

STATE OF MINNESOTA
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
AND THE DEPARTMENT OF HEALTH

In the Matters of the Cease and Desist Order issued to Maple Oakes Funeral Home and Phalen Park Funeral Home; the Notice of Intent to Suspend Licenses Issued to Maple Oakes Funeral Home and Phalen Park Funeral Home; and the Notices of Intent to Revoke Licenses issued to licensed morticians David J. Thorsell and Edward P. Vasey;

**STIPULATION AND
SETTLEMENT AGREEMENT**

This settlement agreement ("Agreement") is made by and among the Minnesota Department of Health ("the Department"), Maple Oakes Funeral Home (License No. 0618) ("Maple Oakes"), Phalen Park Funeral Home (License No. 0039) ("Phalen Park"), and licensed morticians David J. Thorsell (License No. M-2283) ("Thorsell"), and Edward P. Vasey (License No. M-2307) ("Vasey"), the owners of Maple Oakes and Phalen Park.

WHEREAS, on March 19, 2015 the Department issued an Administrative Penalty Order to Maple Oakes pursuant to Minn. Stat. § 149A.06; Maple Oakes did not appeal the March 19 Order; and the Order became a final Order of the Department; and

WHEREAS, on May 15, 2015, the Department issued a Cease and Desist Order to Maple Oakes and Phalen Park pursuant to Minn. Stat. § 149A.08; Maple Oakes and Phalen Park timely appealed the May 15 Order and requested a hearing before an administrative law judge ("ALJ") at the Office of Administrative Hearings ("OAH"); and the appeal has been docketed as OAH No. 14-0900-32543; and

WHEREAS, on June 2, 2015, pursuant to Minn. Stat. §§ 149A.06 and 149A.09 the Department issued to Maple Oakes and Phalen Park a Notice of Intent to Suspend Licenses;

Maple Oaks and Phalen Park requested a hearing before an ALJ at the OAH; and the Notice and Order for Hearing has not yet issued; and

WHEREAS, on June 5, 2015, the Department issued a Notice of Intent to Revoke the License of David J. Thorsell and a Notice of Intent to Revoke the License of Edward P. Vasey; Thorsell and Vasey have requested hearings before an ALJ at the OAH; and the Notices and Orders for Hearing have not yet issued; and

WHEREAS, it is the desire of the parties to fully, finally and completely release and settle the issues raised in the May 15, 2015 Cease and Desist Order, the June 2, 2015 Notice of Intent to Suspend Licenses, the June 5, 2015 Notice of Intent to Revoke the License of David J. Thorsell, the June 5, 2015 Notice of Intent to Revoke the License of Edward P. Vasey, and the appeals and requests for hearings related to those issues;

NOW THEREFORE, in consideration of the recitals and the promises made herein, the parties agree as follows:

1. *Compliance with Minn. Stat. ch. 149A.* Maple Oaks, Phalen Park, Thorsell, and Vasey reaffirm their commitment to comply with the requirements of Minn. Stat. ch. 149A.

2. *Cease and Desist Order and License Actions.* In exchange for Maple Oaks, Phalen Park, Thorsell, and Vasey's agreement to and compliance with the following terms, the Department agrees to lift the May 15, 2015 Cease and Desist Order, withdraw the June 2, 2015 Notice of Intent to Suspend the Licenses of Maple Oaks and Phalen Park, and withdraw the June 5, 2015 Notices of Intent to Revoke the Licenses of Thorsell and Vasey:

a. *Training.* Maple Oaks, Phalen Park, Thorsell, and Vasey agree that Thorsell and Vasey shall complete training on the requirements of Minn. Stat. §§ 149A.90-.91 regarding the preparation and embalming of human bodies,

the ethics of mortuary science, and mortuary science business practices. Within ninety (90) days after the parties execute this agreement, Maple Oaks, Phalen Park, Thorsell, and Vasey shall submit for the Department's approval the proposed content of the training and the name(s) of the person(s) who will conduct the training. Thorsell and Vasey shall receive this training within ninety (90) days after they receive the Department's written approval of the proposed training. Within ten (10) days after completion of the training, Thorsell and Vasey shall submit to the Department verification that they completed the training outlined above, including the dates on which the training occurred, the length and content of the training, and the name(s) of the person(s) who conducted the training. Thorsell and Vasey shall send the training proposal and verification to Manager of the Mortuary Science Section, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882.

b. *Conditional Licenses.* Thorsell and Vasey agree that the Department may place conditions on their licenses to practice mortuary science that provide that Thorsell and Vasey may not prepare or embalm dead human bodies. The parties agree that, pursuant to Minn. Stat. § 149A.09, subdivision 5, Thorsell and/or Vasey may at a future date petition the Department for removal of these conditions and the Department will consider whether Thorsell and/or Vasey have provided sufficient reason to justify removal.

