

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
AND
CLARENCE HACKLEMAN

Clarence Hackleman (“Hackleman”) and the Missouri State Board of Embalmers and Funeral Directors (“Board”) enter into this Settlement Agreement for the purpose of resolving the question of whether Hackleman’s license as a funeral director, no. 003973, will be subject to discipline. Pursuant to § 536.060, RSMo,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. The Board and Hackleman jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Hackleman acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; 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 him at the hearing; the right to present evidence on his 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, as amended, unless otherwise noted.

administrative hearing commissioner concerning the charges pending against him; 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 Hackleman 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 him by law, Hackleman 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 him.

Hackleman acknowledges that he 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. Hackleman stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Hackleman's license as a funeral director, no. 003973, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapters 621 and 333, RSMo.

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

Introduction

1. Hackleman is licensed by the Board as a funeral director, license no. 003973 (“license”), which was current and active at all relevant times herein.
2. Between October 13, 2006 and March 14, 2007, Hackleman was the funeral director of Hackleman and Sons Funeral Home (“Home”) in Eldorado Springs, MO.
3. As funeral director of the Home, Hackleman has a relationship of professional trust and/or confidence with the Home’s customers, the Home’s employees, and the general public.
4. As funeral director of the Home, Hackleman owes a professional duty to the Home’s customers, the Home’s employees, and the general public to ensure that the Home is in compliance with all laws and regulations of the State of Missouri.
5. As funeral director of the Home, Hackleman owes a professional duty to the Home’s customers, the Home’s employees, and the general public to ensure that the Home’s pricing of its services is presented and conveyed in a clear and understandable manner.

6. As funeral director of the Home, Hackleman owes a professional duty to the Home's customers, the Home's employees, and the general public to ensure that all services the Home provides are performed by employees who are licensed to provide them.

7. As funeral director of the Home, Hackleman owes a professional duty to the Home's customers, the Home's employees, and the general public to ensure that all documentation completed by the Home is truthful, honest, and accurate.

8. Section 333.121.2, RSMo, provides in pertinent part:

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 or confidence;

* * *

(16) Presigning a death certificate or signing a death certificate on a body not embalmed by, or under the personal supervision of, the licensee;

* * *

(19) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof[.]

Unclear Pricing Practices

9. Section 333.145, RSMo, provides in pertinent part:

1. Every funeral firm in this state or the funeral service licensee thereof shall give or cause to be given to the person or persons making funeral arrangements or arranging for the disposition of a dead human body, at the time such arrangements are completed and prior to the time of rendering the service or providing the merchandise, a written statement signed by the purchaser or purchasers or their legal representatives, and a representative of the funeral establishment, showing to the extent then known:

(1) The price of the service that the person or persons have selected and what is included therein;

(2) The price of each of the supplemental items of service or merchandise requested;

(3) The amount involved for each of the items for which the firm will advance moneys as an accommodation to the family;

(4) The method of payment.

10. On February 7, 2007, the Home had a general price list, which listed the services the Home provided, as well as the potential costs associated with those services.

11. The general price list did not clearly and understandably indicate what the potential cost of each of the Home's services was.

12. Because Hackleman had allowed the general price list to not clearly and understandably indicate what the potential cost of each of the Home's services was, cause exists to discipline his license pursuant to § 333.121.2(5), (6), and (13), RSMo.

Unlicensed Funeral Directing

13. Section 333.011(7), RSMo, defines the "practice of funeral directing" and provides:

"Practice of funeral directing", engaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a funeral establishment.

14. Section 333.021.2, RSMo, provides:

No person shall engage in the practice of funeral directing unless he has a license issued under this chapter nor shall any person use in connection with his name or business any of the words "undertaker", "mortician", "funeral home", "funeral parlor", "funeral chapel", "funeral consultant", "funeral director" or other title implying that he is in the business defined as funeral directing herein, unless he or the individual having control, supervision or management of his business is duly licensed to practice funeral directing in this state.

15. On February 7, 2007, Mike Hackleman (“Hackleman’s son”) was employed by the Home, purportedly in a secretarial capacity.

16. On February 7, 2007, Hackleman’s son was not licensed by the Board as a funeral director.

17. Hackleman’s son’s duties included the following:

- a. completing the Home’s embalming log;
- b. marking all of the Home’s merchandise;
- c. signing contracts entered into by the Home; and
- d. planning funeral arrangements with customers of the Home.

18. Hackleman’s son’s performance of the abovementioned duties constitutes the practice of funeral directing without a license.

19. Because Hackleman allowed his son to perform the abovementioned duties even though his was not licensed by the Board as a funeral director, cause exists to discipline Hackleman’s license pursuant to § 333.121.2(5), (6), (10), and (13), RSMo.

Unlicensed Embalming

20. Section 333.011(6), RSMo, defines the “practice of embalming” and provides:

“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[.]

21. Section 333.021.1, RSMo, provides:

No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.

22. Between October 13, 2006 and March 14, 2007, Hackleman was never licensed by the Board as an embalmer.

23. Between October 13, 2006 and March 14, 2007, Hackleman embalmed the following decedents'² bodies at the Home:

- a. L.C.D.;
- b. A.L.J.;
- c. O.V.H.;
- d. N.W.; and
- e. L.F.

24. Because Hackleman embalmed the abovementioned bodies even though he was not licensed by the Board as an embalmer, cause exists to discipline his license pursuant to § 333.121.2(5), (6), (10), and (13), RSMo.

Unlawful Signing of Death Certificates

25. 20 CSR 2120-2.070(29) provides:

A licensee shall be prohibited from knowingly using, placing, or including any false, misleading, deceptive or materially incorrect information, or assisting or enabling any person to provide such information, on a death certificate filed in the state of Missouri.

² The decedents are referred to by initials to protect confidential information under 45 C.F.R. § 164.500 *et seq.*

26. On or about November 6, 2006, Hackleman forged embalmer Sean O'Neill's ("O'Neill's") signature to a death certificate for Loren Curtis Dockery representing that O'Neill had embalmed Loren Curtis Dockery's body when O'Neill had not.

27. On or about December 27, 2006, Hackleman forged O'Neill's signature to a death certificate for Opal Velma Hlavacek representing that O'Neill had embalmed Opal Velma Hlavacek's body when O'Neill had not.

28. Because Hackleman forged O'Neill's signature to death certificates for Loren Curtis Dockery and Opal Velma Hlavacek representing that O'Neill had embalmed those bodies when O'Neill had not, cause exists to discipline his license pursuant to § 333.121.2(5), (6), (13), and (16), RSMo.

II.
Jointly 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, 621.045.3, and 621.110, RSMo.

1. **Hackleman's license is suspended, followed by a period of probation.**
Hackleman's license as a funeral director is hereby SUSPENDED for a period of 30 DAYS and shall immediately thereafter be placed on PROBATION for a period of 5 YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Hackleman shall not be entitled to practice as a funeral director pursuant to Chapter 333, RSMo. During the period of probation, Hackleman shall be entitled

to practice as a funeral director under Chapter 333, RSMo, provided Hackleman adheres to all the terms of this Settlement Agreement.

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

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

B. The Home and Hackleman 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 his licenses and registrations in a current and active state.

C. If, at any time within the Disciplinary Period, the Home and/or Hackleman change residence and/or place of business from the State of Missouri, cease to be currently licensed under the provisions of Chapter 333 or 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.

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D. The Home and Hackleman shall comply with all provisions of Chapter 333, RSMo, Sections 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. Hackleman and/or an agent of the Home shall appear before the Board or its representatives upon the Board's request.

F. The Home and Hackleman shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor their compliance with these terms and conditions.

G. The Home and Hackleman 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.

3. Upon the expiration of the disciplinary period, the license of Hackleman shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Hackleman 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 Hackleman's license.

4. 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.

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

6. 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.

7. 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. Hackleman agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

9. 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.

10. 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 620, RSMo.

11. Hackleman, together with his 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, 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.

12. Hackleman understands that he 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 Hackleman's license. If Hackleman desires the Administrative Hearing Commission to review this Settlement Agreement, Hackleman may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

13. If Hackleman 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 Hackleman's license. If Hackleman 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

Clarence Hackleman
Clarence Hackleman

Date: 9-2-08

BOARD

Becky Dunn
Becky Dunn, Executive Director

Date: 9/9/08

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**ATTORNEYS FOR THE MISSOURI
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