

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND ELITE FUNERAL HOME, LLC D/BA ELITE FUNERAL
CHAPEL**

(Establishment and Provider Licenses)

The State Board of Embalmers and Funeral Directors (the "Board") and Elite Funeral Home, LLC ("Licensee" or "Elite Funeral") enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Elite Home, LLC d/b/a Elite Funeral Chapel" (the "Settlement Agreement") to resolve the question of whether Elite Funeral's establishment and provider licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on these licenses.

Pursuant to the terms of Section 536.060 RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee acknowledges that it understands the various rights and privileges afforded to 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 against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against its licenses. Being aware of these rights provided it by operation of law, Licensee knowingly and

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated. Provisions to portions of Chapter 436, RSMo, that were repealed in 2009 are designated also as "Old Law."

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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.

Licensee acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that it has been advised of its right to consult with private legal counsel, at its expense, to assist it with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's licenses are subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

Relevant Statutes and Regulations

1. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

2. Section 333.061, RSMo, requires an establishment license and states, 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.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

* * *

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

3. Regulation 20 CSR 2120-1.040(14) offers the following definition:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

4. Rule 20 CSR 2120-2.070 sets forth requirements for funeral establishment licenses and states, in relevant portion:

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

5. Regulation 20 CSR 2120-2.071 states, in relevant part:

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within thirty (30) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

* * *

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

(11) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

6. Section 333.330.2, RSMo, authorizes discipline against establishment and provider licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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 or her 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 thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

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

* * *

(14) Violation of any professional trust or confidence;

Joint Stipulation of Facts and Conclusions of Law

The parties agree and stipulate to the following findings of fact and conclusions of law:

Parties and Licenses

7. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.

8. Elite Funeral is a Missouri limited liability company in good standing and has registered its address with the Board as 11525 Blue Ridge Blvd, Kansas City, Missouri 64134.

9. Elite Funeral holds funeral establishment license number 2013030330 that is current and active, but subject to probation.

10. Elite Funeral holds provider license number 2013030331 that is current and active, but subject to probation.

11. Elite Funeral registered Malcolm D. Morris as its funeral director in charge.

12. Malcolm D. Morris holds funeral director license number 00637 that was current and active at all times relevant to this Probation Violation Complaint except for when it lapsed, due to non-renewal, from May 31, 2014 until July 7, 2014.

Order of Probation and Terms and Conditions of Probation

13. The Board issued Elite Funeral its “Order Issuing Probated Licenses to Elite Funeral Home, LLC” on August 15, 2013 (the “License Probation Order”). The License Probation Order issued Elite Funeral an establishment license and a provider license, both on probation. Included with the License Probation Order was a letter explaining the conditions of probation and the licenses issued.

14. The License Probation Order placed Elite Funeral’s funeral establishment and provider licenses on probation for a period of one year, subject to certain terms and conditions of probation set forth in paragraph 23 of the License Probation Order.

15. The License Probation Order, in paragraph 23, listed conditions of probation including:

b. Licensee shall comply with all applicable provisions of Chapters 194, 333, and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry;

c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission as set forth in Section 333.330, RSMo;

* * *

f. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active; and...

Conduct Constituting Probation Violations

16. On December 31, 2013, the funeral establishment license issued to Elite Funeral lapsed because Elite Funeral failed to renew the license.

17. By letter dated January 10, 2014, the Board notified Malcolm D. Morris, as funeral director in charge of Elite Funeral, that Elite Funeral's funeral establishment had lapsed and enclosed the forms necessary to request reinstatement of the license.

18. On January 21, 2014, the Board received the Reinstatement submitted by Elite Funeral and signed by Brenda Ferguson, Comptroller, dated January 15, 2014.

19. Elite Funeral met all requirements for reinstatement on January 24, 2014.

20. The Board reinstated Elite Funeral's funeral establishment license on January 24, 2014.

21. The Board requested Elite Funeral to provide copies of documents showing whether Elite Funeral had engaged in the practice of a funeral establishment for the period when it was not so licensed.

22. By fax received January 27 by the Board, Elite Funeral provided records showing that it had practiced as a funeral establishment during the time it was not so licensed.

23. Elite Funeral was open for business during the time it was not licensed as a funeral establishment and between January 1, 2014 and January 24, 2014, the date of reinstatement, provided 4 funeral services.

24. As of May 31, 2014, Malcolm D. Morris' funeral director license lapsed due to failure to renew.

25. The Board reinstated the funeral director license of Malcolm D. Morris on July 7, 2014

26. From May 31, 2014 and until July 7, 2014, Elite Funeral had no registered funeral director in charge.

27. By letter dated June 27, 2014, the Board notified Elite Funeral that the license of its funeral director in charge had lapsed and requested that Elite Funeral immediately notify the Board of who would be serving as funeral director in charge of the establishment.

28. Elite Funeral did not respond to the June 27, 2014 letter of the board.

Procedural History

29. On July 2, 2014, the Board filed its Probation Violation Complaint alleging that Elite Funeral had violated the conditions of discipline as set forth in this Settlement Agreement.

30. The Board set the Probation Violation Complaint for hearing on August 11, 2014.

31. Elite Funeral was properly served with notice of the time, date and location of the hearing on the Probation Violation Complaint.

32. Malcolm Morris appeared for the hearing on the Probation Violation Complaint.

33. In lieu of proceeding with formal hearing, the Board and Malcolm Morris, on behalf of Elite Funeral, agreed to resolution of the probation violation by settlement agreement.

34. Upon the effective date of this Settlement Agreement, the Board will enter its an order dismissing the Probation Violation Complaint.

Cause to Discipline

35. Elite Funeral violated the conditions of its probation set forth in paragraph 23.b, c, and f. of the License Probation Order by continuing to operate as a funeral establishment when it held no current license.

36. Elite Funeral violated the conditions of its probation as set forth in paragraphs 23.b. and c. of the License Probation Order by operating without a licensed funeral director in charge registered with the Board and failing to notify the board of a change in the funeral director in charge within 30 days of the date of the change.

37. The Board has cause to impose additional discipline upon Elite Funeral's funeral establishment and provider licenses because Elite Funeral failed to comply with the conditions of its probation.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 324.042, 333.330 and 621.045, RSMo:

38. Licensee's licenses to practice as an establishment and as a provider are both placed on **PROBATION** for a period of **ONE YEAR** from the effective date of this Settlement Agreement (the "Disciplinary Period"). During the Disciplinary Period, Licensee shall be entitled to practice as an establishment and as a provider, subject to the following conditions of Discipline:

Terms and Conditions of the Disciplinary Period

39. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with the current and active e-mail address of its funeral director in charge;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board,

Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately.

- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with any revenue laws of the state; and
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period.

40. 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.

41. Upon the expiration of the Disciplinary Period and successful completion of the the Disciplinary Period, Licensee's licenses shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee 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 impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's licenses.

42. The Board shall enter no order imposing further discipline on Licensee's licenses without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

43. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

44. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the licenses of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the conditions of the Disciplinary Period occurred.

45. Licensee, together with its heirs and assigns and its attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case,

its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

46. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

47. Licensee understands that it may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

48. If Licensee 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 Licensee's licenses. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

49. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee



Board



By 
Elite Home, LLC

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors

Dated: _____

Dated: 9-30-2014

By checking this box, I, Malcolm Morris, certify that I am authorized by Elite Home, LLC to enter into this Settlement Agreement on its behalf.

Approved:



Sharon K. Euler # 42950
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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
10-15-2014
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS