

AMENDED OPEN AGENDA
Missouri State Board of Embalmers
and Funeral Directors

March 30-31, 2010
Best Western
1200 Gannon Drive
Festus, MO 63028
Meeting Room: Jefferson

Tuesday, March 30, 2010 – 9:30 a.m. – 9:31 a.m.

Call to Order
Roll Call

1. Approval of Agenda

Closed Meeting. The Board will move into closed session pursuant to Section 610.021 Subsection (14) and 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings.

Wednesday, March 31, 2010 – 9:00 a.m. – OPEN MEETING

Call to Order
Roll Call

- 2. Approval of Minutes**
- 3. Executive Director's Report**
- 4. 10:00 a.m. - Duane E. Harvey – Disciplinary Hearing**
- 5. SB 1 Implementation**
- 6. Rules**

7. **Fingerprinting draft rule**
8. **Legislative Update (Connie Clarkston)**
9. **Preneed Seller/Provider/Funeral Director Agent/Agent - Licensure and Registration update (Lori Hayes)**
10. **Funeral Director/Embalmer Renewals**
11. **MFDEA Update Don Otto**
12. **11:00 am Personal Appearance/Representative from MO HealthNet Program & Policy Unit /Question and Answers**
13. **Future Meetings**
14. **Election of Officers**
15. **Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business**
16. **Other**

Closed Meeting. The Board will move into closed session pursuant to Section 610.021 Subsection (14) and 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings.

Adjournment

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

March 30-April 1, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Monday, March 30, 2009 – 12:00-12:01 p.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by James Reinhard, Chairman, at 12:14 p.m. on Monday, March 30, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Todd Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member – joined at 12:30 p.m.

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant (Absent March 30, 2009)
Tabatha Lenzini, Licensure Technician
Earl Kraus, Senior Legal Counsel – joined at 12:40 p.m.
Sharon Euler, Assistant Attorney General

Public Present

Don Eggen, Central Investigations Unit
Kevan Lager, Central Investigations Unit
Doug Ommen, Director, Consumer Protection of the Attorney General's Office
Patricia Churchill, Director, Constituent Services of the Attorney General's Office

Closed Meeting

Motion was made by Gary Fraker and seconded by Martin Vernon to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo

and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent for this portion of the meeting.

Wednesday, April 1, 2009

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by James Reinhard, Chairman, at 9:10 a.m. on Wednesday, April 1, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Todd Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Tabatha Lenzini, Licensure Technician
Sharon Euler, Assistant Attorney General

Public Present

John Huff, Department Director
Doug Ommen, Director, Consumer Protection of the Attorney General's Office
Patricia Churchill, Director, Constituent Services of the Attorney General's Office
Connie Clarkston, Director, Legislation and Budget
Melissa Palmer, DIFP – Legislative Coordinator
Chuck Renn, Missouri Insurance Guaranty Association
Carol Fischer, Deputy Secretary of State for Business Services
Don Eggen, Central Investigations Unit
Kevan Lager, Central Investigations Unit
Sharon Ayers, DHSS
Ivra Cross, DHSS-BVR
Lexi Hall, DHSS-BVR

Willie Stone, DHSS-BVR
Rebecca Blake, Homesteader's Life
Bill Bennett, MFDEA
Don Otto, MFDEA
DJ Gross, Duncan Funeral Home
Darlene Russell, CFL Preneed
Bill Staltor, Staltor Legal
Bill Stuart, Cater Funeral Home
Dave Hill, MFAS
Ann Warren, Preneed Insurance Coalition
Don Lakin
Janet Carder, Real Estate Commission
Pam Groose, Board of Private Investigator Examiners
Loree Kessler, Board of Massage Therapy
Emily Carroll, Board of Cosmetology and Barber Examiners
Tom Reichard, Office of Endowed Care Cemeteries
Pamela Ives Hill, Board of Accountancy
Brad Speaks
Michael Meierhoffer, Meierhoffer Funeral Home & Crematory
Todd Carlson, Funeral Directors Life Insurance
Paul Lovelace, FDLIC
Scott Lindley

Approval of Agenda

Motion was made by Gary Fraker and seconded by John McCulloch to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Approval of Minutes

April 7-9, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 7-9, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 10, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 10, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 14, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 14, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 22, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 22, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 28, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 28, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

May 7, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the May 7, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

May 15, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the May 15, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

June 12, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the June 12, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

August 18-20, 2008 Open Meeting Minutes – INCOMPLETE

August 18-20, 2008 Open Meeting Minutes were not completed for approval at this meeting.

