

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND  
FUNERAL DIRECTORS AND JOHN OLIVER**

The State Board of Embalmers and Funeral Directors (the “Board”) and John Oliver (“Licensee” or “Oliver”), enter into this “Settlement Agreement Between State Board of Embalmers and Funeral Directors and John Oliver” (the “Settlement Agreement”) to resolve the question of whether Oliver’s preneed agent, funeral director and embalmer licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on Oliver’s licenses. Licensee enters this Settlement Agreement for the purposes of settlement only and to avoid the additional expense of litigation. This Settlement Agreement shall fully and finally resolve all complaints and disciplinary matters currently outstanding and within the Board’s knowledge. However, nothing herein shall prevent the Board from taking additional action against Licensee in the event complaints or facts giving rise to discipline are provided to the Board subsequent to this Settlement Agreement.

Pursuant to the terms of Section 536.060 RSMo<sup>1</sup>, 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 that a final disposition of this matter may be effectuated as described below.

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

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

hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time it 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 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. 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 licenses are 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 333.330.2 authorizes discipline against preneed agent, funeral director and embalmer 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:

(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 any profession licensed or regulated under this chapter, for

any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence;

*Statutes Related To Guilty Pleas*

2. Section 304.012, RSMo, states:

1. Every person operating a motor vehicle on the roads and highways of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

2. Any person who violates the provisions of this section is guilty of a class B misdemeanor, unless an accident is involved then it shall be a class A misdemeanor.

3. Section 577.010, RSMo, states:

1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

2. Driving while intoxicated is for the first offense, a class B misdemeanor. No person convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a suspended imposition of sentence for such offense, unless such person shall be placed on probation for a minimum of two years.

3. Notwithstanding the provisions of subsection 2 of this section, in a circuit where a DWI court or docket created under section 478.007 or other court-ordered treatment program is available, no person who operated a motor vehicle with fifteen-hundredths of one percent or more by weight of alcohol in such person's blood shall be granted a suspended imposition of sentence unless the individual participates and successfully completes a program under such DWI court or docket or other court-ordered treatment program.

4. If a person is not granted a suspended imposition of sentence for the reasons described in subsection 3 of this section for such first offense:

(1) If the individual operated the motor vehicle with fifteen-hundredths to twenty-hundredths of one percent by weight of alcohol in such person's blood, the required term of imprisonment shall be not less than forty-eight hours;

(2) If the individual operated the motor vehicle with greater than twenty-hundredths of one percent by weight of alcohol in such person's blood, the required term of imprisonment shall be not less than five days.

4. Section 577.060, RSMo, states:

1. A person commits the crime of leaving the scene of a motor vehicle accident when being the operator or driver of a vehicle on the highway or on any publicly or privately owned parking lot or parking facility generally open for use by the public and knowing that an injury has been caused to a person or damage has been caused to property, due to his culpability or to accident, he leaves the place of the injury, damage or accident without stopping and giving his name, residence, including city and street number, motor vehicle number and driver's license number, if any, to the injured party or to a police officer, or if no police officer is in the vicinity, then to the nearest police station or judicial officer.

2. For the purposes of this section, all peace officers shall have jurisdiction, when invited by an injured person, to enter the premises of any privately owned parking lot or parking facility for the purpose of investigating an accident and performing all necessary duties regarding such accident.

3. Leaving the scene of a motor vehicle accident is a class A misdemeanor, except that it shall be a class D felony if the accident resulted in:

- (1) Physical injury to another party; or
- (2) Property damage in excess of one thousand dollars; or
- (3) If the defendant has previously pled guilty to or been found guilty of a violation of this section.

**Joint Stipulation of Facts and Conclusions of Law**

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

5. 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.

6. Oliver is an individual who has registered his address with the Board as 102 E. Sneed, Centralia, Missouri 65240.

7. Oliver holds funeral director license number 006818 that was and is current and active at all times relevant to this matter.

8. Oliver holds embalmer license number 007503 that was and is current and active at all times relevant to this matter.

9. Oliver holds preneed agent license number 2010027425 that was and is current and active at all times relevant to this matter.

10. Oliver serves as funeral director in charge of Oliver Funeral Home, LLC operating in Centralia, Missouri, establishment license number 2007000155, and in Sturgeon, Missouri, establishment license number 2007000156.

