

**SETTLEMENT AGREEMENT BETWEEN**  
**THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS**  
**AND D W NEWCOMERS SON'S, INC.,**  
**d/b/a WHITE CHAPEL FUNERAL HOME**

D W Newcomers Son's, Inc., a Missouri corporation ("D W Newcomers") that owns and operates licensed funeral establishments located in Missouri including that funeral establishment doing business as White Chapel Funeral Home ("White Chapel") and the State Board of Embalmers and Funeral Directors ("Board") enter into this Settlement Agreement for the purpose of resolving the question of whether D W Newcomers' funeral establishment license for White Chapel, no. 002740, will be subject to discipline. Pursuant to § 536.060, RSMo 2000<sup>1</sup>, 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. 2006. The Board and DW Newcomers jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2005.

D W Newcomers acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; 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 it at the hearing; the right to present evidence on its behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against it; the right to a ruling on questions of

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time D W Newcomers 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 it by law, D W Newcomers 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 it.

D W Newcomers acknowledges that the Board and its attorney followed the procedures enumerated in § 621.045, RSMo Cum. Supp. 2005, including, but not limited to, providing D W Newcomers with a written description of the specific conduct for which discipline is sought and citations to the law and rules violated, together with copies of any documents which are the basis thereof and the Board's initial settlement offer.

For the purpose of settling this dispute, D W Newcomers stipulates that the factual stipulations contained in this Settlement Agreement are true and stipulates with the Board that the White Chapel funeral establishment license, No. 002740, is subject to disciplinary action by the Board in accordance with the provisions of Chapters 333 and 621, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and DW Newcomers in Part II herein is based only on the agreement set out in Part I herein. DW Newcomers understands that the Board may take further disciplinary action against the White Chapel funeral establishment license based on facts or conduct not specifically mentioned in this document that are either now known to the Board, or may be discovered.

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

**I. Joint Stipulation of Facts and Conclusions of Law Relevant to All Counts**

1. The Board is an agency of the State of Missouri, established and existing pursuant to § 333.151, RSMo, for the purpose of administering and enforcing Chapter 333, RSMo, and portions of Chapter 436, RSMo, and the regulations adopted thereunder.

2. D W Newcomers' funeral establishment license for the White Chapel, No. 002740, has been current and active at all relevant times.

3. Ralph Tymson ("Tymson") was the funeral director in charge at White Chapel at all times relevant herein. Tymson holds an embalmer's license, No. 005919, and a funeral director's license, No. 004066. These licenses have been current and active at all relevant times herein.

4. Jon M. Dale ("Dale") was an employee of White Chapel at all times relevant herein. Dale holds an embalmer's license, No. 2002023050, and a funeral director's license, No. 2002023051. These licenses have been current and active at all relevant times herein.

5. James D. "Lou" Moore ("Moore") was an employee of White Chapel at all times relevant herein, until his termination on July 26, 2007. Moore holds a funeral director's license, No. 2002012379. Moore allowed his license to lapse on May 31, 2005. Moore does not hold and has never held an embalmer's license or an embalmer apprentice's license in Missouri.

6. Moore began working at White Chapel in January 2006, prior to his funeral license being renewed; Dale acted as preceptor for Moore.

7. During the time he was employed at White Chapel, Moore performed the following activities: washing bodies; making incisions to open the body; setting the features by using an injunction gun to permanently close the mouth; raising arteries and/or vessels by making an incision and hooking up the artery and/or vessel and pulled them up for injection and closing of incisions in bodies.

8. Moore performed those duties while under the supervision of Dale.

9. Those activities constituted the practice of embalming, as defined by § 333.011(6), RSMo, which states: “‘Practice of embalming,’ the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work[.]”

10. Section 333.021, RSMo, states, in pertinent part: “No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.”

11. From at least January 2003 to late 2006, White Chapel had a policy of requiring embalmers to pre-sign death certificates.

12. The conduct at White Chapel, as alleged herein, constitutes a violation of a professional trust and confidence.

13. Cause exists to discipline the funeral establishment license for White Chapel pursuant to § 333.121.2(5), (6), (10), (13), and (16), RSMo, which states:

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:

....

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(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;

....

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

....

(13) Violation of any professional trust of confidence;

....

(16) Pre-signing a death certificate or signing a death certificate on a body not embalmed by, or under the personal supervision of, the licensee[.]

## **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 §§ 333.121, 536.060, 621.045.3, and 621.110, RSMo, as amended.

14. Suspension and Probation of Funeral Establishment License. White Chapel's Missouri funeral establishment license, No. 002740, shall be **SUSPENDED** on each of the following seven (7) days:

a) December 24, 2007, b) December 25, 2007, c) March 12, 2008, d) March 13, 2008, March 14, 2008, March 15, 2008, and d) March 16, 2008.

White Chapel shall also be placed on **PROBATION** for a period of two (2) years beginning on the date of this Settlement Agreement. The periods of suspension and probation shall be known as the "disciplinary period." On each day of suspension, White Chapel shall not engage in the practice of funeral directing and embalming, including but not limited to:

- i) removing bodies;
- ii) negotiating and/ or entering into contractual agreements for funeral services for a person that is deceased;
- iii) presenting, showing, arranging, planning, conducting and/or supervising visitations, interments, reinterments, disinterments, transportation and funeral ceremonies for a deceased person; or
- iv) preparing bodies for embalming or performing an embalming function.

During the period of probation, White Chapel shall be entitled to practice as a funeral establishment provided it complies with the terms and conditions of the disciplinary period.

15. Terms and Conditions of the Disciplinary Period

- A. D W Newcomer's shall keep the Board apprised at all times in writing of the current business address, and telephone number of White Chapel. D W Newcomers shall provide the Board with written notification within ten days

of any change in this information.

- B. D W Newcomers shall timely renew its White Chapel funeral establishment license and pre-need registration, and timely pay all fees for these renewals and comply with all other requirements to maintain its licenses and registrations in a current and active state.
- C. If, at any time during the disciplinary period, DW Newcomers changes its place of business from the State of Missouri, ceases to be currently licensed under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of its current place of business, or unlicensed status, it shall not be deemed or taken as part of the disciplinary period.
- D. D W Newcomers, in its operation of White Chapel, shall comply with all provisions of Chapter 333, RSMo, §§ 436.005 through 436.071, RSMo, and all rules and regulations of the Board.
- E. D W Newcomers representatives shall appear before the Board or its representatives upon the Board's request.
- F. D W Newcomers shall accept and cooperate with unannounced visits at White Chapel from the Board's duly authorized representatives to monitor its compliance with these terms and conditions.
- G. D W Newcomers 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.

16. Upon the expiration of the disciplinary period, D W Newcomers' license for White Chapel shall be fully restored if all requirements of this Settlement Agreement have been satisfied; provided, however, that in the event the Board determines that D W Newcomers 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 D W Newcomers' White Chapel funeral establishment license.

17. 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 (as amended). If any alleged violation of this Settlement Agreement occurs during the disciplinary period, the Board may conduct a hearing before it to determine whether a violation occurred and may impose further discipline, if the Board chooses to pursue further discipline

18. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by D W Newcomers of Chapter 333, RSMo, as amended, or the regulations promulgated there under.

19. 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.

20. If any alleged violation of this Settlement Agreement occurs 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 discipline. D W Newcomers agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine whether a violation of this Settlement Agreement has occurred.

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

22. 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.

23. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board.

24. D W Newcomers, together with its 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, its investigation, 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 Settlement Agreement or any portion thereof void or unenforceable.

25. D W Newcomers understands that it may, either at the time the Settlement Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining D W Newcomers' funeral establishment license for White Chapel. If D W Newcomers desires the Administrative Hearing Commission to review this Settlement Agreement, D W Newcomers may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, MO 65101.

26. If D W Newcomers 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 D W Newcomers' funeral establishment license for White Chapel. If D W Newcomers does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect IMMEDIATELY after the document is signed by the Executive Director of the Board.

D.W. Newcomer's Son, Inc.

Missouri Board of Embalmers and Funeral Directors

By: John Brownfelter  
John Brownfelter  
Director of Operations  
D.W. Newcomer's Son, Inc.

By: Becky Dunn  
Becky Dunn  
Executive Director  
State Board of Embalmers and Funeral Directors

Date 12-18-07

Date 12/19/07

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Attorney for Board of Embalmers and Funeral Directors

Date 12-18-07

Date 12/19/07