

SETTLEMENT AGREEMENT
BETWEEN
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
AND
SUSIE M. CUNNINGHAM

000052 DEC 23 2009

Susie M. Cunningham (Cunningham) and the State Board of Embalmers and Funeral Directors (Board) enter into this Settlement Agreement for the purpose of resolving the question of whether Cunningham's licenses as a funeral director, no. 005928, and as an embalmer, no. 007357, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo Cum. Supp. 2008. The Board and Cunningham jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2008.

Cunningham acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Cunningham may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to her by law, Cunningham 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 her.

Cunningham acknowledges that she has received a copy of documents that were the basis upon which the Board determined there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Cunningham stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Cunningham's licenses as a funeral director, no. 005928, and as an embalmer, no. 007357, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 324, RSMo Cum. Supp. 2008, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Cunningham in Part II herein is based only on the agreement set out in Part I herein. Cunningham understands that the Board may take further disciplinary action against her

based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Board and Cunningham herein jointly stipulate to the following:

1. On or about January 15, 2009 through February 9, 2009, Cunningham's funeral director and embalmers licenses were suspended by operation of law for non-compliance with § 324.010, RSMo Cum. Supp. 2008.

2. Section 324.010, RSMo Cum. Supp., provides in relevant part:

All governmental entities issuing professional licenses, certificates, registrations, or permits...shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy.

3. During the time her licenses were suspended, Cunningham made arrangements and conducted a funeral service for Tyler Meeks. Meeks died on or about January 28, 2009.

4. Section 333.061, RSMo Cum. Supp. 2008, provides in relevant part:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof, has a license issued by the board.

5. Section 333.121, RSMo Cum. Supp. 2008, provides:

2. 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 his certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(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;

....

(13) Violation of any professional trust or confidence[.]

6. Because Cunningham made arrangements and conducted a funeral service while her licenses were suspended, she violated § 333.061, RSMo Cum. Supp. 2008, and cause exists to discipline Cunningham's licenses pursuant § 333.121.2(6), RSMo Cum. Supp. 2008.

7. Cunningham's conduct of making arrangements and conducting a funeral service while her licenses were suspended, shows a violation of a professional trust or confidence, providing cause to discipline her licenses pursuant to § 333.121.2(13), RSMo Cum. Supp. 2008.

II.
Joint Agreed Disciplinary Order

Based on 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 § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2008.

8. **Cunningham's licenses are on probation.** Cunningham's licenses as a funeral director and embalmer are hereby placed on PROBATION for a period of ONE (1) YEAR. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Cunningham shall be entitled to practice as a funeral director and embalmer under Chapter 333 RSMo, as amended, provided Cunningham adheres to all the terms of this agreement.

9. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Cunningham shall keep the Board apprised at all times in writing of its current business address and telephone number, and Cunningham shall keep the Board apprised at all times in writing of her current home and work addresses and telephone number at each place of business. Cunningham shall provide the Board with written notification within ten days of any change in this information.

B. Cunningham shall timely renew all board issued licenses and registrations and timely pay all fees for these renewals and comply with all other requirements to maintain their licenses and registrations in a current and active state.

C. If, at any time within the disciplinary period, Cunningham change residence and/or place of business from the State of Missouri, cease to be currently licensed under the provisions of Chapter 333 and Chapter 436, or fail to keep the Board advised of all current places of business and/or residence, the time of absence, or unlicensed status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

D. Cunningham shall comply with all provisions of Chapter 333, RSMo, and §§ 436.005 through 436.071, RSMo; all rules and regulations of the Board; and all state and federal laws related to the performance of duties in the funeral industry.

E. Cunningham and/or an agent shall appear before the Board or its representatives upon the Board's request.

F. Cunningham shall accept and cooperate with unannounced visits from the Board's duly authorized representative to monitor their compliance with these terms and conditions.

G. Cunningham shall submit written reports to the Board by no later than January 1 and July 1 during each year of the disciplinary period stating truthfully

whether there has been compliance with all terms and conditions of this Settlement Agreement.

10. Upon the expiration of the disciplinary period, the licenses of Cunningham shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Cunningham has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Cunningham's licenses.

11. No additional discipline shall be imposed by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Board as a contested case in accordance with the provisions of Chapter 536, RSMo.

12. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Cunningham of Chapter 333, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

13. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Board or may be discovered.

14. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Cunningham agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

15. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

16. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained 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.

17. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 333, 610, and 324, RSMo, as amended.

18. Cunningham, together with her partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim,

actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

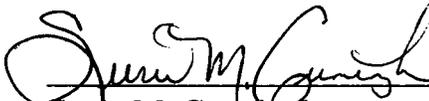
19. Cunningham understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Cunningham's licenses. If Cunningham desires the Administrative Hearing Commission to review this Settlement Agreement, Cunningham may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

16. If Cunningham requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Cunningham's licenses. If Cunningham does not request review by the Administrative Hearing Commission, the

Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

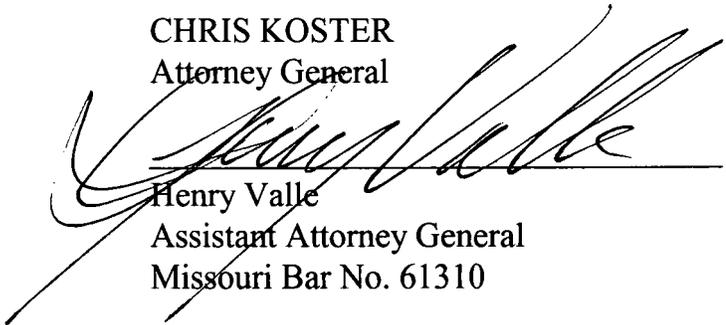
LICENSEE

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS


Susie M. Cunningham 11-17-09
Date


Becky Dunn, Executive Director
Date: 12/28/09

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