11. On May 2, 2011, Oliver plead guilty to the charges of “Operating a Motor Vehicle in a Careless and Imprudent Manner, Involving an Accident” in violation of Section 304.012, RSMo.; “Leaving the Scene of Motor Vehicle Accident” in violation of Section 577.060, RSMo.; and “DWI- Alcohol/Persistent Offender” in violation of Section 577.010, RSMo., a class D felony, in *State v. John Kyle Oliver*, Case No. 11BA-CR00929. On July 18, 2011, Defendant was sentenced to 4 years incarceration with a suspended execution of sentence and placed on 5 years supervised probation subject to certain terms. One such term is that Oliver participate in the Boone County, Missouri, “Drug Court” program.

12. There is cause to discipline the preneed agent, funeral director and embalmer licenses held by Oliver pursuant to Section 333.330.2(2), RSMo.

#### **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:

13. Licensee's licenses to practice as a preneed agent, funeral director and embalmer are hereby placed on **PROBATION** for a period from the effective date of this Settlement Agreement to **July 31, 2016** or until he successfully completes his probation imposed in *State v. John Kyle Oliver*, Case No. 11BA-CR00929, whichever occurs first (the "Disciplinary Period"). During the Disciplinary Period, Oliver shall be entitled to practice as a preneed agent, funeral director and embalmer, as defined in Chapters 333 and 436, RSMo, subject to the following terms and conditions of probation.

Terms and Conditions of Probation

14. 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 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 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;
- 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;

- i. 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;
- j. Licensee shall not operate a motor vehicle in the conduct of any business of funeral directing unless Licensee holds proper licensure to operate a motor vehicle;
- k. Licensee shall comply with all terms and conditions of probation imposed in *State v. John Kyle Oliver*, Case No. 11BA-CR00929, as determined by the Court, including all terms required by the Boone County, Missouri, "Drug Court" Program in which Licensee currently participates. Licensee shall provide his probation officer with a copy of this Order.
- l. Licensee shall provide the Board with his "Drug Court" evaluation and treatment recommendations within six (6) weeks from the effective date of this agreement.
- m. Licensee shall cause the "Drug Court" evaluation and treatment recommendations to be mailed directly to the Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65109 within six (6) weeks of the effective date of this agreement.
- n. Licensee shall follow any treatment recommendations made through the Drug Court program;

- o. Licensee shall follow all recommendations for treatment made by Licensee's probation officer, or other supervising personnel in the Drug Court program, in Case No. 11BA-CR00929;
- p. Licensee shall cause an update of his progress to be forwarded to the Board directly from his probation officer no later than January 1 and July 1 of each year of probation. This update shall be submitted directly to the Board and shall include an evaluation of Licensee's current progress and status related to his probation.
- q. If a 12 step program, or other support group attendance is recommended, Licensee shall submit to the Board evidence, to the Board's satisfaction, to verify such recommended attendance, as part of his January 1 and July 1 compliance reports;
- r. Licensee shall submit to periodic drug and alcohol screens, at Licensee's cost, through his probation in Case No. 11BA-CR00929. Copies of the report from that screening shall be provided to the Board at its request;
- s. Licensee shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes;
- t. Licensee shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Licensee has a bona-fide relationship as a patient. Upon request, Licensee shall execute a medical release authorizing the Board to access all records pertaining to Licensee's condition, treatment, and prescription maintained by the health care professional that prescribed the controlled substance or other

drug for which a prescription is required to release records and/or communicate with the Board, or its representative, regarding Licensee's treatment.

- u. Licensee shall provide a copy of this Order to any employer engaged in the funeral industry within 5 business days of the commencement of his employment or within 5 days of Licensee's receipt of this Order.

15. 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.

16. 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 license(s).

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

18. 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).

19. 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.

20. Licensee, together with its heirs and assigns and its 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.

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

22. Licensee understands that it 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 licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

23. 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. 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.

24. 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

  
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John K. Oliver

Dated: 1-9-2013

Board

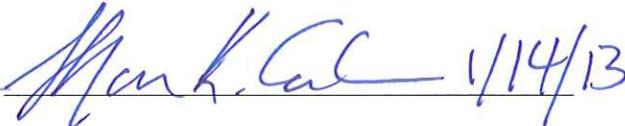
  
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Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors

Dated: 1-17-13

Approved:

  
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