SETTLEMENT AGREEMENT BETWEEN MISSOURI COMMITTEE FOR PROFESSIONAL COUNSELORS AND MICHAEL ALAN EMERT

Michael Alan Emert ("Licensee"), and the Missouri Committee for Professional Counselors ("Committee"), enter into this settlement agreement ("Agreement") for the purpose of resolving the question of whether Licensee's license as a professional counselor will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo.[1] the parties hereto waive the right to a hearing before the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline Licensee's license, and additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the committee at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against this license. Being aware of these rights provided Licensee 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the investigative report and other documents relied upon by the Committee in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Committee believes were violated.

[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

For the purpose of settling this dispute only, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Committee that Licensee's license, numbered 2002020624 is subject to disciplinary action by the Committee in accordance with the provisions of Chapters 621 and 337, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Committee for Professional Counselors is an agency of the State of Missouri, created and existing pursuant to § 337.535, RSMo, for the purpose of carrying out the provisions of §§ 337.500 through 337.540, RSMo.

2. Michael Alan Emert is licensed by the Committee as a professional counselor, license number 2002020624. Licensee's professional counselor license was at all times relevant herein, and is now, current and active.

3. On or about April 15, 2015, Licensee completed the renewal application to renew his license. On the application, Licensee answered "yes" to the question "Since July 1, 2013, have you been arrested, charged, found guilty, or entered a plea of nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense, whether or not sentence was imposed or executed?"

4. With his April 15, 2015 renewal application, Licensee provided a response to his answer of "yes" to the criminal conduct question. Licensee stated that:

a. On March 19, 2015, Licensee pleaded guilty to a Class C Felony for violations involving health care payments.

b. The violations were the result of Licensee billing Medicaid for services which Licensee was unable to perform for clients.

c. Licensee received a Suspended Imposition of Sentence (SIS) and supervised probation for five years, subject to termination after one year with no violations.

d. Licensee stated he billed for the services before they were provided between December, 2011 and March, 2012. Licensee stated he hoped to make up the sessions he had already billed for as soon as he was able to "regain control of [his] emotional issues" following his divorce.

e. Licensee stated he was terminated from employment March 29, 2012 and was unable to make up the sessions before he was terminated.

f. Licensee stated his "intentions were not to cheat anyone out of anything."

5. On or about March 19, 2015, Licensee pleaded guilty to the class C felony of Violations Involving Health Care Payments – 1st Offense – in the Circuit Court of Madison County, Missouri, case number 14MD-CR00148-01. The Court suspended the imposition of sentence and placed Licensee on five years' supervised probation.

6. Licensee's actions as described above in paragraphs 3 through 5 constitute: adjudication of guilt in a criminal prosecution related to the qualifications, functions, or duties of a professional counsel and an offense an essential element of which is fraud and dishonesty and an act of moral turpitude; obtaining or attempting to obtain any fee, charge or compensation by fraud, deception or misrepresentation; misconduct, misrepresentation or dishonesty in the performance of the functions or duties of a professional; and a violation of professional trust or confidence.

7. Cause exists for the Committee to take disciplinary action against Licensee's license under § 337.525.2(2), (4), (5) and (13), RSMo, which states in pertinent part:

> 2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license required by sections 337.500 to 337.540 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:
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> (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 a professional counselor; for any offense an essential element of which is fraud, dishonest or an act of violence; or for any offense involving moral turpitude, whether or not sentence is imposed;
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> (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;
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> (5) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor;

. . .

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

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary Order entered by the Committee in this matter under the authority of § 621.045.3, RSMo.

8. The terms of discipline shall include that the professional counselor license of Michael Alan Emert, license number 2002020624, is placed on **PROBATION** for a period of two (2) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of professional counseling under §§ 337.500 through 337.540, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

