

SETTLEMENT AGREEMENT BETWEEN THE
MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
AND SHAWN PEERY

Shawn Peery (Licensee) and the Missouri State Board of Embalmers and Funeral Directors enter into this settlement agreement for the purpose of resolving the question of whether Licensee's licenses as an embalmer and funeral director will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission (Commission) of the State of Missouri and, additionally, the right to a disciplinary hearing under § 621.110, RSMo 2000, as amended, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee 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 against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline. Being aware of these rights provided him by operation of law, Licensee 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.

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Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believe were violated. 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 as an embalmer, license number 007023, and as a funeral director, license number 005974, are subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2005 and Chapter 333 RSMo, as amended.

Joint Stipulation of Facts

1. The Missouri State Board of Embalmers and Funeral Directors is an agency of the state of Missouri created and existing pursuant to § 333.151, RSMo 2000, as amended, and responsible for the purpose of enforcing the provisions of Chapter 333 RSMo, as amended, relating to embalmers and funeral directors.
2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 333.121.2, RSMo.
3. Shawn Peery ("Licensee") is licensed by the Board as an embalmer, license number 007023, and as a funeral director, license number 005974. Licensee's licenses are presently current and active.

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4. Licensee currently works as an embalmer and funeral director. Licensee's address of record is 913 Hwy P; Park Hills, Missouri 63601.

5. On or about June 19, 2005 Licensee was arrested and prosecution was sought against Licensee for the Class A Misdemeanor of Domestic Assault 3rd Degree, under Section 565.074 RSMo, which states:

1. A person commits the crime of domestic assault in the third degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, RSMo, and:

(1) The person attempts to cause or recklessly causes physical injury to such family or household member; or

(2) With criminal negligence the person causes physical injury to such family or household member by means of a deadly weapon or dangerous instrument; or

(3) The person purposely places such family or household member in apprehension of immediate physical injury by any means; or

(4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to such family or household member; or

(5) The person knowingly causes physical contact with such family or household member knowing the other person will regard the contact as offensive; or

(6) The person knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

2. Except as provided in subsection 3 of this section, domestic assault in the third degree is a class A misdemeanor.

6. On or about October 10, 2006 Licensee entered a plea of guilty to the misdemeanor domestic assault charges brought on June 19, 2005 in the St. Francois County Circuit Court, Case No. 05D7-CRO1673.

7. On or about December 1, 2006, Licensee completed a reactivation application for his embalmer license, number 007023.

8. Section 9 of the Reactivation Application asks in pertinent part as follows:

In the last five (5) years, have you been arrested for, or subject to prosecution for, or entered a plea of guilty to, or been found guilty of, an offense against the laws of any state or the United States, whether or not sentence was imposed? Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"). (Excluding minor traffic violations). If yes, attach a full explanation.

9. On or about December 1, 2006, Licensee responded to Section 9 on his reactivation application by checking a box marked YES.

10. On or about December 1, 2006, Licensee completed a reactivation application for his funeral director license, number 005974.

11. Section 9 of the Reactivation Application asks in pertinent part as follows:

In the last five (5) years, have you been arrested for, or subject to prosecution for, or entered a plea of guilty to, or been found guilty of, an offense against the laws of any state or the United States, whether or not sentence was imposed? Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"). (Excluding minor traffic violations). If yes, attach a full explanation.

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12. On or about December 1, 2006, Licensee responded to Section 9 on reactivation application by checking a box marked YES.

Joint Conclusions of Law

13. Section 333.121.2, RSMo 2000, as amended, provides grounds upon which a licensee may be disciplined, stating in relevant 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:

(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;

14. Cause exists for discipline of Licensee's embalmer and funeral director licenses pursuant to Section 333.121.2(2), RSMo 2000, as amended, in that Licensee plead guilty in a criminal prosecution to an offense reasonably related to the qualifications, functions and/or duties of embalmers and funeral directors, to an offense an essential element of which was dishonesty or an act of violence, and/or to an offense involving moral turpitude.

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JOINTLY AGREED UPON DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered into by the Board in this matter under the authority of §§ 333.121.2, 536.060, 621.045.3, and 621.110, RSMo.

1. Licensee's embalmer license, license number 007023, and funeral director license, license number 005974, are hereby placed on PROBATION for a period of ONE YEAR. The period of probation shall constitute the "disciplinary period." During the period of probation, Peery may work as an embalmer and/or funeral director, provided Licensee adheres to all the terms stated herein.

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

- A. Licensee shall keep the board apprised at all times in writing of his current business address and telephone number. Licensee shall notify the Board in writing within ten days of any changes in this information.
- B. Licensee shall timely renew his funeral embalmer and funeral director licenses when required and shall maintain such licenses in an active and valid state throughout the disciplinary period.
- C. If at any time during the disciplinary period, Licensee changes residence from the state of Missouri, Licensee ceases to be currently licensed under the provisions of chapter 333, RSMo, Licensee fails to timely pay all fees required for license renewal, or Licensee fails to keep the Board advised of all his current places of business, then the time of absence, unlicensed status, delinquency in paying fees for license renewal, or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.
- D. Licensee shall comply with all provision of Chapter 333, RSMo, all rules and regulations of the Board, and all local, state, and federal laws. "State" as used herein refers to the state of Missouri and all other states and territories of the United States.

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- E. Licensee shall accept and comply with reasonable unannounced visits from the Board's duly authorized agents to monitor compliance with the terms and conditions stated herein.
- F. Licensee shall submit written reports to the Board on or before 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 Agreement. The first such report shall be received by the Board on or before July 1, 2007.

3. Upon the expiration of the disciplinary period, Licensee's embalmer and funeral director licenses shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Licensee has violated any term or condition of this 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 Licensee's licenses.

4. No order shall be entered by the Board pursuant to the proceeding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

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

6. If the Board determines that Licensee has violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any

lawful remedies or procedures afforded it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation.

7. This Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Board or may be discovered.

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

9. The parties to this Agreement agree to pay all their own fees and expenses incurred as a result of this case, its investigation, its settlement, and/or litigation.

10. Licensee, together with his shareholders, partners, 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. This includes, but is 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, its investigation, its litigation, its settlement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph

is severable from the remaining portions of the 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.

11. The terms of this Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this 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.

12. The parties to this Agreement understand that the Board will maintain this Agreement as an open and public record of the Board as required by Chapters 329, 610, 620, and 621, RSMo.

13. Licensee understands that he may, either at the time the 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 Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee 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.

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14. If Licensee has requested review, this Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Agreement sets forth cause for disciplining Licensee's licenses. If Licensee has not requested review, this Agreement becomes effective 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

State Board Of Embalmers and Funeral Directors

Shawn Peery 5-17-07
Shawn Peery Date

Becky Dunn 5/22/07
Becky Dunn Date
Executive Director

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