's facility (salon license no. 006209) be inspected one (1) day per week for a period of four (4) weeks. The manager that is working at the Respondent's facility (salon license no. 006209) at the time of the inspections must complete sanitation training that will be administered by a Board Inspector/Investigator.

6. The sanitation training imposed must be completed within thirty (30) days of the date Respondent receives Notice of Entry of this agreement by the Board.

7. Any violation of any of the terms of this Consent Decree will result in further disciplinary action by the Board.

8. The Consent Decree constitutes a full and final settlement of this matter, and nothing in this Consent Decree or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative action by this Board except for an action to enforce the terms of this complaint.

9. If the administrative fines imposed herein totaling $600.00 are not timely paid, this Consent Decree may be summarily enforced in the Circuit Court of Wood County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein, together with pre-judgment interest from the date of the Board's Chair signature hereon, post-judgment interest from the date of entry, and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

10. This matter shall be closed upon the execution of this Consent Decree by both parties, satisfactory completion of the terms contained with this Consent Decree and the full payment of the administrative fines agreed to herein.

11. This Consent Decree relates solely to matters within the jurisdiction of the West Virginia State Board of Barbers and Cosmetologists and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:

Representative of J. C. Penney Styling Salon Respondent	1/24/2020 Date

NOTARY SIGNATURE

The above signature is true to the best of my knowledge.

Notary's Name: DENISE KNIGHTON

Notary's Signature: D. Kight

County Of: SALT LAKE

State Of: UTAH

Sworn and subscribed to me on:

Date: 1-24-2020

DENISE KNIGHTON
Notary Public
State of Utah
My Commission Expires April 02, 2022
COMMISSION NUMBER 699781

Notary Stamp Here

ENTERED into the records of the West Virginia Board of Barbers and Cosmetologists this 8th day of June, 2019/2020.

By: _____

Chair/President or Vice President
West Virginia State Board of Barbers and Cosmetologists
1201 Dunbar Avenue, Dunbar, WV 25064
Telephone: (304) 558-2924
Facsimile: (304) 558-3450

RECEIVED
JAN 31 2020