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STATE BOARD OFFICE

SETTLEMENT AGREEMENT
BETWEEN MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL
DIRECTORS AND CHARLES THOMAS FENTON

Charles Thomas Fenton (“Fenton”) and the Board of Embalmers and Funeral Directors (“Board”) enter into this Settlement Agreement for the purpose of resolving the question of whether Fenton’s licenses as a funeral director, License No. 001368, embalmer, License No. 005584, and Charles Thomas Fenton d/b/a Fenton Funeral Chapels’ licenses as funeral establishments in Centralia and Sturgeon, License Nos. 001775 and 001774 (“Fenton Funeral Chapels”) 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. 2010. The Board and Fenton jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2010.

Fenton acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against them; 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

¹ All statutory citations are to the 2000 Revised Statutes of Missouri, unless otherwise noted. Chapter 333, RSMo, was revised in 2009, all conduct alleged and all statutes cited are to the law as it existed when the conduct occurred and not as currently set forth in the statutes.

to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against Fenton; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Fenton 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, Fenton knowingly and voluntarily waives each and every one of these rights and freely enter into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Fenton 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. Fenton stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Fenton's licenses as a funeral director, License No. 001368, embalmer, License No. 005584, and Fenton Funeral Chapels' establishment licenses, License No. 001774 and 001775, are subject to disciplinary action by the Board in accordance with the relevant provisions of Chapters 333, 436, and 621, RSMo, as amended. The parties stipulate and agree that the disciplinary order agreed to by the Board and Fenton in Part II herein is based only on the agreement set out in Part I herein. Fenton understands that the Board may take further disciplinary action against them based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

Statutes Referenced in this Agreement

1. Section 333.061, RSMo, provided grounds to discipline funeral establishment licenses, and states, in pertinent part:

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director

. . . .

(4) Each funeral establishment shall have available in the preparation or embalming room a register book or log which shall be available at all times in full view for the board's inspector and the name of each body embalmed, . . . the date and time that the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book; . . .

. . . .

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121.

2. Section 333.091, RSMo, provided in pertinent part:

Each establishment, funeral director or embalmer receiving a license under this chapter shall have the license recorded in the office of the local registrar of vital statistics of the registration district in which the licensee practices. The licenses or duplicates shall be displayed in the office(s) or place(s) of business.

3. Section 333.145, RSMo, provided in pertinent 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.

....

3. All merchandise displayed in or by funeral establishments in this state shall have the price of the merchandise and included services, if any, clearly marked or indicated on the merchandise at all times.

4. Section 333.121, RSMo, set forth the grounds for discipline for funeral directors, embalmers, and funeral establishments and provided, 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 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:

(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;

....

(15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo;

....

(17) Obtaining possession of or embalming a dead human body without express authority to do so from the person entitled to the custody or control of the body;

....

5. Section 436.021.2, RSMo. (2000) stated, in relevant part:

2. Each seller under one or more preneed contracts shall:

(1). Maintain adequate records of all such contacts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements.

Regulations Referenced in this Agreement

6. 20 CSR 2120-1.040(14) defines funeral director in charge to mean:

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. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

7. 20 CSR 2120-2.010(26) requires display of embalmer licenses and states:

(26) All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in each office or place of business where they work, for inspection by any duly authorized agent of the board.

8. 20 CSR 2120-2.070 regarding funeral establishments states, in pertinent part:

(2) There shall be the following license classifications:

(A) Function A establishments shall have authority to embalm dead human bodies and to transport dead human bodies to and from the funeral establishment.

....

(C) Function C establishments shall have authority for the care and preparation of dead human bodies, other than by embalming or cremating, authority to transport dead human bodies to and from the funeral establishment, make funeral arrangements, and furnish any funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise.

(D) Function D establishments shall have authority to conduct visitations and funeral ceremonies only. A Function D license is dependent upon and must be operated under the supervision and ownership of a Function C establishment.

....

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be kept free and clean of litter, dirt, debris and clutter or other objects or 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.

....

(21) According to section 333.121.2(17), RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed.

(22) Each Missouri licensed funeral establishment shall maintain documentation of the following information regarding authorization to embalm a body which is embalmed by or on behalf of the Missouri licensed funeral establishment:

(A) When authorization to embalm is given in writing—

1. The name and signature of the person who is authorizing embalming;
2. The relationship of that person to the deceased;
3. The time and date authorization to embalm was given; and
4. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment; and

(B) Authorization to embalm must be given in writing if the person authorizing embalming is present in the Missouri licensed funeral establishment or in the physical presence of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment.

(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;

(C) Purchase agreements; and

(D) Authorizations to embalm or cremate.

(24) Each Function A funeral establishment licensed for embalming shall maintain on the premises in the preparation room an embalming log.

9. 20 CSR 2120-2.080 regarding written statement of charges states, in pertinent

part:

(1) Every Missouri licensed funeral director responsible for providing funeral services or arranging for the delivery of any funeral merchandise, shall give or cause to be given to the person(s) making such arrangements a written statement of charges for the funeral merchandise and funeral services selected.

(2) At the time of need, a written statement of charges shall be completed and given to the person making the at-need arrangements. The written statement of charges shall be completed prior to the rendering of the funeral services or providing merchandise. At a minimum, the written statement of charges shall contain the following:

(A) The name and signature of the Missouri licensed funeral director responsible for making the arrangements or

providing the funeral merchandise;

(B) The name and address of the Missouri licensed funeral establishment in charge of providing the merchandise or funeral services;

(C) The name, address and signature of the person making the at-need arrangements;

(D) The date of the signatures;

(E) The name of the deceased;

(F) The date of death;

(G) The price of the service(s) selected and the price of the supplemental (additional) items;

(H) The price of the merchandise selected including a detailed description of the casket and outer burial container;

(I) The amount and description of all cash advance items; and

(J) The method of payment.

(3) A preneed contract [sic] shall not be substituted for the written statement of charges required by the [sic] this rule.

(4) Violations of this rule will be deemed misconduct in the practice of funeral directing.

10. 20 CSR 2120-2.090 regarding preparation rooms/embalming rooms states, in pertinent part: “(14) Preparation rooms shall be secured with a functional lock so as to prevent entrance by unauthorized persons.”

I.
Joint Stipulation of Facts and Conclusions of Law

The Board and Fenton jointly stipulate and agree to the following findings of fact and conclusions of law:

The Parties

11. 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, and certain provisions of Chapter 436, RSMo, and the regulations adopted thereunder.

12. Fenton holds a funeral director license, License No. 001368 (“funeral director license”). Fenton’s funeral director license is and was at all times relevant herein current and active.

13. Fenton holds an embalmer license, License No. 005584 (“embalmer license”). Fenton’s embalmer license is and was at all times relevant herein current and active.

14. Fenton held preneed seller registration number S00077 when the conduct set forth in this Settlement Agreement occurred. This preneed seller registration is now void, by operation of law. Fenton now holds preneed seller license number 2009039854 pursuant to 2009 statute revisions.

15. Fenton held preneed provider registration P00177 when the conduct set forth in this Settlement Agreement occurred. This preneed provider registration is now void, by operation of law. Fenton now holds preneed provider license number 2009039855 pursuant to the 2009 statute revisions.

16. Fenton is a sole proprietor who operates Fenton Funeral Chapel a funeral establishment located at 104 South Collier Street, Centralia, Missouri 65240 (“Centralia Chapel”).

17. Fenton registered with the Board as the funeral director in charge of the Centralia Chapel.

18. Centralia Chapel holds funeral establishment license number 001775. Centralia Chapel’s funeral establishment license is and was at all times relevant herein current and active.

19. Centralia Chapel operates as a Function A and Function C funeral establishment, as defined in 20 CSR 2120-2.070.

20. Fenton operates as a sole proprietorship, Fenton Funeral Chapel, a funeral establishment located at 300 South Proctor, Sturgeon, Missouri 65284 (“Sturgeon Chapel”).

21. Sturgeon Chapel holds funeral establishment license number 001774. Sturgeon Chapel’s funeral establishment license is and was at all times relevant herein current and active.

