

**SETTLEMENT AGREEMENT BETWEEN**  
**THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS**  
**AND SHELDON FUNERAL HOME**

Sheldon Funeral Home ("Funeral Home") and the State Board of Embalmers and Funeral Directors ("the Board") enter into this Settlement Agreement ("Agreement") for the purpose of resolving the question of whether Funeral Home's funeral establishment license will be subject to discipline. Pursuant to § 536.060, RSMo<sup>1</sup>, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri, and additionally, the parties hereto waive the right to a disciplinary hearing before the Board under § 621.110, RSMo. Funeral Home and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Funeral Home acknowledges that it understands the various rights and privileges afforded 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 present evidence on its own behalf at the hearing; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a decision based upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against it; the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; the right to a claim for attorney's fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and

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<sup>1</sup>All statutory references are to RSMo 2000, as amended, unless otherwise noted.

the Board. Being aware of these rights provided it by law, Funeral Home knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as those terms pertain to it.

Funeral Home acknowledges that it has been informed of the right to consult legal counsel in this matter at its own expense. Funeral Home further acknowledges that it 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 believes was violated. For the purpose of settling this dispute, Funeral Home stipulates with the Board that Funeral Home's license as a funeral establishment, License No. 002618, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 333, RSMo.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Funeral Home in Part II herein is based only on the agreement set out in Part I herein. Funeral Home understands that the Board may take further disciplinary action against Funeral Home's funeral establishment license based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

Based upon the foregoing, the Board and Funeral Home stipulate to the following:

I.

**JOINT STIPULATIONS OF FACT & CONCLUSIONS OF LAW**

1. The State Board of Embalmers and Funeral Directors ("the Board") is an agency of the state of Missouri created and existing pursuant to § 333.111, RSMo, for the purpose of licensing embalmers and funeral directors and of executing and enforcing the provisions of Chapter 333, RSMo.

2. Sheldon Funeral Home holds a Missouri funeral establishment license, No. 002618, and Funeral Home is both a Function A and a Function C Funeral Establishment.

3. Charles R. Sheldon ("Sheldon") holds a Missouri funeral director's license, No. 003018.

4. Sheldon is, and was at all relevant times herein, the designated funeral director in charge of Funeral Home.

5. Both Funeral Home's and Sheldon's licenses are, and were at all relevant times herein, active and valid.

6. Sheldon's Missouri funeral director license and Funeral Home's establishment license are jointly culpable for the conduct and violations revealed by the Board's inspections dated April 20, 2004, January 12, 2005, and February 10, 2006.

7. The Board conducted an inspection at Funeral Home on or about April 20, 2004 ("April 20, 2004 Inspection").

8. The Board conducted an inspection at Funeral Home on or about January 12, 2005 ("January 12, 2005 Inspection").

9. The Board conducted an inspection at Funeral Home on or about February 10, 2006 ("February 10, 2006 Inspection").

10. The April 20, 2004 Inspection revealed that Funeral Home performed services for the following without a written Statement of Funeral Goods and Services:

1. Hazel Koger; and
2. Bonnie Cochran.

11. The April 20, 2004 Inspection revealed that the file with Statements for Goods and Services for 2003 contained numerous statements of charges that did not include the client's signature.

12. The January 12, 2005 Inspection revealed that Funeral Home did not have a Statement of Funeral Goods and Services for the following:

1. Hannah Ray Coleman-Bourland, date of death December 13, 2004;
2. Keith Jerome McMannis, date of death December 6, 2004;
3. Earl Virgil Wood, date of death November 20, 2004;
4. David Lane Carter, date of death October 21, 2004; and
5. Ronald Dan Campbell, date of death May 13, 2004.

13. The January 12, 2005 Inspection revealed that Funeral Home did not have an Authorization to Embalm for the following:

1. Hannah Ray Coleman-Bourland, date of death December 13, 2004;
2. Keith Jerome McMannis, date of death December 6, 2004; and
3. Earl Virgil Wood, date of death November 20, 2004.

