

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS AND DALE WESTBY**

Dale Westby (“Westby”) and the State Board of Embalmers and Funeral Directors (“Board”) enter into this Settlement Agreement for the purpose of resolving the question of whether Westby’s license as a funeral director, license no. 002943, 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. 2007. The Board and Westby jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2007.

Westby 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 administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission;

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

the right to a disciplinary hearing before the Board at which time Westby 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, Westby 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.

Westby 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. Westby stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Westby's license as a funeral director, license no. 002943, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2007, and Chapters 333 and 436, RSMo, as amended.

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

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Joint Stipulation of Facts and Conclusions of Law

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

1. The Board is an agency of the state of Missouri created pursuant to § 333.151, RSMo, for the purpose of enforcing the provisions of chapter 333, RSMo, and the relevant provisions of chapter 436, RSMo, and the regulations adopted thereunder.
2. Westby is licensed by the Board as a funeral director, license number 002943. Westby's Missouri funeral director license is and was current and active at all relevant times herein.
3. At all relevant times herein, Baue Funeral Home Co. d/b/a Baue Funeral Homes ("Funeral Home"), employed Westby as Funeral Director in Charge ("FDIC") at Funeral Home at the St. Charles location.
4. Westby is registered with the Board as the FDIC at Funeral Home at the St. Charles location.
5. As FDIC, Westby is responsible for the general management and supervision of Funeral Home at the St. Charles location, and Westby is responsible to ensure that employees at Funeral Home at the St. Charles location comply with Chapter 333, RSMo, and the regulations promulgated thereunder, with respect to the practice of embalming.

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6. At all relevant times herein, Funeral Home employed Mary Sammelman (“Sammelman”) as Director of Preparation Care at Funeral Home at the St. Charles location.

7. Among Sammelman’s duties as Director of Preparation Care at Funeral Home, Sammelman was in charge of the embalming of dead bodies in preparation for funerals.

8. At all relevant times herein, Funeral Home employed Brandon Morrow (“Morrow”) as a member of the removal/prep team.

9. Morrow had served his embalmer practicum at Funeral Home, but his practicum license expired on May 1, 2004.

10. On or about December 21, 2004, Morrow did not hold a license to practice embalming in Missouri.

11. On or about December 21, 2004, Sammelman directed Morrow to assist with three embalming procedures, including but not limited to, the embalming of bodies.

12. At all relevant times herein, Funeral Home employed Cynthia Campbell (“Campbell”) as a member of its removal/prep team.

13. Campbell has never been licensed to practice embalming, nor has she ever held an embalming practicum license.

14. Between June, 2004 and January 2005, Sammelman repeatedly directed Campbell to assist in various aspects of the embalming process, including but not limited

APR 28 2008

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to, aspirating bodies, sewing autopsy incisions, sewing the mouths of bodies closed, and building up tissue with a syringe.

JOINT PROPOSED CONCLUSIONS OF LAW

15. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 333.121.2, RSMo.
16. By assisting with three embalming procedures pursuant to Sammelman's direction on or about December 21, 2004, Morrow engaged in the practice of embalming.
17. By assisting with various aspects of the embalming process pursuant to Sammelman's direction between June, 2004 and January 2005, Campbell engaged in the practice of embalming.
18. By directing Morrow and Campbell to engage in the practice of embalming, Sammelman assisted and enabled unlicensed individuals to practice embalming.
19. Section 333.021, RSMo, mandates that one be licensed to practice embalming in order to practice embalming, which states, in pertinent part:
 1. No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.
20. Board regulation 20 CSR 2120-1.040 defines the practice of embalming, which states, in pertinent part:
 - (1) . . . the "practice of embalming," the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies or the holding of oneself out as being engaged in such work and has met the requirements for registration pursuant to sections 333.041 and 333.042, RSMo and 4 CSR 120-2.010.

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21. Board regulation 20 CSR 2120-1.040 defines "funeral director in charge,"

providing, in pertinent part:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri.

22. Because Westby is responsible for the general management and supervision of Funeral Home at the St. Charles location, Westby is responsible for the unlicensed practice of embalming at Funeral Home.

23. Therefore, cause exists to discipline Westby's Missouri funeral director license pursuant to §§ 333.121.2(5), (6), (10), and (13), RSMo, which states, 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 or 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 by regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or 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[.]

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, 621.045.3, and 621.110, RSMo.

1. **Suspension and Probation of funeral director license.** Westby's license as a funeral director, license no. 002943, is hereby **SUSPENDED** for a period of seven days and shall be immediately thereafter be placed on **PROBATION** for a period of two years. The periods of suspension and probation shall be referred to jointly hereinafter as "the disciplinary period." During the period of suspension, Westby shall not be entitled to practice as a funeral director. During the period of probation, Westby shall be entitled to practice as a funeral director provided he pays all required fees, maintains his license in a current and active status, and adheres to all the terms stated herein.

A. Westby 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. Westby shall provide the Board with written notification within ten days of any change in this information.

B. Westby 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, Westby changes residence and/or place of business from the State of Missouri, ceases to be currently licensed under the provisions of Chapter 333 or Chapter 436, or fails to keep the Board advised of all current places of business and/or residence, the time of absence, unlicensed status, or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.

D. Westby shall comply with all provisions of Chapter 333, RSMo; §§ 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. Westby shall appear before the Board or its representatives upon the Board's request.

F. Westby shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor his compliance with these terms and conditions.

G. Westby 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.

2. Upon the expiration of the disciplinary period, Westby's license as a funeral director, license no. 002943, shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Westby 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 Westby's licenses.

3. 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.

4. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Westby of Chapters 333 and 436, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

5. 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.

6. Within five days of the effective date of this settlement agreement, the Board agrees to dismiss with prejudice its action against Westby before the

Administrative Hearing Commission, specifically, case no 07-0624 EM, and hereby agrees not to seek further redress based on the conduct alleged in its Complaint filed in that matter.

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. Westby 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, 436, 610, and 620, RSMo, as amended.

11. Westby, together with his partners, shareholders, officers, directors, heirs,

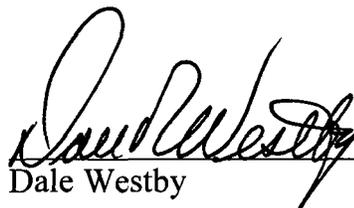
APR 28 2008

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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.

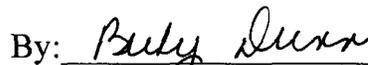
13. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

RESPONDENT


 Dale Westby 4-14-08
 Date

PETITIONER

State Board of Embalmers and Funeral Directors

By:  4/28/08
 Becky Dunn Date
 Executive Director

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