

SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS AND DEBORA M. KELLOM

Debora M. Kellom (Kellom) and the State Board of Embalmers and Funeral Directors (Board) enter into this Settlement Agreement for the purpose of resolving the question of whether Kellom's licenses as a funeral director and embalmer, Nos. 007478 and 007639, respectively, 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 Kellom 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.

Kellom 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 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

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

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the Board at which time Kellom 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, Kellom 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.

Kellom 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. Kellom stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Kellom's licenses as a funeral director and embalmer, License Nos. 007478 and 007639, respectively, are subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 333, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Kellom in Part II herein is based only on the agreement set out in Part I herein. Kellom 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.

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I.

Joint Stipulation of Facts and Conclusions of Law

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

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri, created pursuant to § 333.111, RSMo 2000, for the purpose of maintaining standards of service and practice to be followed in the professions of embalming and funeral directing.

2. The Board is charged with enforcing the provisions of Chapter 333 pursuant to § 333.121, RSMo 2000.

3. Kellom holds Missouri funeral director and embalming licenses, License Nos. 007478 and 007639, respectively. Kellom's licenses are and were at all times material herein current and active.

4. On or about May 6, 2009, Kellom pled guilty in the United States District Court, Eastern District of Missouri, Case No. 4-09-cr-00319-RWS, to the charge of devising, conducting, and carrying out a scheme and artifice to defraud and to obtain money, funds, and other property by means of material false and fraudulent pretenses, representations, and promises in connection with the business of Wade Funeral Home.

5. Kellom embezzled in excess of \$200,000 from Wade Funeral Home.

6. Cause exists to discipline Kellom's Missouri funeral director and embalming licenses pursuant to § 333.121.2(2), RSMo, which 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:

....

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[;]

....

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(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.

....

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

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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.

1. **Kellom's licenses are revoked and all indicia of licensure shall be surrendered immediately.** Kellom's licenses as a funeral director and embalmer are hereby REVOKED and ALL INDICIA OF CERTIFICATION SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

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

3. 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.

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

5. 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.

6. 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, as amended.

7. Kellom, 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.

8. Kellom understands that she may, either at the time the Settlement Agreement is signed by all parties, or within 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 Kellom's licenses. If Kellom desires the Administrative Hearing Commission to review this Settlement Agreement, Kellom may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

9. If Kellom 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 Kellom's licenses. If Kellom 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.

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LICENSEE

Debra M. Kellom

Debra M. Kellom

Date June 25, 2009

STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

Becky Dunn

Becky Dunn, Executive Director

Date 7/21/09

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