14. The January 12, 2005 Inspection revealed that Funeral Home did not have an Authorization to Cremate for the following:

1. David Lane Carter, date of death October 21, 2004; and
2. Ronald Dan Campbell, date of death May 13, 2004.

15. The January 12, 2005 Inspection revealed that expired licenses of Terry Heuser, funeral director license No. 006227, and Timothy Stacy, embalmer license No. 007095 were posted at Funeral Home.

16. The January 12, 2005 Inspection revealed Funeral Home had no separate merchandise price list.

17. The January 12, 2005 Inspection also revealed that Funeral Home's preparation room does not contain a lock on the door.

18. The February 10, 2006 Inspection revealed that Funeral Home failed to display the Funeral Director license of Deborah Sheldon.

19. The February 10, 2006 Inspection revealed that Funeral Home failed to maintain documentation of authorizations to embalm or cremate.

20. The February 10, 2006 Inspection also revealed that Funeral Home failed to maintain on the premises pre-need contracts which have been cancelled or fulfilled.

21. A Sheldon Funeral Home representative signed inspection reports for the inspections dated April 20, 2004, January 12, 2005, and February 10, 2006.

22. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 333.121.2, RSMo.

23. Section 333.121.2, RSMo, authorizes the Board to file a complaint with the Administrative Hearing Commission and states, in 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:

....

(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;

(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;

....

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence.

24. Section 333.145, RSMo, requires written and signed statements of charges and states, in relevant 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.

25. The failure of Funeral Home to display the Funeral Director license of Deborah Sheldon as revealed by the February 10, 2006 Inspection provides grounds to discipline pursuant to the following provisions:

1. Section 333.121.2(12), RSMo;
2. Section 333.121.2(4), RSMo;
3. Section 333.121.2(5), RSMo; and
4. Section 333.121.2(13), RSMo.

26. The failure of Funeral Home to provide written statements of charges for funeral goods and services to clients for services rendered on two instances as revealed by the April 20, 2004 Inspection and five instances as revealed by the January 12, 2005 Inspection provides seven separate grounds to discipline, pursuant to Section 333.145.1, RSMo, and Section 333.121.2(6), RSMo.

27. The failure of Funeral Home to provide written statements of charges for funeral goods and services to clients for services rendered on two instances as revealed by the April 20, 2004 Inspection and five instances as revealed by the January 12, 2005 Inspection demonstrates incompetency, misconduct, gross negligence, fraud, misrepresentation and dishonesty in the performance of the functions and duties of a funeral home, constituting seven independent grounds for discipline pursuant to Section 333.121.2(5), RSMo.

28. The failure of Funeral Home to provide written statements of charges for funeral goods and services to clients for services rendered on two instances as revealed by the April 20, 2004

Inspection and five instances as revealed by the January 12, 2005 Inspection demonstrates seven separate violations of a professional trust and confidence of a funeral home, constituting seven independent grounds for discipline pursuant to Section 333.121.2(13), RSMo.

29. The failure of Funeral Home to produce Statements of Funeral Goods and Services with signatures of both the funeral home director and the purchaser on numerous instances as revealed by the April 20, 2004 Inspection constitutes violations of Section 333.145.1, RSMo, each violation providing grounds for discipline pursuant to Section 333.121.2(6), RSMo.

30. The failure of Funeral Home to produce Statements of Funeral Goods and Services with signatures of both the funeral home director and the purchaser on numerous instances as revealed by the April 20, 2004 Inspection demonstrates incompetency, misconduct, gross negligence, fraud, misrepresentation and dishonesty in the performance of the functions and duties of a funeral home, constituting at least seven independent grounds for discipline pursuant to Section 333.121.2(5), RSMo.

31. The failure of Funeral Home to produce Statements of Funeral Goods and Services with signatures of both the funeral home director and the purchaser on numerous instances as revealed by the April 20, 2004 Inspection demonstrates numerous violations of a professional trust and confidence of a funeral home, each violation providing grounds for discipline pursuant to Section 333.121.2(13), RSMo.