c. *Preparation and Embalming.* Maple Oaks and Phalen Park agree that no human remains may be present on the premises of Maple Oaks/Phalen Park and that no preparation and embalming work may be completed on the premises of Maple Oaks/Phalen Park until the ceiling of the preparation and embalming room is brought into

compliance with Minn. Stat. § 149A.92, subdivision 5 and has passed a re-inspection by the Department. After the ceiling passes a re-inspection by the Department, if Maple Oaks and Phalen Park wish to use the facility for preparation and embalming, Maple Oaks and Phalen Park agree that, so long as Thorsell and Vasey's licenses are subject to the conditions enumerated in paragraph 2(b) of this agreement, Maple Oaks and Phalen Park will not allow Thorsell or Vasey to perform preparation and embalming work and will instead retain the services of another mortician licensed in the State of Minnesota to perform any required preparation and embalming work, either as a third-party contractor or as an employee.

d. *Cleaning Schedule.* Maple Oaks and Phalen Park agree that, within thirty (30) days of the date of execution of this agreement, they will develop and implement a monthly cleaning schedule for the facility preparation and embalming room and will maintain records indicating the dates the preparation and embalming room was cleaned, who completed the cleaning, and what cleaning was completed. Maple Oaks and Phalen Park acknowledge their obligation to make the cleaning scheduled and cleaning records available for review by the Department during unannounced inspections conducted pursuant to Minn. Stat. § 149A.04, subdivision 3.

e. *Withdrawal of Appeal.* Maple Oaks and Phalen Park agree to withdraw their request for a hearing on the June 2, 2015 Notice of Intent to Suspend Licenses, and to withdraw their appeal of the May 15, 2015 Cease and Desist Order, docketed as OAH No. 14-0900-32543. Thorsell and Vasey agree to withdraw their requests for hearings on the June 5, 2015 Notices of Intent to Revoke Licenses.

f. *Payment of Civil Penalty.* Maple Oaks agrees to pay the \$20,000 civil penalty assessed in the March 19, 2015 Administrative Penalty Order in the following manner:

- i. \$5,000 to be received by September 1, 2015;
- ii. \$5,000 to be received by October 1, 2015;
- iii. \$5,000 to be received by November 1, 2015; and
- iv. \$5,000 to be received by December 1, 2015.

The Department agrees, however, that if Maple Oaks pays a lump sum of \$15,000 within ten (10) days of the execution of this agreement, the Department will forgive the remaining \$5,000 penalty amount and will not attempt to collect the outstanding balance. The check(s) shall be made payable to the "State of Minnesota" and shall be sent to Manager of the Mortuary Science Section, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882.

3. *Confession of Judgment.* As security for Maple Oaks's payment of the civil penalty, Maple Oaks shall, simultaneously with the execution of this Agreement, execute the Confession of Judgment attached hereto and incorporated herein by reference. If Maple Oaks fails to timely make a payment as outlined in paragraph 2(f), the Department shall send by certified mail a written notice of default. The Department shall send the notice to Maple Oaks and its counsel, Michael Sharkey, Cousineau McGuire, 1550 Utica Avenue South, Suite 600, Minneapolis, MN 55416. The Department may only file or enter the Confession of Judgment if Maple Oaks fails to make payment required herein and also fails to cure the default by making the specific payment which is late and in default within ten (10) calendar days from the date it receives the notice of default. The Confession of Judgment may be filed, entered and docketed,

in Ramsey County District Court, and must be filed together with an affidavit indicating that written notice of default has been provided to Maple Oaks and to Michael Sharkey and that Maple Oaks has not cured the default within four calendar days after the date Maple Oaks receives the notice.

4. *Fees and Costs.* The parties agree that, with the exception of the civil penalty described in paragraph 2(f) of this Agreement, the parties are not entitled to and shall not seek from any court any other monetary relief or compensation, including damages or other fees, costs, expenses or disbursements in connection with the issues raised in the May 15, 2015 Cease and Desist Order, the June 2, 2015 Notice of Intent to Suspend Licenses, the June 5, 2015 Notice of Intent to Revoke the License of David J. Thorsell, the June 5, 2015 Notice of Intent to Revoke the License of Edward P. Vasey, and the appeals and requests for hearing on those documents and that, except to the extent stated in this Agreement, the parties are responsible for their own fees, costs, and expenses.