22. Sturgeon Chapel operates as a Function D funeral establishment, as defined in 20 CSR 2120-2.070.

23. Fenton registered with the Board as funeral director in charge of Sturgeon Chapel.

24. Jurisdiction and venue are proper pursuant to §§ 621.045, 333.121, RSMo, as amended.

Conduct Giving Cause for Discipline

January 30, 2007 Inspection - Centralia Chapel

25. On or about January 30, 2007, Lori Hayes, Inspector for the Board (“Hayes”), conducted a routine inspection of the Centralia Chapel. Her inspection found:

- a. The embalming log at Centralia Chapel did not contain the names of two deceased persons who had been received the night before and who were in the embalming room.
- b. One of the doors to the embalming room at the Centralia Chapel did not have a functional lock on it.
- c. A number of the written statements of goods and services contained violations of Chapter 333, RSMo, and its accompanying regulations.
- d. The written statements of goods and services for W. M. P., E. R. P., H. E. C., D. J. L., N. J. K., L. M. L., G. L. A. (M.), S. B., E. W., and E. A. G. contained no written statement of the charges for the funeral, even though they were signed by the next of kin.
- e. The written statements of goods and services contained no funeral home signature for the services for W. M. P., E. R. P., H. E. C., D. J. L., N. J. K., G. L. A. (M.), S. B., E. W., and E.A. G.
- f. The written statements of goods and services for W. M. P., D. J. L., L. M. L., G. L. A. (M.), S. B., and E. W. failed to list the date of death.
- g. The written statements of goods and services for E. R. P., H. E. C., and E. A.

- G. were not entered into and/or were not signed at the time the arrangements were made and before the services were held and the merchandise provided.
- h. The written statements of goods and services for W. M. P., E. R. P., H. E. C., D. J. L., N. J. K., L. M. L., G. L. A. (M.), S. B., E. W., E. A. G., and J. E. did not contain the address of the person making the at-need arrangements.
 - i. The written statements of goods and services for W. M. P., E. R. P., H. E. C., D. J. L., N. J. K., L. M. L., G. L. A. (M.), S. B., E. W., E. A. G., and J. E. do not contain the date of the signature of the person making the at-need arrangements.
 - j. The written statements of goods and services for W. M. P., E. R. P., H. E. C., D. J. L., N. J. K., L. M. L., G. L. A. (M.), S. B., E. W., E. A. G., and J. E. did not reflect the method of payment and whether there is a balance due.

June 26, 2007 Investigation - Centralia Chapel

- 26. On June 26, 2007, Don Eggen, Investigator for the Board (“Eggen”), met with Fenton at the Centralia Chapel.
- 27. Upon Eggen’s request, Fenton provided various at-need and preneed funeral contracts and embalming logs to the Board.
- 28. The June 26, 2007 investigation revealed the following violations:
 - a. A number of the at-need and preneed funeral contracts at the Centralia Chapel were found to contain violations of the law and/or regulations governing embalmers, funeral directors, funeral establishments, preneed sellers, and

preneed providers.

- b. The written statements of goods and services for M. F. R., F. A. B., M. E. E., H. G. D., E. T. N., F. D. G., D. F., H. M. R., E. H., R. E. G., E. W., E. A. G., B. L. E., W. C., A. R., S. B., and G. A. were not entered into and/or were not signed at the time the arrangements were made and before the services were held and the merchandise provided.
- c. The written statements for M. F. R., F. A. B., M. E. E., V. S., H. G. D., E. T. N., F. D. G., D. F., H. M. R., E. H., R. E. G., E. W., E. A. G., B. L. E., G. L. A. (M.), W. C., A. R., S. B., and G. A. do not contain the address of the person making the at-need arrangements.
- d. The written statements of goods and services for R. E. G., B. L. E., G. L. A. (M.), W. C., and A. R. do not contain the date of the signature of the person making the at-need arrangements.
- e. The written statements of goods and services for services performed for A. R., did not include the merchandise and cash advance items and a summary of the charges.
- f. The written statement of goods and services of G. A. did not contain a total amount due for the goods and services, did not indicate the method of payment, nor did it include the amount of the preneed contract.
- g. Fenton did not provide a copy of the Authorization to Embalm for F. A. B. whose body Fenton embalmed.

- h. The embalming log failed to include two bodies that had been embalmed at the Centralia Chapel.