October 28, 2008 Open Mail Ballot Meeting Minutes – INCOMPLETE

October 28, 2008 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

October 31, 2008 Open Mail Ballot Meeting Minutes – INCOMPLETE

October 31, 2008 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

December 2-4, 2008 Open Meeting Minutes – INCOMPLETE

December 2-4, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 8, 2008 Open Meeting Minutes – INCOMPLETE

December 8, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 11, 2008 Open Conference Call Meeting Minutes – INCOMPLETE

December 11, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 16, 2008 Open Meeting Minutes – INCOMPLETE

December 16, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 23, 2008 Open Mail Ballot Meeting Minutes – INCOMPLETE

December 23, 2008 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

January 28, 2009 Open Mail Ballot Meeting Minutes – INCOMPLETE

January 28, 2009 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

February 18, 2009 Open Mail Ballot Meeting Minutes – INCOMPLETE

February 18, 2009 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

Executive Director’s Report

Becky Dunn reported on the FY2009 Financial Statement as of January 31, 2009

	Year-To-Date	Projected	Remaining
FY 2009 Beginning Fund Balance	1,499,792.36		
Revenue	100,069.99	158,712.00	58,642.01
Expense and Equipment	89,270.09	145,393.00	56,122.91
Total Transfers	246,889.79	564,237.31	317,347.52
Ending Fund Balance	1,263,702.47		

**FY 2009 OA Cost Allocation
Board Cost:**

OA Expenditures \$585.00	Auditor Expenditures \$0.00	Governor Expenditures \$130.00	Lt. Governor Expenditures \$25.00	Sec. of State Expenditures \$567.00	
Atty General Expenditures \$0.00	Gen Assembly Expenditures \$1,804.00	Capitol Police \$81.00	DOR Receipts \$654.00		Total \$3,846.00

Division Cost:

OA Expenditures \$88.19	Auditor Expenditures \$0.00	Governor Expenditures \$19.63	Lt. Governor Expenditures \$3.84	Sec. of State Expenditures \$85.48	
Atty General Expenditures \$0.00	Gen Assembly Expenditures \$272.13	Capitol Police \$12.24	DOR Receipts \$0.00		Total \$481.51

FY2009 Total Cost:

\$4,327.51

Introduction of Division Director, Jane Rackers

Jane Rackers, Division Director, was introduced to the Board by Connie Clarkston. Governor Jeremiah (Jay) Nixon appointed Jane Rackers the Director of the Division of Professional Registration beginning January 2009, replacing David Broeker who resigned that position. Members of the Board welcomed Jane Rackers as the new Division Director.

Introduction of Division's Senior Legal Counsel, Earl Kraus

Earl Kraus is the Division's Senior Legal Counsel as of January 2009. Members of the Board welcomed Earl Kraus as the new Senior Legal Counsel.

Missouri Ethics Commission Report

All members of the board are required to file a Personal Financial Disclosure Statement with the Missouri Ethics Commission and should have received their blank statement. The completed statement must be submitted directly to the Missouri Ethics Commission after January 1, 2009 and no later than 5:00 p.m. May 1, 2009.

Rules – Approve

The Board reviewed the following rules: Areas in brackets will be deleted.

20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship

(8) Effective July 30, 2004 the Missouri State Board embalmers' examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science Section, and Missouri Law section. Application, payment, scheduling and administration for the national board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or other designee of the Board. An applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another license and that license is in active status. *[within twelve (12) months of the date that the Board receives the new application.]* In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination results will be accepted, or the Board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

20 CSR 2120-2.040 Licensure by Reciprocity

(F) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy five percent (75%) or better within twenty-four (24) months after the Board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the Board *[within twelve (12) months prior to applying for a license]* for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license if the first license remains in active status;

(D) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy five percent (75%) or better within twenty-four (24) months after the Board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the Board *[within twelve (12) months prior to applying for a license]* for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license if the original license remains in active status;

20 CSR 2120-2.060 Funeral Directing

(13) An applicant shall be exempt from the requirement of successful completion of the Missouri Law examination if the applicant has successfully completed the Missouri Law examination for another

license if that license remains in active status. *[within twelve (12) months of the date that the Board receives the new application.]*