32. 4 CSR 120-2.070 establishes the documents and conditions to be maintained by licensed funeral establishments, stating in relevant part:

....

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be kept free.... of.... conditions which present a potential or actual hazard to the health, safety or welfare of the public.

(15) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be maintained in a manner that does not present a potential or actual hazard to the health, safety or welfare of the public.

....

(22) Each Missouri licensed funeral establishment shall maintain documentation of.... authorization to embalm[;]

(23) Each Function C funeral establishment shall maintain on the premises the following documents:

(A) General price list;

(B) Preneed contracts which have been cancelled or fulfilled[.]

33. 4 CSR 120-2.090(14) refers to the security and cleanliness of preparation rooms, and states in relevant part:

....

(14) Preparation rooms shall be secured with a functional lock so as to prevent entrance by unauthorized persons.

34. By failing to maintain documentation of authorizations to embalm, as revealed by the February 10, 2006 Inspection, Funeral Home violated 4 CSR 120-2.070(22), providing grounds to discipline pursuant to Section 333.121.2(6), RSMo.

35. By failing to maintain documentation of authorizations to embalm, as revealed by the February 10, 2006 Inspection, further grounds exist to discipline pursuant to the following provisions:

1. Section 333.121.2(5), RSMo; and
2. Section 333.121.2(13), RSMo.

36. By failing to maintain on the premises pre-need contracts which have been cancelled or fulfilled, as revealed by the February 10, 2006 Inspection, Funeral Home violated 4 CSR 120-2.070(23)(B), providing grounds to discipline pursuant to Section 333.121.2(6), RSMo.

37. By failing to maintain on the premises pre-need contracts which have been cancelled or fulfilled, as revealed by the February 10, 2006 Inspection, further grounds exist to discipline pursuant to the following provisions:

3. Section 333.121.2(5), RSMo; and
4. Section 333.121.2(13), RSMo.

38. By failing to install a lock on the door to the preparation room as revealed by the January 12, 2005 Inspection, Funeral Home violated 4 CSR 120-2.090(14), providing grounds to discipline Funeral Home's license pursuant to Section 333.121.2(6), RSMo.

39. By failing to install a lock on the door to the preparation room as revealed by the January 12, 2005 Inspection, Funeral Home demonstrated incompetency, misconduct, and gross negligence in the performance of the functions and duties of a funeral home, constituting grounds for discipline pursuant to Section 333.121.2(5), RSMo.

40. By failing to provide a merchandise price list as revealed by the January 12, 2005 Inspection, Funeral Home did not maintain on the premises a general price list, violating 4 CSR 120-2.070(23)(A), providing grounds to discipline pursuant to Section 333.121.2(6), RSMo.

41. By failing to provide a merchandise price list as revealed by the January 12, 2005 Inspection, Funeral Home demonstrated incompetency and gross negligence in the performance of the functions and duties of a funeral home, constituting grounds for discipline pursuant to Section 333.121.2(5), RSMo.

42. By failing to provide a merchandise price list as revealed by the January 12, 2005 Inspection, Funeral Home violated a professional trust and confidence of a funeral home, constituting grounds for discipline pursuant to Section 333.121.2(13), RSMo.

43. By posting the expired licenses of two employees of Funeral Home and failing to display the Funeral Director license of Deborah Sheldon, Funeral Home failed to display valid licenses as required by Chapter 333, providing grounds for discipline pursuant to Section 333.121.2(12), RSMo.

44. By posting the expired licenses of two employees of Funeral Home and failing to display the Funeral Director license of Deborah Sheldon, Funeral Home obtained or attempted to obtain a fee, charge, or other compensation by fraud, deception and misrepresentation, providing grounds for discipline pursuant to Section 333.121.2(4), RSMo.

