BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

In the Matter of the Application of:

WOODS MEMORIAL GROUP L.L.C
d/b/a TYLER M. WOODS FUNERAL DIRECTOR

ORDER ISSUING PROBATED PROVIDER LICENSE

COMES NOW, the Missouri State Board of Embalmers and Funeral Directors (the "Board") and pursuant to Section 324.038, RSMo[1], issues this order issuing a **PROBATED PROVIDER LICENSE** to Woods Memorial Group L.L.C. d/b/a Tyler M. Woods Funeral Director ("Licensee or "Woods Memorial") located at 611 E. Capitol Avenue, Jefferson City, Missouri 65109.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee's profession. If such review is

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

requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

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

Relevant Statutes

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

> 324.038. 1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.
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> 2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.
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> 3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such

restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.061.1, RSMo, states:

> 1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

3. Section 333.315, RSMo, requires a 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.
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> 2. An applicant for a preneed provider license shall:
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> (1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;
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> (2) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;
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> (3) Identify the name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;
>
> (4) Identify the name and address of each seller authorized by the provider to sell preneed contracts in which the provider is designated or obligated as the provider;
>
> (5) File with the state board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the provider's books and records which contain information concerning preneed contracts sold for or on behalf

of a seller or in which the applicant is named as a provider; and

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

4. Section 333.330, RSMo, authorizes the Board to deny an application for a provider license and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

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:

* * *

(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 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;

* * *

(14) Violation of any professional trust or confidence;

5. Relevant portions of 20 CSR 2120-2.060 state:

(23) The business and practice of funeral directing may be conducted only from a fixed place or establishment which has been licensed by the board.

6. Relevant portions of 20 CSR 2120-2.070 state as follows:

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo....

* * *

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

Parties and Background

7. 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 enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

8. Woods Memorial Group L.L.C. d/b/a Tyler M. Woods Funeral Director is a Missouri limited liability corporation, in good standing.

9. Tyler M. Woods Funeral Director is registered with the Missouri Secretary of State as a fictitious name owned by Woods Memorial Group L.L.C.

10. Woods Memorial applied for a Missouri provider license by filing its "Provider Application" (the "Application") with the Board.

11. The Board received the Application on March 31, 2014.

12. The Application lists Tyler M. Woods as the funeral director in charge of Woods Memorial.

13. Woods Memorial currently holds a funeral establishment license for a location located at 3216 B6 Emerald Lane, Jefferson City, Missouri 65109 that operates under the registered name of Memorial Cremation and Burial Services, establishment license number 2012035250.

14. On May 30, 2014, the Board issued to Woods Memorial a funeral establishment license for a location located at 611 E. Capital Avenue, Jefferson City, Missouri 65101 operating under the name Tyler M. Woods Funeral Director, establishment license number 2014016391 (the "New Establishment License").

15. The Application became finally submitted on May 30, 2014.

Basis for Probation

16. On March 30, 2014, an advertisement appeared in the Jefferson City New Tribune for a funeral home advertising the name "Tyler M. Woods Funeral Director."

17. On April 25, 2014, Licensee held out to the public on Facebook as providing "Burial & Cremation Service... Funeral Service" as a business under the name "Tyler M. Woods Memorial Cremation & Burial Services."

18. Prior to issuance of the New Establishment License, Licensee held out to the public on its website www.woodsmemorialservices.com that it was a funeral establishment that provided funeral services, including in-house embalming, under the name "Tyler M. Woods Funeral Director.

19. Prior to issuance of the New Establishment License, Licensee held out to the public on its website www.woodsmemorialservices.com, that it operated several businesses including "Tyler M. Woods Funeral Director – Jefferson City, MO...Tyler M. Woods Funeral Director, Ashland, MO...."

20. Prior to issuance of the New Establishment License, Licensee held out in obituaries published on the website located at http://www.cremationsjeffersoncity.com that arrangements for funerals were under the direction of "MEMORIAL CREMATION & BURIAL SERVICES & TYLER M. WOODS."

21. While Memorial Cremation and Burial Services is a licensed funeral establishment and authorized to make funeral arrangements, prior to issuance of the New Establishment License, Tyler M. Woods was not a licensed funeral establishment name and was not a funeral establishment authorized to make funeral arrangements.

22. Tyler M. Woods Memorial Cremation & Burial Services is not a name registered with the Board as authorized for any Licensee to use in an advertisement.

23. Prior to issuance of the New Establishment License, no entity registered with the Board the name "Tyler M. Woods Funeral Director" as an authorized name for holding out to the public as a funeral establishment.

24. Licensee holds no license to operate a funeral establishment in Ashland, Missouri.

25. Licensee holds no license for a funeral establishment authorized for "in-house embalming."

26. By letter dated April 28, 2014, the Board requested Licensee to appear before the Board to discuss the Application.

27. On May 5, 2014, Licensee appeared before the Board and discussed the Application with the Board, including Licensee's use of a non-registered name for its business.

28. On May 28, 2014, prior to issuance of the New Establishment License, Licensee sent an e-mail to the Board with a signature block using the name "Tyler M. Woods Funeral Director" as an establishment name.

Cause for Discipline

29. Licensee held out to the public and represented itself as a licensed funeral establishment at a time when it held no such license, held itself out as operating a funeral establishment in Ashland, Missouri where Licensee had no

funeral establishment located, and held itself out as providing in-house embalming when it held no such license, and thus the Board has cause to deny the Application pursuant to Section 333.330.2 (5), (6), (7), and (14), RSMo.

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

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a provider license to Woods Memorial Group, LLC, d/b/as Tyler M. Woods Funeral Director on **PROBATION** for a period of **FIVE YEARS** (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of the Disciplinary Period

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

a. Licensee shall keep the Board informed at all times of its current address and telephone number(s) at each place of business. If there is a change in address or telephone number, Licensee shall inform the Board, in writing, no later than 5 days after the change occurs;

b. Licensee shall timely renew all licenses issued by the Board and comply with all statutes, regulations and reporting requirements to maintain these licenses in a current and active status;

c. Licensee shall comply with all provisions of Chapters 194, 333 and 436, RSMo, all regulations imposed under the authority of these statutes, and all laws and regulations of any state including Missouri and all other states and territories of the United States, and all federal laws and regulations related to the operation of a funeral related business and applicable to persons and entities engaged in the funeral and death care industry;

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

e. Licensee shall not allow any person to serve as a funeral director apprentice or embalmer apprentice without the consent of the Board. If any person seeks to serve as an apprentice at Licensee's funeral establishment, Licensee shall make written request to the Board requesting approval of the apprenticeship before the commencement of any such apprenticeship;

f. Upon the Board's request, Licensee shall appear before the Board or its representative for personal meetings;

g. Licensee shall accept and cooperate with visits, whether scheduled or unannounced, from the Board's duly authorized representatives to monitor Licensee's compliance with these terms and conditions;

h. Upon request by the Board or its designee, Licensee shall submit any and all records requested to show compliance with these terms and conditions. These records shall be timely submitted per the request of the Board; and

i. Licensee shall submit written reports to the Board on or before January 1 and July 1 of each year during the Disciplinary Period in which Licensee shall state truthfully whether it has fully complied will all terms and conditions of the Disciplinary Period and shall fully describe any non-compliance.

32. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's license shall be fully restored if all other requirements of the law have been satisfied.

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

34. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary

Period occurred and, if so, 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 the licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

35. 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.

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

IT IS SO ORDERED.

Dated: 6.9.2014

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors