SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND TOBY POLLEY

(Funeral Director License)

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

Pursuant to the terms of Section 536.060 RSMo[1], 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 to 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 license. Being aware of these rights provided to him by operation of law, Licensee knowingly

[1] All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated. Provisions to portions of Chapter 436, RSMo, that were repealed in 2009 are designated also as "Old Law."

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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 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 333.011.1, RSMo, defines terms used in Chapters 333 and 436, RSMo, and includes the following relevant definitions:

> (10) "Provider", the person designated or obligated to provide the final disposition, funeral, or burial services or facilities, or funeral merchandise described in a preneed contract;
>
> (11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

2. Section 333.061, RSMo, requires a license to operate as a funeral establishment and requires each funeral establishment to maintain a register log, and states, in relevant portion:

> 1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.
>
> 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 a register book or log which shall be available at all times for the board's inspector and that shall contain:

(a) The name of each body that has been in the establishment;

(b) The date the body arrived at the establishment;

(c) If applicable, the place of embalming, if known; and

(d) If the body was embalmed at the establishment, the date and time that the embalming took place, and the name, signature, and license number of the embalmer; and ...

3. Section 333.091, RSMo, requires a current and active license to be displayed at each licensee's place of business and states:

All licenses or registrations, or duplicates thereof, issued pursuant to this chapter shall be displayed at each place of business.

4. Section 333.315, RSMo, requires a provider license to operate as a provider and states, in relevant part:

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.

* * *

3. Each preneed provider 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:

* * *

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

5. Section 333.320, RSMo, requires a seller license and states, in relevant part:

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.

* * *

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.

6. Section 333.330.2, RSMo, authorizes discipline on establishment, seller and provider 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:

(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;

(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;

* * *

(13) Failure to display a valid certificate or license if so required by this chapter regulating preneed or any rule established thereunder;

(14) Violation of any professional trust or confidence;

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436;

7. Section 436.460, RSMo, requires each seller to file an annual report with the Board and states:

1. Each seller shall file an annual report with the board which shall contain the following information:

(1) The contract number of each preneed* contract sold since the filing of the last report with an indication of, and whether it is funded by a trust, insurance or joint account;

(2) The total number and total face value of preneed contracts sold since the filing of the last report;

(3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;

(4) The name, address, and license number of all preneed agents authorized to sell preneed contracts on behalf of the seller;

(5) The date the report is submitted and the date of the last report;

(6) The list including the name, address, contract number and whether it is funded by a trust, insurance or joint account of all Missouri preneed contracts fulfilled, cancelled or transferred by the seller during the preceding calendar year;

(7) The name and address of each provider with whom it is under contract;

(8) The name and address of the person designated by the seller as custodian of the seller's books and records relating to the sale of preneed contracts;

(9) Written consent authorizing the board to order an investigation, examination and, if necessary, an audit of any joint or trust account established under sections 436.400 to 436.520, designated by depository or account number;

(10) Written consent authorizing the board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts; and

(11) Certification under oath that the report is complete and correct attested to by an officer of the seller. The seller or officer shall be subject to the penalty of making a false affidavit or declaration.

2. A seller that sells or has sold trust-funded preneed contracts shall also include in the annual report required by subsection 1** of this section:

(1) The name and address of the financial institution in which it maintains a preneed trust account and the account numbers of such trust accounts;

(2) The trust fund balance as reported in the previous year's report;

(3) The current face value of the trust fund;

(4) Principal contributions received by the trustee since the previous report;

(5) Total trust earnings and total distributions to the seller since the previous report;

(6) Authorization of the board to request from the trustee a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller;

(7) Total expenses, excluding distributions to the seller, since the previous report; and

(8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration.

3. A seller that sells or who has sold joint account-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of the financial institution in Missouri in which it maintains the joint account and the account numbers for each joint account;

(2) The amount on deposit in each joint account;

(3) The joint account balance as reported in the previous year's report;

(4) Principal contributions placed into each joint account since the filing of the previous report;

(5) Total earnings since the previous report;

(6) Total distributions to the seller from each joint account since the previous report;

(7) Total expenses deducted from the joint account, excluding distributions to the seller, since the previous report; and

(8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by an authorized representative of the financial institution. The affiant shall be subject to the penalty of making a false affidavit or declaration.

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;

(2) The status and total face value of each policy;

(3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company; and

(4) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration.

5. Each seller shall remit an annual reporting fee in an amount established by the board by rule for each preneed contract sold in the year since the date the seller filed its last annual report with the board. This reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the board from the funds of the seller. The reporting fee shall be in addition to any other fees authorized under sections 436.400 to 436.520.

6. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

7. If a seller fails to file the annual report on or before its due date, his or her preneed seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

8. This section shall apply to contracts entered into before August 28, 2009.

8. Regulation 20 CSR 2120-1.040(21) defines a register log and states:

(21) Register log—a written record or log kept in the preparation/embalming room of a Missouri licensed funeral establishment available at all times in full view for a board inspector, which shall include the following:

(A)The name of the deceased;
(B)The date and time the dead human body arrived at the funeral establishment;
(C) The date and time the embalming took place, if applicable;
(D) The name and signature of the Missouri licensed embalmer, if applicable;
(E) The name and signature of the Missouri registered apprentice embalmer, if any;
(F) The Missouri licensed embalmer's license number, if applicable;
(G) The Missouri apprentice embalmer registration number, if any; and
(H) The name of the licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.

9. Regulation 20 CSR 2120-2.070 (27) requires each funeral establishment to maintain a register log and states:

(27) Each funeral establishment shall maintain a register log, as defined by 20 CSR 2120-1.040(21). The log shall be kept in the preparation or embalming

room of the Missouri licensed funeral establishment at all times and in full view for a board inspector. If the funeral establishment does not contain a preparation or embalming room, the log shall be kept on the premises of the licensed funeral establishment and shall be easily accessible and in full view for a board inspector. A register log shall contain the information required by 20 CSR 2120-1.040(21).

10. Regulation 20 CSR 2120-2.090 requires proper backflow and states, in relevant portion:

> (4) Each Missouri licensed establishment shall comply with Missouri Department of Health and Senior Services rules and regulations, Missouri Department of Natural Resources rules and regulations, and all other applicable county, city, municipal and state rules and regulations relating to plumbing, sewage and liquid waste, solid waste disposal and disposal of body parts.
>
> (5) Sewage and Liquid Waste Disposal.
>
> (A) All sewage and water-carried wastes from the entire Missouri licensed funeral establishment, including the preparation room, shall be disposed of in a public sewage system or an approved disposal system which is constructed, operated and maintained in conformance with the minimum standards of the Department of Health and Senior Services.
>
> (B) The following aspirators are approved for preparation rooms:
>
> 1. Electric aspirators;
>
> 2. Water-operated aspirators. All water operated aspirators shall be protected from back siphonage by the minimum of an atmospheric vacuum breaker approved by the American Society of Sanitary Engineering or by the *Uniform Plumbing Code* and installed a minimum of twelve inches (12") above the maximum possible height of the embalming table; and
>
> 3. Water-controlled unit. All water-controlled units shall be installed and maintained according to the *Uniform Plumbing Code*, and properly protected from back siphonage with a backflow prevention device approved by the American Society of Sanitary Engineering or the *Uniform Plumbing Code*.

Joint Stipulation of Facts and Conclusions of Law

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

Parties and Licenses

11. 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.

12. Polley Funeral holds funeral establishment license number 2007008989 and has registered this funeral establishment's address with the Board as 214 N. Pennsylvania Avenue, Lawson, Missouri 64062 (the "Lawson Establishment"). This license was current and active until it lapsed on December 31, 2013.

13. Polley Funeral holds provider license number 2009039722 and has registered this provider's license address with the Board as 214 N. Pennsylvania Avenue, Lawson, Missouri 64062 (the "Lawson Provider"). This license was current and active until it expired on October 31, 2012.

14. Polley Funeral holds funeral establishment license number 2006025730 and has registered this funeral establishment's address with the Board as 122 W N Main, Richmond, Missouri 64085 (the "Richmond Establishment"). This license was current and active until it lapsed on December 31, 2013.

