

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

In the Matter of the Application of )  
 )  
MARTRON, LLC )  
dba MARTS MEMORIAL MEMORAL SERVICES, )  
 )  
Applicant. )

**ORDER OF THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS**  
**ISSUING A PROBATIONARY PRENEED PROVIDER LICENSE TO**  
**MATRON, LLC, dba MARTS MEMORIAL SERVICES**

The Missouri State Board of Embalmers and Funeral Directors (the "Board") hereby issues this **ORDER PROBATING** the preneed provider license of Matron, LLC, dba Marts Memorial Services ("Marts Memorial"), pursuant to the provisions of §§ 324.038 and 333.330, RSMo 2000. As set forth in § 324.038.2, RSMo, Marts Memorial may submit a written request to the Administrative Hearing Commission seeking a hearing and review of the Board's decision to issue a probated preneed provider 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.

The 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, Marts Memorial shall have the right to testify, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board. Following the hearing, the Administrative Hearing Commission shall issue findings of fact, conclusions of law and a

decision based on all evidence admitted at the hearing. A copy of the findings of fact, conclusions of law and decision shall be delivered to the parties. Review of the decision of the Administrative Hearing Commission shall be pursuant to Chapter 536, RSMo.

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 Marts Memorial file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

Based upon the foregoing, the Board states:

I.

#### FINDINGS OF FACT

1. The Board is an agency of the state of Missouri created and established pursuant to § 333.151, and is responsible for executing and enforcing the provisions of Chapter 333 and §§ 436.400 – 436.525, RSMo (as amended), relating to the practice of funeral directing, embalming and preneed funeral contracts.

2. On or about May 3, 2010, Marton, LLC, dba Marts Memorial Services submitted an application to the Board to be licensed as a preneed provider.

3. In the application, question number C. 3. asks "Have you ever had any professional license, certification, registration or permit revoked, suspended, placed on probation, censured, reprimanded, fined or otherwise subjected to any type of disciplinary action? **If yes, attach a full explanation.**" (Emphasis in original).

4. In response to question number C. 3., Marts Memorial checked "YES." In explanation, Marts Memorial attached a statement, dated April 23, 2010, in which it states:

My Missouri Funeral Directors license is on probation because we did not have refrigeration for our bodies. As a start-up, there was no problem transporting the bodies to the crematory within 24 hours. As our business grew rapidly, it was sometimes more than 24 hours before they were transported and we had not yet installed a cooler. We have now fixed that problem, but my license was placed on probation. That is the only time in 34 years there has been any problem.

5. On or about May 28, 2009, the Board entered into a Settlement Agreement with Marts Memorial and Ronald Marts (Marts) for the purpose of resolving the question of whether Marts' funeral director license and Marts Memorial's funeral establishment license were subject to discipline. The Board and Marts Memorial and Marts entered into the Settlement Agreement because:

- a. From May 2008 to October 2008, Marts Memorial and Marts:
  - i. Knowingly failed to refrigerate, embalm, or place in a hermetically sealed casket all human remains within 24 hours of death;
  - ii. Failed to file certificates of death with the local registrar of the county where the death occurred within five days of death;
  - iii. Failed to deliver completed certificates of death certifying the cause of death as determined by the medical examiner/coroner or physician to the registrar of the county where death occurred before having bodies cremated even when the cause of death could be established within 72 hours after death and instead made a practice of relying on written authorizations to cremate bodies from the medical examiner/coroner or physician who would be certifying the cause of death;
  - iv. Failed to use a cremation authorization form that contained the place of birth of the deceased, the date and place of the funeral, the date and time

cremation began, and to whom the remains were released; and

v. Failed to accurately record embalmings.

b. On or about May 22, 2008, Warren Watkins, a licensed embalmer and funeral director with Watkins Brothers Memorial Chapel, embalmed the body of Sharon Eastep and on July 6, 2008, embalmed the body of Thomas Monahan. Marts forged Watkins' signature under the "statement by licensed embalmer" section of both death certificates without Watkins' permission.

6. As a result of the violations contained in paragraph 5, the Board determined there was cause to discipline Marts' funeral director and Marts Memorial's funeral establishment licenses pursuant to § 333.121.2(5), (6), (13), (15) and (16), RSMo. The May 22, 2009 Settlement Agreement placed both Marts' and Marts Memorial's licenses on probation for a period of five years and required Marts and Marts Memorial to comply with eight terms of probation. One requirement was that Marts and Marts Memorial comply with all provisions of Chapter 333, Sections 436.005 through 436.071.<sup>1</sup> Additionally, the terms of probation required that Marts and Marts Memorial refrigerate, embalm or place in a hermetically sealed casket all human remains within 24 hours following death. Finally, the terms of probation required that Marts and Marts Memorial accept and coordinate with unannounced visits from the Board's representatives to monitor compliance with the Agreement.

7. On or about April 1, 2010, the Board conducted a routine inspection at Marts Memorial, 14 Westport Road, Kansas City, Missouri. The Board instructed its inspector to conduct a routine inspection and determine if there was compliance with the May 2008 settlement agreement. The Board's investigator also conducted follow up inspections on April 9,

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<sup>1</sup> With the passage of Senate Bill 1, effective on August 28, 2009, Sections 436.005 through 436.071, RSMo were repealed and the relevant provisions are now 436.400 through 436.525, RSMo.

2010 and May 18, 2010. The inspections revealed:

- a. Marts Memorial provided a pre-need funeral for William Cunningham on March 16, 2010, while not licensed as a pre-need provider pursuant to § 333.315, RSMo.
- b. Marts Memorial had no at-need contract for the funeral services of Cunningham.
- c. Marts Memorial had the body of Mary Williams in the funeral home for more than 24 hours without proof the body was properly refrigerated.
- d. Marts Memorial did not have a current register log of human bodies that entered his funeral home as required by Board regulations.
- e. During the April 9 follow up inspection, Marts Memorial had the remains of Willie Robinson in his cooler but could not verify that the cooler was refrigerated at 40 degrees or cooler.
- f. Marts Memorial was engaged in providing pre-need contracts for cremation with a memorial service at a church with a price that was higher than listed on the general price list. The general list price for cremation with a memorial service in a church was listed as \$1,025. However, Marts Memorial agreed to be the provider of multiple pre-need services funded through Missouri Funeral Trust (MFT), which had a price for cremation with memorial service at Unity Temple of \$2,000. Documentation shows contracts for cremation and a church service for William Cunningham and Floyd Woods in an amount of \$2,000.
- g. Marts Memorial stated that it only had three contracts with MFT. However, MFT and pre-need sellers Dee and Gail Suddarth provided 22 contracts to the Board's investigator where Marts Memorial is the provider.
- h. Marts Memorial provided altered paperwork to the Board's investigator indicating

that he had complied with the Board's request regarding licensing his establishment as a new provider. Marts Memorial provided the investigator a copy of the Annual Reporting Notice which he stated the Board sent him for renewal. It had been altered to reflect the year 2009 in that many of the dates had been whited-out and changed to 2009. However, Marts Memorial did not change all the dates and the Notice was actually for the year 2004.

- i. During the May 18, 2010 visit, there were four bodies in the refrigerated room with a temperature of 50 degrees according to Marts Memorial's recently purchased thermostat. The cooler room is not capable of reaching the required temperature of 40 degrees.
- j. Three additional human bodies were located in the kitchen area during the May 18, 2010 visit. They were not refrigerated and had been deceased less than 24 hours.
- k. Unity Temple acted as a pre-need seller for Marts Memorial while Marts Memorial was not licensed as a provider by the Board. Unity Temple paid Marts Memorial its fee and kept the remainder of the money for itself. Upon the Board's investigator's visit, Unity Temple stated it no longer works with Marts Memorial.

## II.

### CONCLUSIONS OF LAW

8. Section 333.315, RSMo states, in pertinent part: "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.”

9. Rule 20 CSR 2120-2.070(21) states, in pertinent part:

(21) If the body is not embalmed, a Missouri licensed funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed body is refrigerated in a cooling unit at a temperature of forty degrees Fahrenheit (40° F) or cooler or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed[.]

10. Regulation 20 CSR 2120-2.070 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).

11. Regulation 20 CSR 2120-1.040(21) 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.

12. Marts Memorial’s failure to properly refrigerate or store deceased human bodies as described above violates Board regulation 20 CSR 2120-2.070(21) and is therefore subject to

discipline pursuant to § 333.330.2(6), RSMo.

13. Marts Memorial providing false or fraudulent reports to the Board, as described above, constitutes fraud, deception, or misrepresentation and 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, and violation of a professional trust or confidence and is therefore subject to discipline pursuant to § 333.330.2(5), and (14), RSMo.

14. Marts Memorial's sale of preneed contracts without a license, as described above, is a violation of § 333.315, RSMO and is therefore subject to discipline pursuant to § 333.330.2(6), RSMo.

15. Marts Memorial holding itself out to be a licensed preneed provider without holding a current preneed provider license, as described above, constitutes impersonation of any person holding a certificate of registration or authority, permit, or license and is therefore subject to discipline pursuant to § 333.330.2(7), RSMo.

16. Marts Memorial collecting fees associated with preneed contracts sold when Marts Memorial did not hold a current preneed provider license, as described above, constitutes obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation in that he held himself out to purchasers to be a licensed provider and the purchasers relied on that in entering in to the contracts and is therefore subject to discipline pursuant to § 333.330.2(4), RSMo.

17. Marts Memorial charging purchasers \$2,000 for preneed services that included cremation and a service in a church when the general price list stated the price for that service was \$1,250, as described above, constitutes obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation and 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, and violation of a professional trust or confidence and is therefore subject to discipline pursuant to § 333.330.2(4), (5), and (14), RSMo.

18. Marts Memorial's failure to maintain a register log containing the required information, as described above, is a violation of regulation 20 CSR 2120-2.070 and is therefore subject to discipline pursuant to § 33.330.2(6), RSMo.

19. The Board has authority to deny or refuse a license application pursuant to § 333.330.1, RSMo Cum. Supp. 2009, which provides:

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, RSMo.

20. The Board has cause to deny or refuse Marts Memorial's application for a preneed provider license pursuant to § 333.330.2(4), (5), (6), (7), and (14), RSMo Cum. Supp. 2009, 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 or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

...

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(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[.]

21. As an alternative to denial of an application, the Board may, at its discretion, grant an application subject to probation, pursuant to § 324.038.1, RSMo Cum. Supp. 2009, which provides:

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.

22. The Board issues this Order in lieu of denial of Marts Memorial's application for a preneed provider license. The Board has determined that this Order is necessary to ensure the protection of the public.

### III.

### ORDER

Based on the foregoing, and after having fully considered all the evidence, it is the **ORDER** of the Board that Marts Memorial's preneed provider license shall be placed on

probation for a period to run **CONCURRENTLY** with the disciplinary period in the May 28, 2009 Settlement Agreement, or any Agreement or Order entered into as a result of a violation of the May 28, 2009 Agreement, beginning upon the effective date of this Order, not to exceed five years. During the period of probation (Disciplinary period), Marts Memorial shall be entitled to operate as a licensed preneed provider as defined in Chapter 333, RSMo, subject to the following terms and conditions:

- A. During the Disciplinary period, Marts Memorial shall comply with all applicable provisions of Chapter 333 and §§ 436.400 – 436.525, 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. Marts Memorial 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 Disciplinary period.
- C. Marts Memorial 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, Marts Memorial shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.
- E. During the Disciplinary period, Marts Memorial shall timely renew its license(s) and registration(s), timely pay all fees required for licensure or registration and comply with all other requirements necessary to maintain its license(s) or registration(s) current and active.
- F. During the Disciplinary period, Marts Memorial shall accept and comply with unannounced visits from the Board’s representatives to monitor compliance with the terms and conditions of this Order.
- G. If Marts Memorial 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 Disciplinary 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 § 324.042, RSMo. The Board has continuing jurisdiction to hold a hearing to determine if a

violation of this Order has occurred.

- H. In the event the Board determines that Marts Memorial 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.
- I. This Order does not bind the Board or restrict the remedies available to the Board for any violation of Chapter 333 or §§ 436.400 – 436.525, RSMo, as amended, not specifically mentioned in this document.
- J. Upon the expiration of the Disciplinary period, Marts Memorial's preneed provider license shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that Marts Memorial 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 license. 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.
- K. If the Board determines that Marts Memorial 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.
- L. Any failure by Marts Memorial to comply with any condition of discipline set forth herein constitutes a violation of this Order.
- M. If, at any time during the Disciplinary period, Marts Memorial changes its 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 Disciplinary period.
- N. 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.

The Board will maintain this Order as an open record of the Board as provided in Chapters 333, 610 and 324, RSMo.

SO ORDERED EFFECTIVE THIS 20<sup>th</sup> day of July, 2010.



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