45. By posting the expired licenses of two employees of Funeral Home and failing to display the Funeral Director license of Deborah Sheldon, Funeral Home demonstrated incompetency, misconduct, gross negligence, fraud, misrepresentation and dishonesty in the performance of the

functions and duties of a funeral home, constituting grounds for discipline pursuant to Section 333.121.2(5), RSMo.

46. By posting the expired licenses of two employees of Funeral Home and failing to display the Funeral Director license of Deborah Sheldon, Funeral Home violated a professional trust and confidence of a funeral home, constituting two separate grounds for discipline pursuant to Section 333.121.2(13), RSMo.

## II.

### 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 §§ 333.121.3, 536.060, 621.045.3, and 621.110, RSMo.

1. Funeral Home's FUNERAL ESTABLISHMENT LICENSE, License No. 002618, is SUSPENDED for a period of THREE DAYS. During the period of suspension, Funeral Home may not practice as a funeral home as defined in Chapter 333, RSMo, nor receive any compensation as such.

2. Immediately thereafter, Funeral Home'S FUNERAL ESTABLISHMENT LICENSE, License No. 002618, is placed on PROBATION for a period of TWO YEARS. The period of suspension and probation shall constitute the "disciplinary period." During the period of probation, Funeral Home may operate as a funeral home, provided Funeral Home adheres to all the terms stated herein.

3. Terms and conditions of the disciplinary period are as follows:
- A. Funeral Home shall keep the Board apprised at all times in writing of its current business address and telephone number. Funeral Home shall notify the Board in writing within ten days of any changes in this information.
  - B. Funeral Home shall timely renew its funeral establishment license when required and shall maintain such license in an active and valid state throughout the disciplinary period.
  - C. If at any time during the disciplinary period, Funeral Home changes residence from the state of Missouri, Funeral Home ceases to be currently licensed under the provisions of Chapter 333, RSMo, Funeral Home fails to timely pay all fees required for license renewal, or Funeral Home fails to keep the Board advised of all 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. Funeral Home 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.
  - E. Funeral Home 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. Funeral Home 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 January 1, 2007.

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

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

6. If the Board determines that Funeral Home has violated a term or condition of this Agreement, which violation also would 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. If any alleged violation of this 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. Funeral Home agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

8. The parties to this Agreement agree to pay all their own fees and expenses incurred as a result of this case, settlement, and litigation.

9. The parties to this Agreement understand that the Board will maintain this Agreement as an open and public record of the Board as provided in Chapters 333, 610 and 620, RSMo.

10. 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.

11. Funeral Home, together with its 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, 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, its investigation, its litigation, and its settlement, or from the negotiation or execution of its settlement. Funeral Home acknowledges 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.

12. Funeral Home understands that it 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 Funeral Home's Licenses. If Funeral Home desires the Administrative Hearing Commission to review this Settlement Agreement, Funeral Home may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, P.O. Box 1557, Jefferson City, Missouri 65101.

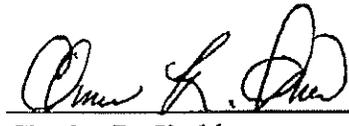
13. If Funeral Home has requested review, Funeral Home and the Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Funeral Home's funeral establishment license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining such license. The agreed upon discipline set forth herein shall be effective the date the Administrative Hearing Commission determines that this Agreement sets forth cause for disciplining such licenses.

14. If Funeral Home has not requested review, this Agreement becomes effective 15 days after the document is signed by the Board's Executive Director.

15. As designated funeral director of Sheldon Funeral Home, Charles Sheldon possesses the legal authority to bind Sheldon Funeral Home to this settlement agreement.

LICENSEE

STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS

  
\_\_\_\_\_  
Charles R. Sheldon                      Date  
on behalf of Sheldon Funeral Home

  
\_\_\_\_\_  
Becky Dunn                                      Date  
Executive Director

JEREMIAH W. (JAY) NIXON  
Attorney General

  
\_\_\_\_\_  
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