November 5, 2007 Document Review - Centralia Chapel

29. On November 5, 2007, Hayes reviewed documentation provided to the Board by Fenton.

30. The Board requested Fenton to produce various at-need and preneed funeral contracts and embalming logs from Centralia Chapel.

31. The November 5, 2007 review found the following violations:

- a. The contracts provided for review contained numerous violations of Chapter 333 and the accompanying regulations.
- b. The written statements of goods and services for P. L. F.; D. R. L.; D. M. J.; W. F.; R. C-B.; E. W. S., Jr.; and L. B. did not contain the address of the person making the at-need arrangements.
- c. The written statements of goods and services for P. L. F.; D. M. J.; R. C-B.; E. W. S., Jr.; and L. B., the Statements did not contain the date of the signature of the person making the arrangements.
- d. The written statements of goods and services for P. L. F.; D. R. L.; D. M. J.; W. F.; R. C-B.; E. W. S., Jr.; and L. B., the Statements did not contain an itemization of the services selected.
- e. Fenton began embalming the body of D. M. J. before he received authorization to embalm.

- f. The authorization to embalm the body of R. C-B. does not list a time.

January 9, 2008 Investigation - Centralia Chapel

32. On January 9, 2008, Hayes met with Fenton at the Centralia Chapel for the purposes of conducting an investigation.

33. Pursuant to this investigation, the Board requested that Fenton produce various at-need and preneed funeral contracts and embalming logs to the Board.

34. This investigation revealed numerous violations of statutes and regulations, including:

- a. The written statement of goods and services for M. A. A.'s services did not contain an itemization and did not list a balance due.
- b. The written statements of goods and services for M. E. S., H. J. M., O. M. T., M. C. T., and P. H. were not signed before the goods and services were provided.
- c. The written statement of goods and services for M. C. T. did not show a preneed contract nor the balance due.
- d. The written statement of goods and services for B. P. did not list the date of death or the balance due.

August 6, 2009 Document Review - Centralia Chapel

35. On August 6, 2009, Hayes reviewed documentation provided to the Board by Fenton.

36. The Board's review revealed numerous violations of statutes and regulations as follows:

- a. The written statements of goods and services for D. R., O. W., Jr., M. D. and B. R. were not fully executed before the goods and services were provided.
- b. The written statements of goods and services for D. R., O. W., Jr., M. D., A. M. R., N. W., R. Y., and B. R. did not contain the address of the person making the at-need arrangements.
- c. The written statements of goods and services for D. R.; O. W., Jr.; M. D.; N. W.; and B. R. did not contain the date of the signature of the person making the arrangements.
- d. The written statements of goods and services for D. R.; O. W., Jr.; M. D.; A. M. R.; R. Y.; and B. R. did not reflect whether there was a balance due.
- e. The written statement of goods and services for O. W., Jr. did not list the amount of the preneed contract.
- f. Fenton embalmed the bodies of D. R.; O. W., Jr.; A. M. R.; and B. R. at the Centralia Chapel before he received permission to embalm their bodies.
- g. Fenton did not record in his embalming log at the Centralia Chapel the name of the embalmer of the body of N.W. as well as the embalmer's license number and the date and time that the embalming took place.

January 30, 2007 Inspection - Sturgeon Chapel

37. On January 30, 2007, Hayes conducted an inspection of Sturgeon Chapel.
38. This inspection revealed the following violations of statutes and regulations:
 - a. Fenton's current funeral director's license was not displayed.
 - b. Lois Fenton's current funeral director's license was not displayed.
 - c. Dead bugs were found throughout the building.

Preneed Violations

39. On January 6, 2009, the Office of the Attorney General issued a "Determination of Probable Cause to Conclude That a Violation of §§436.005 to 436.071, RSMO, Has Occurred" (the "2009 Probable Cause") based upon a preneed investigation conducted by the Division of Professional Registration.

40. The Board provided Fenton an opportunity to respond to the findings in the 2009 Probable Cause and Fenton appeared at a meeting before the Board on March 31, 2009.

41. The preneed investigation showed that Fenton's records with regard to his preneed funeral contracts did not match the records of the financial institutions where the preneed funds were held as required by the relevant provisions of Chapter 436, RSMo.

Cause for discipline

42. Fenton had a relationship of professional trust and confidence with his customers, the members of his community, his employees and the public at large.

43. Fenton, as funeral director in charge, is responsible for all conduct occurring in Centralia Chapel and Sturgeon Chapel.

44. Based on the stipulated conduct in this Settlement Agreement, Fenton violated §§ 333.061 (4), 333.091, 333.145, RSMo, and 20 CSR 2120-2.010(26), 20 CSR 21.20-2.070, 20 CSR 2120-2.080, and 20 CSR 2120-2.090.

45. Based on the stipulated conduct in this Settlement Agreement, cause exists to discipline the funeral director and embalmer licenses held by Fenton pursuant to Section 333.121.2 (5), (6), (12), (13), (15), and (17), RSMo.

46. Based on the stipulated conduct in this Settlement Agreement, cause exists to discipline the Centralia Chapel funeral establishment license pursuant to Section 333.121.2 (5), (6), (12), (13), (15), and (17), RSMo.

47. Based upon the stipulated conduct in this Settlement Agreement, cause exists to discipline the Sturgeon Chapel funeral establishment license pursuant to Section 333.121.2 (5), (6), (12), (13), and (15), RSMo.

Mitigating Factors Presented by Fenton

48. The following allegations are NOT stipulated or agreed to by the parties, but are mitigating factors that Fenton wishes to preserve in this Settlement Agreement:

- a. On January 30, 2007, when the inspectors appeared, the funeral home had been very busy and was simply behind in completing all paperwork.
- b. The lack of lock in the embalming room has been remedied.
- c. Some of the at need contracts mentioned in the inspection report that involve fulfillment of preneed contracts are for preneed contracts for which National Prearranged Services (“NPS”) was the preneed seller. The fact that NPS has

been placed into receivership in Texas has created many issues for the fulfillment of these preneed contracts.

II.
Jointly 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, RSMo, and §§ 621.045.3 and 621.110, RSMo.

49. **Fenton's and Fenton Funeral Chapels' licenses and registrations are on probation.** Fenton's licenses as funeral director, License No. 001368, and embalmer, License No. 005584, and Fenton Funeral Chapels' funeral establishment licenses, License Nos. 001775 and 001774, are hereby placed on **PROBATION** for a period of **TWO YEARS**. The period of probation shall constitute the "Disciplinary Period." During the Disciplinary Period, Fenton shall be entitled to practice as a funeral director and an embalmer and Fenton Funeral Chapels shall be entitled to operate as funeral establishments at the Centralia Chapel and the Sturgeon Chapel, under Chapters 333, RSMo, as amended, provided Fenton adheres to all the terms of this agreement.

Terms and conditions of the Disciplinary Period

50. Licensee shall comply with the following terms and conditions of probation:

General Requirements

- a. Licensee shall keep the Board informed of Licensee's current work and home 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 his current and active e-mail address;

- 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;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission as set forth in Section 333.330, RSMo;
- 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. 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;
- f. 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;

- g. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- h. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;

51. Upon the expiration of the Disciplinary Period, the licenses and registrations of Fenton shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Fenton 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 Fenton's and Fenton Funeral Chapels' licenses and registrations.

52. 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.

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

54. 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.

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

56. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

57. 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.

58. 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 324, 333, 436, and 610, RSMo, as amended.

59. Fenton together with his partners, shareholders, officers, directors, 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, 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.

60. Fenton understands that he 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 Fenton's and Fenton Funeral Chapels' licenses and registrations. If Fenton desires the Administrative Hearing Commission to review this

Settlement Agreement, Fenton may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

61. If Fenton requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Fenton's and Fenton Funeral Chapels' licenses and registrations. If Fenton does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

62. Upon the effective date of this Settlement Agreement, the Board shall dismiss its complaint currently pending before the Administrative Hearing Commission in Case No. 10-0139 EM.

LICENSEE

BOARD

Charles Thomas Fenton 1-10-2013
Charles Thomas Fenton Date

Sandy Sebastian
Sandy Sebastian, Executive Director
Date: 1/28/13

Approved:

Grimes, Pay & Kopp, L.L.C.

CHRIS KOSTER
Attorney General

Elton Fay
Elton Fay Date
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Attorneys for Respondents

Attorneys for the Board

EFFECTIVE DATE
2.12.13
**STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**