

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND THEODORE FOSTER, SR.**

(Funeral Director and Embalmer)

The State Board of Embalmers and Funeral Directors (the "Board") and Theodore Foster, Sr. ("Licensee" or "Foster") enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Theodore Foster, Sr." (the "Settlement Agreement") to resolve the question of whether Licensee's funeral director and embalmer licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on Licensee's funeral director and embalmer licenses.

Pursuant to the terms of Section 536.060 RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee 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 against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his licenses. Being aware of these rights provided him by operation of law, Licensee knowingly and

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

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.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that he has been advised of his right to consult with private legal counsel, at his expense, to assist him with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

Relevant Statutes and Regulations

1. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

2. Section 333.330.3, RSMo, authorizes the Board to impose discipline against funeral director and embalmer licenses and, upon the finding of cause for discipline, authorizes different levels of discipline. Section 333.333.3, RSMo states:

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the

board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke any certificate of registration or authority, permit, or license issued under this chapter

Joint Stipulation of Facts and Conclusions of Law

The parties agree and stipulate to the following findings of fact and conclusions of law:

The Parties and Licenses

3. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

4. Foster is an individual who resides at 1230 Postgrove Drive, St. Louis, Missouri 61346.

5. Foster holds funeral director license number 000890 and embalmer license number 005469. Both licenses are current, but subject to discipline and suspension.

Order of Probation and Terms and Conditions of Probation

6. The Board and Foster entered into a "Settlement Agreement between Missouri State Board for Embalmers and Funeral Directors and Theodore Foster and Ted Foster & Sons, Inc, and Ted Foster & Sons Funeral Home, Inc." that was signed by the Board on January 9, 2012 and went into effect 15 days later (the "Settlement Agreement"). A true and accurate copy of the Settlement Agreement and the letter and accompanying materials mailed to Licensee with the Settlement Agreement are attached as Exhibit 1 and incorporated herein by reference.

7. The Settlement Agreement suspended Foster's funeral director and embalmer licenses for a period of 3 years to be immediately followed by probation for a period of 2 years. The period of suspension and also the period of probation constitute the disciplinary period, subject to certain terms and conditions set forth in the Settlement Agreement.

8. The Settlement Agreement, in paragraph 73, lists the conditions of the disciplinary period including:

E. Licensee shall submit written reports to the Board no later than January 1 and July 1 of each year. Each of these written reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order and shall fully explain any non-compliance. These 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;

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.

9. Licensee failed to submit the written compliance reports due on or before July 1, 2012 and due on or before January 1, 2013.

10. Effective October 12, 2010, Licensee's funeral director and embalmer licenses were suspended pursuant to Section 324.010, RSMo, for failure to comply with certain taxation laws.

11. Licensee has failed to meet all requirements necessary to maintain his funeral director and embalmer licenses current and active.

Procedural History

12. On January 31, 2013, the Board filed its Probation Violation Complaint seeking additional discipline against Foster's license due to violations of the terms and conditions of probation as set forth in the Settlement Agreement. *State Board of Embalmers and Funeral Directors v. Theodore Foster, Sr.*, Case number EMB 13-004-PV.

13. The Board set the Probation Violation Complaint for hearing on March 20, 2013.

14. Foster was properly served with the Probation Violation Complaint and the Notice of Hearing notifying him of the time, date and location of the hearing.

15. At the Board's meeting on March 7, 2013, the Board granted a request for continuance of the probation violation hearing and the Order Granting Petitioner's Request for Motion for Continuance" was issued on March 16, 2013.

16. This Settlement Agreement will fully resolve all issues before the Board in the matter of *State Board of Embalmers and Funeral Directors v. Theodore Foster, Sr.*, Case number EMB 13-004-PV.

Jurisdiction and Venue

17. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to paragraphs 22 and 23 of the Funeral Director Probation Order.

18. Venue is proper.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

19. Licensee's license to practice ^{an} ~~an~~ embalmer is hereby **SUSPENDED** for a period of **6 MONTHS**, immediately followed by **PROBATION** for **5 YEARS** and his license as a funeral director is hereby **SUSPENDED** for a period of **3 YEARS** from the effective date of this Settlement Agreement and upon completion of the suspension, shall immediately be placed on **PROBATION** for a period of **5 YEARS** from the date of the end of the period of suspension (collectively, the "Disciplinary Period"). During the suspension portion of the Disciplinary Period, Licensee shall NOT be entitled to practice as a funeral director or embalmer. During the probation portion of the Disciplinary Period, Licensee shall be entitled to practice as both an embalmer and a funeral director, subject to the following terms and conditions.

Terms and Conditions of the Disciplinary Period

20. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

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 utilized e-mail, Licensee shall provide the Board with his current and active e-mail addresses.

- 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. Licensee shall submit written reports of compliance to the Board no later than January 1 and July 1 of each year. Each of these written reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order and shall fully explain any non-compliance. These 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;

- 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
- i. Licensee shall not serve as the supervisor of any funeral director 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.

21. 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.

22. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's licenses 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 Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's licenses.

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

24. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, 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).

25. If any alleged violation of this Settlement Agreement 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 license(s) of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

26. Licensee, together with his heirs and assigns and his attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or 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 Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges 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 void or unenforceable.

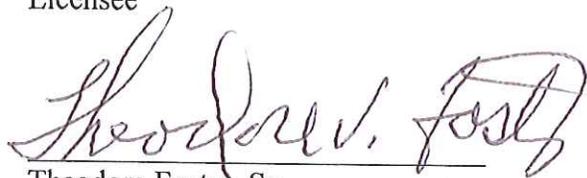
27. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

28. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license(s). If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

29. If Licensee 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 Licensee's license(s). If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

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.

Licensee


Theodore Foster, Sr.

Board

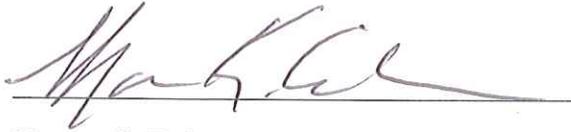

Sandy Sebastian
Executive Director

Dated: _____

State Board of Embalmers and Funeral Directors

Dated: 6.26.2013

Approved:



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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE

7-11-13

**STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**