15. Polley Funeral holds provider license number 2009039721 and has registered this provider's address with the Board as 122 W. Main, Richmond, Missouri 64085 (the "Richmond Provider"). This license was current and active until it expired on October 31, 2012.

16. Polley Funeral holds funeral establishment license number 2007008991 and has registered this establishment's address with the Board as 5951 E Highway10, Excelsior Springs, Missouri 64024 (the "Excelsior Springs Establishment"). This license was current and active until it lapsed on December 31, 2013.

17. Polley Funeral holds provider license number 2009039724 and has registered this provider's address with the Board as 5951 E. Highway 10, Excelsior Springs, Missouri 64024 (the "Excelsior Springs Provider"). This license was current and active until it expired on October 31, 2012.

18. Polley Funeral holds seller license number 2009039723 and has registered this seller's address as 5951 E. Highway 10, P.O. Box 271, Excelsior Springs, Missouri 64024 (the "Excelsior Springs Seller"). This license was current and active until it expired on October 31, 2012.

19. Toby Polley ("Polley") holds funeral director license number 006070 and has registered his address with the Board as 5951 East Highway 10, P.O. Box 271, Excelsior Springs, Missouri. Polley's funeral director license is and has been at all relevant times, current and active.

20. Polley serves as funeral director in charge for the Lawson Establishment, the Richmond Establishment and the Excelsior Springs Establishment.

21. As funeral director in charge, Polley is responsible for the supervision and management of each funeral establishment and to ensure each establishment's compliance with applicable Missouri statutes and regulations.

22. Polley serves as the manager in charge for the Excelsior Springs Seller.

23. As manager in charge for the Excelsior Springs Seller, Polley is responsible for the supervision and management of the seller's business and to ensure the seller complies with applicable Missouri statutes and regulations.

24. For the purposes of this document, the Richmond Establishment, the Lawson Establishment and the Excelsior Springs Establishment licenses, collectively will be referred to as the "Establishment Licenses." The Richmond Provider, the Lawson Provider and the Excelsior Springs Provider licenses, collectively, will be referred to as the "Provider Licenses." The Richmond Establishment, the Lawson Establishment, the Excelsior Springs Establishment, the Richmond Provider, the Lawson Provider, the Excelsior Springs Provider, and the Excelsior Springs Seller licenses, collectively, will be referred to as the "Polley Licenses."

Conduct Giving Cause for Discipline

25. On May 3, 2013, the Board mailed Polley at Polley Funeral home a letter, via certified mail, notifying Polley that the Excelsior Springs Provider license had expired. This letter enclosed the reinstatement forms and instructions to have the license reinstated. This letter also requested copies of contracts for which Polley Funeral fulfilled contracts as the Excelsior Springs Provider. Polley Funeral signed the certified mail receipt for this letter on May 8, 2013.

26. On May 3, 2013, the Board mailed Polley at Polley Funeral home a letter, via certified mail, notifying Polley that the Excelsior Springs Seller license had expired. This letter enclosed the reinstatement forms and instructions to have the license reinstated. This letter also requested copies of contracts for which Polley Funeral acted as a preneed seller using the Excelsior Springs Seller license. Polley Funeral signed the certified mail receipt for this letter on May 8, 2013.

27. On May 3, 2013, the Board mailed Polley at Polley Funeral home a letter, via certified mail, notifying Polley that the Lawson Provider license had expired. This letter enclosed the reinstatement forms and instructions to have the license reinstated. This letter also requested copies of contracts for which Polley Funeral fulfilled contracts as the Lawson Provider. Polley Funeral signed the certified mail receipt for this letter on May 8, 2013.

28. On May 3, 2013, the Board mailed Polley at Polley Funeral home a letter, via certified mail, notifying Polley that the Richmond Provider license had expired. This letter enclosed the reinstatement forms and instructions to have the license reinstated. This letter also requested copies of contracts for which Polley Funeral fulfilled contracts as the Richmond Provider. Polley Funeral signed the certified mail receipt for this letter on May 8, 2013.

29. On May 29, 2013, the Board mailed Polley at Polley Funeral a letter reminding Polley Funeral that it had not reinstated its Provider Licenses nor the Excelsior Springs Seller license and that Polley Funeral had not responded to the Board's previous letters that Polley Funeral received on May 8, 2013. In this May 29, 2013 letter, the Board again request copies of documents and also notified Polley Funeral of the time, date and location for a scheduled appearance before the Board at its June 25, 2013 meeting.

30. By fax on June 21, 2013, Polley provided the records requested by the Board.

31. On July 11 and July 22, 2013, the Board notified Polley Funeral, via fax, that the reinstatement renewals for the Provider Licenses and the Excelsior Springs Seller could not be renewed until Polley Funeral provided a "No Tax Due" certificate from the Missouri Department of Revenue. These faxes also reiterated to Polley Funeral that it could not lawfully practice as a seller or as a provider until the licenses were renewed.

32. On June 21, 2013, Polley Funeral responded to the Board's request and enclosed the requested documents and also indicated that it should be able to provide a "No Tax Due" certificate from the Missouri Department of Revenue on June 22, 2013 or as soon as the Missouri Department of Revenue could process Polley Funeral's payment.

33. On June 21, 2013, Polley Funeral faxed to the Board the following reinstatement requests:

a. Excelsior Springs Provider "Reinstatement" signed by Polley on May 14, 2013;

b. Lawson Provider "Reinstatement" signed by Polley on May 14, 2013;

c. Richmond Provider "Reinstatement" signed by Polley on May 14, 2013; and

d. Excelsior Springs Seller "Reinstatement" signed by Polley on June 19, 2013 and included the seller's annual report that had been due on October 31, 2012.

34. On July 25, 2013, Polley called the Board office to say that he had not been able to obtain a "No Tax Due" certificate from the Missouri Department of Revenue, but that Polley was told that the Missouri Department of Revenue that it might be another month or two before he could obtain the certificate.

35. On September 4, 2013, Polley contacted the Board office and told the Board he expected to have everything to Missouri Department of Revenue in the next couple of days.

36. On November 22, 2013, the Board's inspector conducted an inspection of Polley Funeral and submitted his report of that inspection to the Board on December 6, 2013 (the November Inspection).

37. At the November Inspection, the Excelsior Springs Establishment was open for business and had the following violations:

a. Polley Funeral displayed Seller License number 2009039723 that was expired;

b. Polley Funeral displayed provider license number 2009039724 that was expired;

c. The register log was not up to date with the last entry being September 18, 2013 and the Excelsior Springs Establishment had had 22 funerals since September 18, 2013; and

d. The Excelsior Springs Establishment could not provide a current backflow inspection.

38. At the November Inspection, the Lawson Establishment had the following violations:

a. The Lawson Establishment displayed preneed seller license number 2009039723 that was expired; and

b. The Lawson Establishment displayed preneed provider license number 2009039722 that was expired.

39. The November Inspection found the following violations at the Richmond Establishment:

a. The Richmond Establishment displayed preneed seller license number 2009039723 that was expired; and

b. The Richmond Establishment displayed preneed provider license number 2009039721 that was expired.

40. At the November Inspection Polley was not available to meet with the inspector.

41. The Board's inspector asked the employee of Polley Funeral that was present for the inspection to ask Polley to contact the Board's inspector and requested that Polley provide to the Board's inspector the date of the last backflow inspection for the Excelsior Springs

Establishment, copies of preneed contracts that had been provided since November 2, 2012 and an updated register log.

42. Polley never contacted the Board's inspector nor did he or anyone else with Polley Funeral supply the information the Board requested at the November Inspection except on June 21, 2013, Polley faxed to the Board office copies of preneed contracts that had been provided since November 2, 2012.

43. Polley Funeral's Establishment Licenses expired on December 31, 2013 because they were not renewed on or before December 31, 2013.

44. By letters dated January 10, 2014 sent by both certified and regular mail to each funeral establishment, the Board notified Polley at Polley Funeral that all Establishment Licenses had expired due to non-renewal and included instructions for reinstatement.

45. The Board received confirmation of delivery of each of these letters to each of the establishments.

46. By letter dated February 11, 2014 and by e-mail on February 11, 2014, the Board confirmed a telephone conversation with Polley about what he needed to do to have the Funeral Establishment, Seller and Provider Licenses reinstated.

47. On February 24, 2014, the Board again provided Polley with instruction and forms to complete the reinstatement of Polley Funeral's Licenses.

48. Polley Funeral continued to operate as a funeral establishment as the Excelsior Springs Establishment, even though it held no license to do so.

49. Polley Funeral continued to operate as a funeral establishment at the Lawson Establishment, even though it held no license to do so.

50. Polley Funeral continued to operate as a funeral establishment at the Richmond Establishment, even though it held no license to do so.

51. Since Polley Funeral's Funeral Establishment Licenses lapsed, Polley Funeral has handled final disposition for at least 19 decedents.

52. Polley Funeral continued to act as a provider after November 1, 2012, even though it held no license to do so and provided at least 8 preneed contracts during the time its provider licenses were expired.

53. Polley Funeral continued to act as a seller after November 1, 2012, even though it held no license to do so and acted as seller by continuing to hold active preneed contracts and by acting as a seller in the fulfillment of at least 8 preneed contracts during the time its seller license was expired.

Cause to Discipline

54. Polley Funeral failed to renew its Excelsior Springs Seller license, but continued to operate and practice as a seller and held out to the public that it was so licensed from November 1, 2012 until the present and when it held no valid license to do so.

55. Polley Funeral failed to file its seller annual report due on or before October 31, 2012 and, as of the date of signing this Settlement Agreement has failed to do so and failed to file the seller annual report due on or before October 31, 2013.

56. Polley Funeral failed to renew timely its Lawson Provider, its Richmond Provider and its Excelsior Springs Provider, but continued to hold out to the public and act as a provider at each location and provided at least 8 preneed contracts from November 1, 2012 until the present and during that time it held no provider license.

57. Polley Funeral failed to renew the Polley Establishment Licenses on or before December 31, 2013, but continued to hold out to the public and to operate as a funeral establishment at each location from January 1, 2014 and to the present even though it held no current funeral establishment license at any of the three locations.

58. As the funeral director in charge of the Polley Establishments and as manager in charge of the Excelsior Springs Seller, Polley is responsible for the conduct of the Polley Establishments and the Excelsior Springs Seller.

59. For all conduct alleged in this Settlement Agreement, Polley engaged in that conduct on behalf of Polley Funeral.

60. The Board has cause to discipline Polley's funeral director license pursuant to Section 333.330.2, (6), (7), (13), (14), and (19), 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:

61. Licensee's license to practice as a funeral director is hereby **SUSPENDED** for **SIX MONTHS**, beginning on the effective date of this Settlement Agreement and then immediately placed on **PROBATION** for a period of **FIVE YEARS** (collectively, the "Disciplinary Period"). During the probation portion of the Disciplinary Period, Licensee shall be entitled to practice as funeral director subject to compliance with this Settlement Agreement.

Terms and Conditions of Discipline

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

a. Licensee shall not operate any funeral establishment, seller and/or provider unless said funeral establishment, seller and/or provider holds a current and active license to operate nor shall Licensee allow any such funeral establishment, seller and/or provider to hold out to the public that it is open for business unless said funeral establishment, seller and/or provider holds a current and active license to operate.

b. Licensee shall take all steps necessary to have the Polley Licenses reinstated no later than 15 days after the effective date of this Settlement Agreement. Until such time as the relevant licenses are reinstated, Licensee shall not allow Polley Funeral to practice as a seller, provider or funeral establishment.

c. 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;

d. 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;

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

f. 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;

g. 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. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately;

h. 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;

i. 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 including not allowing any license to be suspended for failure to comply with Missouri's revenue laws;

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

k. Licensee shall provide any death care employer with a copy of this Settlement Agreement within 5 working days from the date of receipt of the final executed

Settlement Agreement and within 5 working days from the date of any new employment.

l. 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;

63. 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.

64. Upon successful completion of the Disciplinary Period, 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 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.

65. 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.

66. 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).

67. 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 the Disciplinary Period occurred and, if so, may impose further discipline on Licensee's license. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

68. 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.

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

70. 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.

71. 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.

72. 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

Toby Polley

Dated: 7/3/14

Board

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors

Dated: 7.14.2014

Approved:

Sharon K. Euler # 42950
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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
7.29.2014
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS