BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

ORDER ISSUING PROBATED LICENSE
TO AUSTIN A. LAYNE MORTUARY, INC.
(Seller)

The Missouri State Board of Embalmers and Funeral Directors (the "Board") and pursuant to Section 324.038, RSMo[1], issues this order granting a **PROBATED SELLER LICENSE** to **AUSTIN A. LAYNE MORTUARY, INC.** ("Austin A. Layne Mortuary" or "Licensee") located at 7302 West Florissant Avenue, St. Louis, Missouri 63136.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee's profession. If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the

[1] All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

> 1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.
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> 2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is

qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.320, RSMo, requires a license to operate as a seller and states:

1. No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

2. An applicant for a preneed seller license shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

(2) Be an individual resident of Missouri who is eighteen years of age or older, or a business entity registered with the Missouri secretary of state to transact business in Missouri;

(3) If the applicant is a corporation, each officer, director, manager, or controlling shareholder, shall be eligible for licensure if they were applying for licensure as an individual;

(4) Meet all requirements for licensure;

(5) Identify the name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;

(6) Identify the name and address of each licensed provider that has authorized the seller to designate such person as a provider under a preneed contract;

(7) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 436.400 to 436.520. A trust shall not be required if the applicant certifies to the board that the seller will only sell insurance-funded or joint account-funded preneed contracts;

(8) Identify the name and address of a trustee or, if applicable, the financial institution where any preneed trust or joint accounts will be maintained; and

(9) File with the board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the seller's books and records which contain information concerning preneed contracts sold by or on behalf of the seller.

3. Each seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule; and

(3) File annually with the board a signed and notarized annual report as required by section 436.460.

4. Any license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal within two years of the renewal date may apply for reinstatement by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

3. Section 333.315.1, RSMo, requires a license to operate as a provider of preneed contracts and states:

1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such

agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

4. Section 333.330.2, RSMo, authorizes discipline on seller licenses and states, in relevant part:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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 or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:
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> (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 thereto;
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> (7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;
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> (14) Violation of any professional trust or confidence;
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> (19) Violation of any of the provisions of chapter 193, 194, 407, or 436;

Parties and Application for Licensure

5. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.

6. Austin A. Layne Mortuary is a Missouri limited liability company in good standing with its principal place of business at 7302 West Florissant Ave, St. Louis, Missouri 63136.

7. On December 10, 2013, Austin A. Layne Mortuary signed its "Seller Application" (the "Seller Application") and submitted it to the Board.

8. The Board received the Seller Application on December 16, 2013.

9. The Seller Application was completed on December 1, 2014 when Licensee met all requirements for the Board to consider it for licensure.

Basis for Probation

Operating Without a Seller License

10. Austin A. Layne Mortuary previously held seller license number 2009038260 (the "Old Seller License).

11. The Old Seller License lapsed on October 31, 2010 due to non-renewal and was automatically suspended per Section 436.460.7, RSMo.

12. By letter dated February 14, 2011, the Board notified Austin A. Layne Mortuary that its seller license had been suspended for failure to file its annual report and renew the Old Seller License.

13. By "Notification of Intent to Sell Assets or Cease Doing Business (Seller)" (the "Cease"), Licensee notified the Board, per Section 436.500, RSMo, that it was ceasing its business as a seller as of February 16, 2011. The Cease was signed by Austin A. Layne, Jr. on February 17, 2011.

14. As part of the Cease, Austin A. Layne Mortuary notified the Board that it would be assigning all active preneed contracts to another licensed seller.

15. Licensee attempted to transfer its preneed contracts to another licensed seller, but did not do so.

16. Austin A. Layne Mortuary determined that it would continue to operate as a seller and submitted and the Seller Application for re-licensure.

17. During the time Austin A. Layne Mortuary held no seller license, it continued to act as a seller including, but not limited to, holding consumer funds, being designated as the seller on preneed contracts, acting as a seller for insurance funded preneed contracts and paying providers for fulfillment of preneed contracts.

Unlicensed Practice as a Provider

18. Austin A. Layne Mortuary held provider license PNS2009038261 that was current and active, except when it lapsed from October 31, 2012 until it was renewed and reinstated on May 20, 2013.

19. By letter dated May 3, 2013, the Board notified Austin A. Layne Mortuary that its provider license had lapsed and advised Licensee that it could not lawfully practice as a provide until its provider license was reinstated. The Board provided Licensee with the forms and instructions to reinstate its provider license.

20. The Board conducted an investigation to determine whether Licensee engaged in the practice of a provider during the time its provider license was lapsed.

21. Austin A. Layne Mortuary provided fulfilled 11 preneed contracts while its provider license was lapsed.

22. During the time its provider license was lapsed, Austin A. Layne Mortuary held out to the public that it was a duly licensed provider when it held no such license.

Statutory Basis for Denial

23. The Board has cause to deny the Seller Application pursuant to Sections 333.330.2 (6), (7), (14), and (19), RSMo.

24. The Board finds that issuance of a probated seller license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a seller license to Austin A. Layne Mortuary, LLC on **PROBATION** for a period of **THREE YEARS** (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of Probation

25. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

a. Licensee shall keep the Board informed of Licensee's current telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with the current and active e-mail address of its manager in charge;

b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry

including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;

d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;

e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Order. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active; and

h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation; and

26. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Order, 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 license.

27. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

28. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

29. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on the provider license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

30. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: 9.8.15

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors