

BEFORE THE  
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS  
STATE OF MISSOURI

STATE BOARD OF EMBALMERS AND	)
FUNERAL DIRECTORS,	)
	)
Petitioner,	)
	)
v.	)
	)
BRAM FUNERAL HOME OF	)
MARYVILLE, INC.,	)
	)
Respondent.	)

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DISCIPLINARY ORDER**

**Statement of the Case**

The Missouri State Board of Embalmers and Funeral Directors (the "Board") hereby issues this **ORDER PROBATING** the funeral establishment license of Bram Funeral Home of Maryville, Inc. ("Bram Funeral Home"), pursuant to the provisions of § 620.149, RSMo 2000. As set forth in § 620.149.2, RSMo 2000, Respondent Bram Funeral Home may submit a written request to the Administrative Hearing Commission seeking a hearing and review of the Board's decision to issue a probated license. Such written request must be filed with the Administrative Hearing Commission within 30 days of delivery or mailing of this Order of the Board. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman State Office Building, Room 640, Jefferson City, MO 65102-1557. 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. Should Respondent Bram Funeral Home appeal this Order, the terms and conditions of this Order shall remain in force and effect unless and/or until such time as a court of competent jurisdiction enters an Order to the contrary.

I.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the foregoing the Board hereby states:

1. The Board is an agency of the state of Missouri and is responsible for executing and enforcing the provisions of Chapter 333, RSMo (as amended), relating to the practice of funeral directing and funeral establishments.

2. On or about April 23, 2007, Respondent Bram Funeral Home submitted an application to the Board to be licensed as a funeral establishment at the business address of 206 E. South Hills Drive, Maryville, Missouri 64468. At all times mentioned herein, Respondent Bram Funeral Home was not licensed as a Missouri funeral establishment.

3. In approximately November and/or December 2006, Respondent Bram Funeral Home published or circulated, or caused to be published or circulated, a notice, publication or advertisement to the public and on the internet, advertising Bram Funeral Home as a funeral establishment in the state of Missouri, as defined by § 333.011(4), RSMo.

4. On or about January 7, 2007, and February 9, 2007, Respondent Bram Funeral Home published or circulated, or caused to be published or circulated, a notice, publication or advertisement in the St. Gregory's Catholic Community Newsletter advertising Bram Funeral Home as a funeral establishment in the state of Missouri, as defined by § 333.011(4), RSMo.

5. At the time the foregoing publications and/or advertisements were published or circulated, Bram Funeral Home was not a licensed funeral establishment in the state of Missouri.

## II.

### CONCLUSIONS OF LAW

6. The Board has authority to deny or refuse a license application pursuant to § 333.121.1, RSMo 2000, which provides:

*The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to 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 right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.*

7. The Board has cause to deny or refuse Respondent Bram Funeral Home's application for a funeral establishment license pursuant to § 333.121.2(5), (6), (13) and (14), RSMo 2000, which provides:

*2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, 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 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 to this chapter;*

*(13) Violation of any professional trust or confidence;*

*(14) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;*

8 The Board has grounds to deny Respondent Bram Funeral Home's license under § 333.121.2(14) in that Respondent Bram Funeral Home used an advertisement or solicitation which was false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation was primarily directed, as a result of the conduct identified in paragraphs 3-5 herein.

9. The Board has grounds to deny Respondent Bram Funeral Home's license under § 333.121.2(6) in that, as a result of the conduct identified in paragraphs 2-5 herein, Respondent Bram Funeral Home violated, or assisted or enabled another to violate a provision of Chapter 333, RSMo, namely, § 333.061 which provides "No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board."

10. The Board has grounds to deny Respondent Bram Funeral Home's license under § 333.121.2(13) in that Respondent Bram Funeral Home violated a public trust or confidence as a result of the conduct identified in paragraphs 2-5 and paragraphs 8-9 herein.

11. As a result of the conduct identified in paragraphs 2-5 and paragraphs 8-10, the Board has grounds to deny Respondent Bram Funeral Home's license under § 333.121.2(5) for demonstrating incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of the profession licensed or regulated by Chapter 333, RSMo.

12. As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation, pursuant to § 620.149, RSMo 2000, which provides:

*Whenever a board within 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 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.*

13. The Board issues this Order in lieu of denial of Respondent's application for a funeral establishment license. The Board has determined that this Order is necessary to ensure the protection of the public.

### III.

#### **ORDER**

14. Based on the foregoing, and after having fully considered all the evidence, it is the **ORDER** of the Board that Respondent Bram Funeral Home's funeral establishment shall be placed on probation for a period of **TWO (2) YEARS**, beginning upon the effective date of this Order. During the period of probation, Respondent Bram Funeral Home shall be entitled to operate as a funeral establishment as defined in Chapter 333, RSMo, subject to the following terms and conditions:

- A. During the probationary period, Respondent Bram Funeral Home shall comply with all applicable provisions of Chapter 333 and Chapter 436, RSMo, as amended, all applicable Board regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. Respondent Bram Funeral Home shall meet in person with the Board or its representative at any such time and place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the probationary period.
- C. Respondent Bram Funeral Home shall submit written reports to the Board by no later than January 1 and July 1, during each year of the Disciplinary period, stating truthfully whether there has been compliance with all terms and conditions of this Order. A copy of the required report may be obtained from the Board.
- D. In addition to the required compliance reports, Respondent Bram Funeral Home shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.
- E. Respondent Bram Funeral Home shall keep the Board apprised at all times of its current address, telephone number and funeral-director-in-charge. Respondent Bram Funeral Home shall immediately inform the Board in writing within two (2) days of any change

in this information.

- F. During the probationary period, Respondent Bram Funeral Home shall timely renew its license, timely pay all fees required for licensure and comply with all other requirements necessary to maintain its license current and active.
- G. During the probationary period, Respondent Bram Funeral Home shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- H. If Respondent Bram Funeral Home fails to comply with the terms of this order during the probationary period, in any respect, the Board may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose disciplinary action under § 620.153, RSMo. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.
- I. In the event the Board determines that Bram Funeral Home has violated any term or condition of this Order, the Board may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the Board, including revocation of the license.
- J. This Order does not bind the Board or restrict the remedies available to the Board for any violation of Chapter 333 or Chapter 436, RSMo, as amended, not specifically mentioned in this document.
- K. Upon the expiration of the probationary period, Respondent Bram Funeral Home's funeral establishment license shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that Respondent Bram Funeral Home has violated any term or condition of this Order, the Board may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the Board shall deem appropriate, including, revocation of said certification. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board in accordance with Chapter 536, RSMo, as amended.
- L. If the Board determines that Respondent Bram Funeral Home has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.
- M. Any failure by Respondent Bram Funeral Home to comply with any condition of discipline set forth herein constitutes a violation of this Order.
- N. If, at any time during the probationary period, Respondent Bram Funeral Home changes

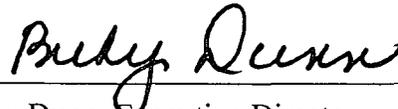
its business address from the state of Missouri, or ceases to be currently licensed under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of its current places of business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.

- O. Unless otherwise specified by the Board, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board shall be forwarded to: State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102.

15. The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order 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. The Board will maintain this Order as an open record of the Board as provided in Chapters 333, 610 and 620, RSMo.

SO ORDERED EFFECTIVE THIS 17<sup>th</sup> day of May, 2007.



Becky Dunn, Executive Director  
Missouri State Board of  
Embalmers and Funeral Directors