5. *Pending Investigations.* All parties acknowledge that this Agreement resolves all issues raised in the May 15, 2015 Cease and Desist Order, the June 2, 2015 Notice of Intent to Suspend Licenses, the June 5, 2015 Notice of Intent to Revoke the License of David J. Thorsell, the June 5, 2015 Notice of Intent to Revoke the License of Edward P. Vasey, and the appeals and requests for hearings related to those matters. All parties acknowledge that this Agreement does not resolve any other complaints regarding Maple Oaks, Phalen Park, Thorsell, and Vasey currently pending before the Department and does not preclude the Department from investigating and/or disciplining Maple Oaks, Phalen Park, Thorsell, or Vasey for any future complaints or violations of Minn. Stat. ch. 149A.

6. *Dismissal of OAH Case.* The Department, Maple Oaks, Phalen Park, Thorsell, and Vasey agree to dismiss the appeal of the May 15, 2015 Cease and Desist Order pending before the OAH (OAH No. 14-0900-32543) with prejudice. Upon execution of this Release and Settlement Agreement, the parties, individually or by their counsel, shall execute a stipulation to dismiss the appeal with prejudice in the form attached hereto as Exhibit A. The Department shall file the stipulation with the OAH.

7. *Failure to Comply.* In addition to action the Department may take against Maple Oaks, Phalen Park, Thorsell, and Vasey pursuant to Minnesota Statutes Chapter 149A and other remedies provided by law, if Maple Oaks, Phalen Park, Thorsell, or Vasey fail to comply with any terms of this Stipulation and Settlement Agreement, the Administrative Penalty Order, Notice of Intent to Suspend Licenses, and Notices of Intent to Revoke Licenses shall be reinstated as originally issued. In addition, if Maple Oaks fails to comply with any terms of the Stipulation and Settlement Agreement the full amount of the penalty initially assessed shall immediately become due and owing.

8. *Settlement Agreement.* This Agreement is binding. The parties acknowledge that they have been advised that (1) the other parties have no duty to protect their interests or provide them with information about their legal rights, (2) signing this Agreement may adversely affect their legal rights; and (3) they should consult an attorney before signing this Agreement if they are uncertain of their rights.

9. *Government Data.* All signatories to this Settlement Agreement acknowledge that the Department's release of information concerning this matter from the files of the Department is governed by Minn. Stat. ch. 149A, the Minnesota Government Data Practices Act (Minn. Stat. ch. 13) and the Official Records Act (Minn. Stat. ch. 15).

10. *Entire Agreement.* This Settlement Agreement constitutes the entire agreement between and among the parties. This Agreement supersedes any and all prior agreements. No modification shall be binding on any of the parties unless it has been agreed to by the parties in writing, signed by them and identified as an amendment to this Agreement. There are no inducements or representations leading to the execution of this Settlement Agreement except as herein explicitly contained. If any part of this agreement is rendered invalid by a Court of competent jurisdiction, the rest of the agreement shall still remain in force.

11. *Voluntary and Knowing Action.* The parties to this Settlement Agreement acknowledge that they have read and understand the terms of this Settlement Agreement, that they have been represented by legal counsel or had the opportunity to retain legal counsel, and that they are voluntarily entering into this Settlement Agreement to resolve the dispute among them.

12. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

The parties have caused this Agreement to be signed on the dates opposite their signatures.

Dated: 7/8/15 MINNESOTA DEPARTMENT OF HEALTH
By: Darcy Miner
DARCY MINER, Director Health Regulations Division

Dated: 6 July 2015 MAPLE OAKS FUNERAL HOME (License No. 0618)
By: Edward P. Vargo PHALEN PARK FUNERAL HOME (License No. 0039)
Title: CEO

Dated: July 6, 2015

David J. Thorsell
DAVID J. THORSELL (License No. M-2283)

Dated: July 6 - 2015

Edward P. Vasey
EDWARD P. VASEY (License No. M-2307)

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Cease and Desist Order
Issued to Maple Oaks Funeral Home and
Phalen Park Funeral Home

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed by and among the Minnesota Department of Health, Maple Oaks Funeral Home, and Phalen Park Funeral Home that the above-entitled matter, together with all causes of action and claims that were or that might have been alleged therein, is dismissed with prejudice, and without award of attorney fees, costs, or disbursements to any party. The parties request that the Court issue the attached proposed order at this time without further notice to the parties.

COUSINEAU MCGUIRE



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ATTORNEY FOR MAPLE OAKS AND
PHALEN PARK FUNERAL HOMES

Dated

July 8, 2015

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota



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ATTORNEY FOR MINNESOTA
DEPARTMENT OF HEALTH

Dated

July 8, 2015

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Cease and Desist Order
Issued to Maple Oaks Funeral Home and
Phalen Park Funeral Home

ORDER

Based upon the Stipulation For Dismissal With Prejudice submitted by the parties to this matter,

IT IS HEREBY ORDERED that the above-entitled matter is dismissed with prejudice and without award of attorney fees, costs, or disbursements to any party.

Dated: _____

7-9-15



STEPHEN SWANSON
Administrative Law Judge