BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

In the Matter of the Application of:

Kalmer Memorial, LLC
d/b/a American Cremation of St. Louis

ORDER ISSUING
PROBATED PROVIDER LICENSE

COMES NOW, the Missouri State Board of Embalmers and Funeral Directors (the "Board") and pursuant to Section 324.038, RSMo[1], issues this order issuing a **PROBATED PROVIDER LICENSE** to Kalmer Memorial, LLC d/b/a American Cremation of St. Louis ("Licensee or "Kalmer Memorial") located at 4455 Telegraph Road, Suite 110, St. Louis, Missouri 63129.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee's profession. If such review is

[1] All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.061.1, RSMo, states:

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

3. Section 333.330, RSMo, authorizes the Board to deny an application for a provider license and states, in relevant portion:

> 1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.
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> 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:
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> (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;
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> (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;
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> (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;

* * *

(14) Violation of any professional trust or confidence;

4. Relevant portions of 20 CSR 2120-2.060 state:

(23) The business and practice of funeral directing may be conducted only from a fixed place or establishment which has been licensed by the board.

5. Relevant portions of 20 CSR 2120-2.070 state as follows:

(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) "doing business as" name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location, or name of the Missouri licensed establishment is changed, a new license shall be obtained.

(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....

* * *

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.

> (B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

Parties and Background

6. 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 enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

7. Kalmer Memorial, LLC d/b/a American Cremation of St. Louis is a Missouri limited liability company, in good standing.

8. Kalmer Memorial applied for a Missouri provider license by filing its "Provider Application" (the "Application") with the Board which shows July 1, 2014 as the date Kalmer Memorial signed the application before a notary public.

9. The Application became final and was deemed filed with the Board on November 20, 2014.

10. Kalmer Memorial previously operated a licensed funeral establishment located 5444 Hwy 61-67, Imperial, Missouri 63052.

11. Kalmer Memorial submitted an application for a funeral establishment license in conjunction with its submission of its Application.

12. On December 9, 2014, the Board issued its Order Issuing Probated Funeral Establishment License to Kalmer Memorial.

Basis for Probation

13. On September 5, 2014, the Board received a phone call from Joseph Kalmer requesting an extension of time to respond to a request from the Board and indicated that the Board had sent its letter to the wrong address at 5444 Hwy 61-67, Imperial, Missouri rather than the new address of 4455 Telegraph Road, Suite 110, St. Louis, Missouri.

14. On September 5, 2014, the Board had issued no license for a funeral establishment at 4455 Telegraph Road, Suite 110, St. Louis, Missouri.

15. The Board conducted an investigation to determine whether Kalmer Memorial operated as a funeral establishment at an unlicensed location.

16. On June 13, 2014, Mehlville Fire Protection District of St. Louis County, Missouri issued an occupancy permit to Kalmer Memorial.

17. On September 18, 2014, St. Louis County Department of Public Works issued Kalmer Memorial a Commercial Certificate of Use and Occupancy permit.

18. On July 8, 2014, September 15, 2014, and September 18, 2014, Kalmer Memorial engaged in the business of operating a funeral establishment holding itself out at the address of 4455 Telegraph Road, St. Louis, Missouri 63129.

19. At no time prior to the entry of the Board's Order Issuing a Probated Funeral Establishment License had Kalmer Funeral been licensed to operate as a

funeral establishment at the location of 4455 Telegraph Road, St. Louis, Missouri 63129.

20. Before the issuance of the Board's Order Issuing a Probated Funeral Establishment License, Kalmer Funeral held out to the public that it operated as a funeral establishment located at 4455 Telegraph Rd., Suite 110, St. Louis, Missouri 63129 on its website located at http://amcsstl.com

Conclusions of Law

21. Kalmer Memorial held out to the public, engaged in conduct and represented itself as a licensed funeral establishment at a time when it held no such license and thus the Board has cause to deny the Application pursuant to Section 333.330.2 (5), (6), (7), and (14).

22. The Board finds that issuance of a probated provider license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a provider license to Kalmer Memorial, LLC, d/b/a American Cremation of St. Louis on **PROBATION** for a period of **THREE (3) YEARS** (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of the Disciplinary Period

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

a. Licensee shall keep the Board informed of Licensee's current telephone numbers and addresses and the home and work telephone numbers of its manager in charge. 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 manager 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 law of the state; and

h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the conditions of discipline.

24. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee's license shall be fully restored if all other requirements of the law have been satisfied.

25. If the Board determines that Licensee has violated a term or condition of this Order, 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).

26. If any alleged violation of this Order 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 terms and conditions of the Disciplinary Period occurred and, if so, 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 license. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

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

28. 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.

IT IS SO ORDERED.

Dated: 12.9.2014

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors