

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 OFH 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 July 19, 2010, Oliver Funeral Home, LLC submitted an application to the Board to be licensed as a preneed seller.

3. OFH was registered as a preneed seller prior to the passage of Senate Bill 1¹, which became effective on August 28, 2009.

4. OFH did not file a notice of intent to apply pursuant to 20 CSR 2120-3.100 nor an application for preneed seller as required pursuant to 20 CSR 2120-3.100.

¹ House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1, 95th General Assembly, First Regular Session, effective August 28, 2009.

5. On or about April 19, 2010, the Board notified OFH that it had not filed an application for preneed seller and it needed to either cease doing business or file an application with the Board.

6. The Board conducted an investigation to determine if OFH had sold any preneed contracts since October 31, 2009. The investigation revealed that:

- a. John Oliver (Oliver), owner and funeral director in charge of OFH stated that OFH had not sold any pre-need contracts since October 31, 2009.
- b. Oliver stated that he had not made up his mind about selling pre-need contracts.
- c. Oliver stated that he bought the funeral home from Meadors' Funeral Home and there were approximately fifteen contracts funded with American Prearranged Services and four contracts funded with National Prearranged Services.
- d. Oliver provided the Board a print-out with thirty-three names from Regions Bank where Meadors had the pre-need funds in trust. Oliver stated, however, that three of the individuals were deceased. The document detailed the trusts under OFH's authority at Regions Bank. The total value of the contracts for which trusts had been established at Regions Bank as of September 30, 2009 was \$155,238.18.

II.

CONCLUSIONS OF LAW

7. Section 333.320.1, RSMo states, in relevant part:

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 to conduct business in Missouri.

8. 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.

9. The Board has cause to deny or refuse OFH's application for a preneed seller license pursuant to § 333.330.2(6), (7), 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:

...

(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 of 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[.]

10. The Board has grounds to deny OFH's preneed seller license application under § 333.330.2(6) and (7) in that OFH practiced as a preneed seller from August 28, 2009 to present without being licensed as required by § 333.320, RSMo.

11. As an alternative to denial of an application, the Board may, at its discretion, grant an application subject to probation, pursuant to § 324.038, RSMo Cum. Supp. 2009, which provides:

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.

12. The Board issues this Order in lieu of denial of OFH's application for a preneed seller 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 Oliver Funeral Home's preneed seller license shall be placed on probation for a period of five (5) years, beginning upon the effective date of this Order. During the period of probation (Disciplinary period), OFH shall be entitled to operate as a licensed preneed seller as defined in Chapter 333, RSMo, subject to the following terms and conditions:

- A. During the Disciplinary period, OFH 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. OFH 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. OFH 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, OFH shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.

- E. OFH shall keep the Board apprised at all times of its current address, and telephone number. OFH shall immediately inform the Board in writing within two (2) days of any change in this information.
- F. During the Disciplinary period, OFH 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 her license(s) or registration(s) current and active.
- G. During the Disciplinary period, OFH 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 OFH 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.
- I. In the event the Board determines that OFH 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 §§ 436.400 – 436.525, RSMo, as amended, not specifically mentioned in this document.
- K. Upon the expiration of the Disciplinary period, OFH's preceed seller license shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that OFH 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.
- L. If the Board determines that OFH 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 OFH to comply with any condition of discipline set forth herein constitutes a violation of this Order.

- N. If, at any time during the Disciplinary period, OFH 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.
- 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.

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 4th day of August, 2010.



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