

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

State Board of Embalmers	)	
and Funeral Directors,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 15-1072
	)	
C & D Shepard, Inc.,	)	
	)	
Respondent.	)	

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

On October 1, 2015, the Administrative Hearing Commission entered its “Default Decision” in the case of *State Board of Embalmers and Funeral Directors v. C & D Shepard, Inc.*, Case number 15-1072 (the “AHC Order”). In the AHC Order, the Administrative Hearing Commission found that C & D Shepard, Inc.’s (“Licensee”) license to practice as a preneed seller is subject to discipline pursuant to Sections 333.330.2(6), (7), (14), and (19), RSMo<sup>1</sup>.

Pursuant to notice and Section 621.110, RSMo, the Board held the disciplinary hearing in this matter on Tuesday, June 14, 2015 at the Hyatt Place St

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated. Any reference to the provisions of Chapter 436, RSMo, as supplemented up to 2008, are so designated by the notation of “Old Law”.

Louis/Chesterfield, 333 Chesterfield Center East, Chesterfield, Missouri 63017 for the purpose of determining the appropriate disciplinary action against the preneed seller license held by C & D Shepard, Inc.. The Board commenced the hearing at approximately 3:50p.m. Jamie Cox represented the Board at this hearing. David Shepard and Caren Shephard appeared on behalf of C & D Shepard, Inc., but no counsel appeared to represent the corporation.

After full review of the record and the evidence and testimony presented at hearing, the Board issues the following Findings of Fact, Conclusions of Law and Disciplinary Order:

1. 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.

2. C & D Shepard, Inc. is a corporation that has registered its address with the Board as 9255 Natural Bridge, St. Louis, Missouri 63134.

3. C & D Shepard, Inc. holds preneed seller license number 2010000171 that is and was current and active at all times relevant to this matter.

4. The Board adopts and incorporates by reference the findings of fact and conclusions of law contained in the AHC Order and the record of the Administrative Hearing Commission in the case of *State Board of Embalmers and Funeral Directors v. C & D Shepard, Inc.*, Case number 15-1072.

5. The State Board of Embalmers and Funeral Directors (the “Board”) received and reviewed the record certified to it by the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated into this Findings of Fact, Conclusions of Law and Disciplinary Order (the “Board Order”) by reference as if set forth in its entirety in this Board Order.

6. The Board takes official notice of its file and the record in this matter.

7. The Board timely set this case for disciplinary hearing and properly served Respondent C & D Shepard, Inc. with notice of the time, date and location of the disciplinary hearing.

8. The Board has jurisdiction over this matter pursuant to Section 621.110 and Section 333.330, RSMo.

9. The Board finds this Board Order is necessary to protect the public.

**THEREFORE**, having fully considered the evidence before the Board and giving full weight to the Findings of Fact and Conclusions of Law as found by the Administrative Hearing Commission and set forth in the AHC Order, the Board makes the following disciplinary order:

10. The preneed seller license held by C & D Shepard, Inc. is hereby placed on **PROBATION** for a period of **ONE (1) YEAR** (the “Disciplinary Period), beginning on the effective date of this Board Order and subject to the following conditions of the Disciplinary Period:

### Conditions of the Disciplinary Period

11. Licensee shall comply with the following conditions of discipline 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 its 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 per Section 333.330, RSMo;
- 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. These compliance reports shall contain all other information required by this Board Order 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;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these 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 including not allowing any license to be suspended for failure to comply with any revenue law of the state; and
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the conditions of discipline;

12. Upon the expiration of the Disciplinary Period and 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 Board Order, 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.

13. 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, except that the Board expressly reserves the right to seek additional discipline against Licensee based on the outcome of any currently pending or future financial examination conducted by the Board pursuant to Section 436.470, RSMo.

14. If the Board determines that Licensee has violated a term or condition of this Board 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 Board Order in its determination of appropriate legal actions concerning such violation(s).

15. If any alleged violation of this Board 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 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 conditions of the Disciplinary Period occurred.

16. This Board 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: 08/02/2016



Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors

**BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

**FILED**

JUN 29 2015

ADMINISTRATIVE HEARING  
COMMISSION

STATE BOARD OF EMBALMERS	)	
AND FUNERAL DIRECTORS	)	
3605 Missouri Blvd.	)	
P.O. Box 423	)	
Jefferson City, MO 65102-0423	)	Case No.
573-751-0813	)	
Petitioner,	)	
	)	
v.	)	
	)	
C & D SHEPARD, INC. D/B/A SHEPARD	)	
FUNERAL CHAPEL	)	
Registered Agent:	)	
David Shepard	)	
9255 Natural Bridge	)	
St. Louis, MO 63134	)	
314-426-6000	)	
	)	
Respondent.	)	

**COMPLAINT**

COMES NOW Petitioner, the State Board of Embalmers and Funeral Directors ("Petitioner" or "Board"), by and through counsel, and for its Complaint against Respondent, C & D Shepard, Inc. d/b/a Shepard Funeral Chapel ("Respondent" or "Shepard Funeral"), states as follows:

1. 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.

2. Jurisdiction and venue are proper before this Commission pursuant to Chapter 621, RSMo, and § 333.330, RSMo.

3. C & D Shepard, Inc. is a Missouri corporation in good standing and has registered its address with the Board at 9255 Natural Bridge, St. Louis, Missouri 63134.

4. The Missouri Secretary of State's website indicates that the registered agent of C & D Shepard, Inc. is David Shepard, 9255 Natural Bridge, St. Louis, Missouri 63134.

5. C & D Shepard, Inc. operates in Missouri under the fictitious name of Shepard Funeral Chapel.

6. Shepard Funeral holds preneed seller license number 2010000171. This license is now current and active, but was expired due to non-renewal from November 1, 2013 until it was reinstated on November 21, 2013.

7. Shepard Funeral failed to renew its seller license on or before the renewal deadline of October 31, 2013.

8. Shepard Funeral's license was also automatically suspended from November 1, 2013 to November 21, 2013 pursuant to Section 436.460.7, RSMo, for failure to file its preneed seller annual report by the deadline of October 31, 2013.

9. By letter dated November 12, 2013, the Board notified Shepard Funeral that its seller license was suspended pursuant to Section 436.460.7, RSMo, and provided it with information as to how to seek reinstatement of its seller license.

10. The November 12, 2013 letter also notified Shepard Funeral that, as a result of the suspension of the seller license, it was not allowed to practice as a preneed seller.

11. Shepard Funeral signed its "2013 Renewal License/Annual Report Preneed Seller" (the "Seller Renewal") on or about November 7, 2013 and submitted it to the Board. The Board received the Seller Renewal on or about November 13, 2013.

12. On or about November 13, 2013, the Board sent an e-mail to Shepard Funeral and noted that an additional \$200 fee was required to renew the seller license because the Seller Renewal was received after October 31, 2013.

13. Shepard Funeral paid the reinstatement fee on or about November 21, 2013.

14. The Board issued a renewed seller license to Shepard Funeral on or about November 21, 2013.

15. The Board conducted an investigation to determine whether Shepard Funeral acted as a seller during the time when its seller license was expired and/or suspended.

16. Shepard Funeral continued to act as a seller on its existing preneed contracts while its license was expired and/or suspended, including paying out proceeds from one (1) preneed contract while its license was expired and/or suspended.

17. Shepard Funeral practiced as a preneed seller and held out to the public that it was licensed as a seller during a period when it held no valid license to do so.

18. 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.

19. 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.

20. Section 333.330.2, RSMo, authorizes discipline against seller 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;

\* \* \*

(14) Violation of any professional trust or confidence;

\* \* \*

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436[.]

21. Shepard Funeral's conduct, as set forth in this Complaint, constitutes a violation of Section 333.320, RSMo, for which the Board has cause to take disciplinary action against its seller license pursuant to Section 333.330.2(6), RSMo.

22. Shepard Funeral's conduct, as set forth in this Complaint, constitutes the impersonation of a person holding a valid preneed seller license for which the Board has cause to take disciplinary action against its seller license pursuant to Section 333.330.2(7), RSMo.

23. Shepard Funeral's conduct, as set forth in this Complaint, constitutes a violation of a professional trust and/or confidence for which the Board has cause to take disciplinary action against its seller license pursuant to Section 333.330.2(14), RSMo.

24. Shepard Funeral's conduct, as set forth in this Complaint, constitutes a violation of Section 436.460, RSMo, for which the Board has cause to take disciplinary action against its seller license pursuant to Section 333.330.2(19), RSMo.

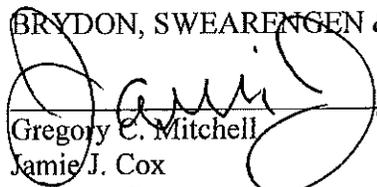
25. The Board has cause to discipline Shepard Funeral's preneed seller license pursuant to Section 333.330.2(6), (7), (14), and (19), RSMo.

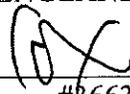
WHEREFORE, Petitioner respectfully requests that this Commission conduct a hearing in this matter, and thereafter, issue its findings of fact and conclusions of law determining that Petitioner may take disciplinary action against Respondent's preneed seller license pursuant to Chapter 333, RSMo, and for such other and further relief this Commission deems just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

  
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Attorneys for Petitioner

2. Article Number



7196 9008 9111 1390 0401

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

*[Handwritten Signature]*

- Agent
- Addressee
- Yes
- No

Does the recipient of this item differ from Item 4? If so, please print the address below:

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee)

**X** Yes

JUL 09 2015

1. Article Addressed to:

ADMINISTRATIVE HEARING COMMISSION

13-1072 Em

C & D Shepard, Inc.  
d/b/a Shepard Funeral Chapel  
Registered Agent: David Shepard  
9255 Natural Bridge  
St. Louis, MO 63134

**RESTRICTED DELIVERY**

Before the  
Administrative Hearing Commission  
State of Missouri



STATE BOARD OF EMBALMERS AND )  
FUNERAL DIRECTORS, )

Petitioner, )

vs. )

C & D SHEPARD, INC., )

Respondent. )

No. 15-1072 EM

**DEFAULT DECISION**

On June 29, 2015, Petitioner filed a properly pled complaint seeking to discipline Respondent. Respondent was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail before July 9, 2015.

More than thirty days have elapsed since Respondent was served. Respondent has not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo (Supp. 2013), we enter a default decision against Respondent establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on October 1, 2015.

  
AUDREY HANSON MCINTOSH  
Commissioner