9. SPECIFIC REQUIREMENTS

a. During the disciplinary period, Licensee shall perform all professional counseling services under the bi-weekly supervision of a licensed professional counselor, a licensed psychologist or a licensed psychiatrist approved by the Committee. Costs for such supervision shall be Licensee's responsibility.
   i. Within thirty (30) days of the effective date of this Settlement Agreement, Licensee shall submit to the Committee office at least two (2) names of potential supervisors for consideration as Licensee's supervisor during the disciplinary period.
   ii. The supervisor shall not be a relative of Licensee in any degree, by blood, marriage or adoption or a personal friend to Licensee;
   iii. Licensee must provide a copy of the Settlement Agreement and Supervision Contract, provided by the Committee, to the supervisor. The Committee must receive a signed copy of the Supervision Contract within thirty (30) days of the beginning of supervision.
   iv. Supervision shall be well-documented and shall also include:
      1. Review of the nature of Licensee's practice including scope of practice, assessment and treatment related to the issues presented by clients to the Licensee;
      2. Recommendations Licensee makes to clients;
      3. Referrals by Licensee to other professionals; and
      4. Review of Licensee's billing records and other documents, as deemed necessary by the supervisor, to adequately inform the supervisor and ultimately the Committee, of Licensee's compliance with professional ethics and statutes, professional boundaries and rules pertaining to the practice of professional counseling.
   v. Licensee shall facilitate such supervisor's timely submission of quarterly written reports to the Committee. Reports must be completed in compliance with the terms of the Supervision Contract and this Settlement Agreement, as detailed in paragraph 9.a.iv. above. The first quarterly report shall be due four months following the Committee's approval of Licensee's supervisor.

vi. As part of each quarterly report, the supervisor shall select ten (10) of Licensee's clients for a records review. The records shall be redacted as necessary. The supervisor shall review billing records, assessments, diagnoses, treatment plans and progress notes for each of the ten randomly selected clients, along with any other records deemed necessary by the supervisor to adequately inform the supervisor, and ultimately the Committee, of Licensee's compliance with professional ethics and the statutes and regulations pertaining to the practice of professional counseling.

vii. The supervisor shall be responsible for the control, oversight, guidance and professional responsibility of Licensee.

viii. In the event the supervisor is unable to provide supervision, Licensee shall advise the Committee and submit the names of two (2) potential supervisors to the Committee for consideration within fifteen (15) days of termination of the supervision.

ix. All costs associated with supervision shall be the responsibility of Licensee.

b. Within one (1) year of the start date of probation, Licensee shall complete a three (3) semester hour graduate course in professional orientation and advise the Committee in writing upon completion. The course shall not apply to the continuing education requirements for licensure renewal, must be an on-campus class, and must not be delivered via the internet or similar distance education method. Costs incurred for such course shall be Licensee's responsibility. An official transcript shall be sent by the school to the Committee documenting completion of the course.

10. GENERAL REQUIREMENTS

a. Licensee shall meet with the Committee or its representatives at such times and places as required by the Committee after notification of a required meeting.

b. Licensee shall submit reports to the Missouri Committee for Professional Counselors, Post Office Box 1335, Jefferson City, Missouri 65102, stating truthfully whether Licensee has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period. The first report shall be due January 1, 2016.

c. Licensee shall keep the Committee apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Committee within ten days of any change of home or work address and home or work telephone number.

d. Licensee shall comply with all provisions of the §§ 337.500 through 337.540, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

e. During the disciplinary period, Licensee shall timely renew Licensee's license(s) and timely pay all fees required for licensing and comply with all other Committee requirements necessary to maintain Licensee's licenses in a current and active state.

f. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of §§ 337.500 through 337.540, RSMo, or fails to advise the Committee of Licensee's current place of business and residence, the time of her absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 337.525.4, RSMo.

g. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Committee may impose such additional or other discipline that it deems appropriate, (including imposition of a revocation).

h. This Settlement Agreement does not bind the Committee or restrict the remedies available to it concerning any other violation of §§ 337.500 through 337.540, RSMo, by Licensee not specifically mentioned in this document.

11. The parties to this Agreement understand that the Committee will maintain this Agreement as an open record of the Committee as provided in Chapters 337, 610 and 324, RSMo.

12. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided 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.

13. Licensee, together with his heirs and assignees, and his attorneys, do hereby waive, release, acquit and forever discharge the Committee, its respective members and any of its employees, agents and attorneys, including any former Committee members, employees, agents and attorneys of, and from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arising out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

14. If no contested case has been filed against the Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the Licensee. **If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

15. If licensee has requested review, Licensee and the Committee jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date of the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

16. If the licensee does not request review by the Administrative Hearing Commission, the agreement will become effective thirty (30) days after the agreement is signed by the committee's Executive Director.

LICENSEE

Michael Alan Emert

Date: 11/6/2015

COMMITTEE

Loree Kessler, Executive Director
Committee for Professional Counselors

Date: 12/16/15