This is what it says under Definitions:

20 CSR 2120-1.040 Definitions

Consisting of the following:

- (A) National Board Funeral Service Arts Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the Board;
- (B) In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the Board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination;
- (C) National Board Funeral Service Science Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the Board; and
- (D) Missouri Law Section

A motion was made by Todd Mahn and seconded by Martin Vernon to approve the rules as drafted and proceed with filing. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Legislation – Connie Clarkston – Director Legislation and Budget

Connie Clarkston provided the Board an overview of pending legislation that pertains to the Board. It was mentioned by Darlene Russell that there will be a hearing the next day at 9:00 a.m. in Hearing Room 4.

HB111 sponsored by Representative David Day allows unclaimed remains of veterans to be collected by a veterans' service organization for the purpose of internment in a veterans' cemetery under certain circumstances.

HB174 sponsored by Representative Stanley Cox requires the Governor to disclose certain specified information regarding tax credits and state contracts.

HB 243 sponsored by Representative Chris Molendorp expands the membership of the State Board of Embalmers and Funeral Directors by adding five consumer advocates.

HB316 sponsored by Representative Timothy Jones changes the laws regarding the Open Meetings and Records Law, commonly known as the Sunshine Law.

HB340 sponsored by Representative Mike Cunningham requires state agencies, public schools and colleges, and political subdivisions to use the traditional names of holidays.

HB607 sponsored by Representative Doug Ervin establishes the Missouri Patient Privacy Act which limits the disclosure of patient medical information.

HB699 sponsored by Representative Jake Zimmerman revises the definition of "public governmental body" as it relates to the Open Meetings and Records Law, commonly known as the Sunshine Law, to include certain public officials and state employees.

HB769 sponsored by Representative Jason Grill requires any business to take all reasonable measures to protect against identity theft when disposing certain information.

HB770 sponsored by Representative Jason Grill establishes provisions for the prevention of and protection from security breaches.

HB841 sponsored by Representative Jay Wasson transfers the duties for the regulation of certain professions from the Division of Professional Registration to the specific governing body for the profession.

HB850 sponsored by Representative Chris Molendorp requires licensed embalmers and funeral directors renewing their licenses to complete a certain number of hours of continuing education.

HB852 sponsored by Representative Jay Wasson specifies that certain information collected from health maintenance and community-based health maintenance organizations that do not contain identifiable information will be public information.

HB853 sponsored by Representative Jay Wasson establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents and establishes the Missouri Preneed Funeral Contract Act.

HB866 sponsored by Representative Don Wells allows certain unsubstantiated complaints made against licensed social workers and physicians by certain sexually violent predators to be removed from the regulating entity's records.

HB876 sponsored by Representative Bill Deeken prohibits an employer from requiring a nonexempt state employee to take time off during any week the employee works more than an eight-hour workday or his or her regularly assigned hours of work.

HB945 sponsored by Representative Don Wells changes the laws regarding endowed care cemeteries.

HB983 sponsored by Representative Margo McNeil requires racial and gender equity in the membership of boards, commissions, committees, and councils.

HB1044 sponsored by Representative Scott Largent requires county coroners and deputy coroners to complete required training within six months of election or appointment.

HB1055 sponsored by Representative Bryan Pratt establishes the Uniform Prudent Management of Institutional Funds Act.

HB1058 sponsored by Representative Jason Smith repeals various expired provisions of law as contained in the January 2009 Annual Report of the Joint Committee on Legislative Research on Laws Which Expire, Sunset, Terminate, or Become Ineffective.

HB1083 sponsored by Representative Therese Sander penalizes state entities who knowingly and purposely disclose Social Security Numbers of living persons unless such disclosure is permitted by law or otherwise.

HJR23 sponsored by Representative Allen Ictet proposes a constitutional amendment prohibiting appropriations in any fiscal year from exceeding certain limits.

SB1 sponsored by Senator Scott Wasson establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents.

SB245 sponsored by Senator Kurt Schaefer creates consumer notification requirements for data security breaches.

SB416 sponsored by Senator Tom Dempsey modifies provisions related to cemeteries.

SB472 sponsored by Senator Luann Ridgeway requires the governor and political subdivisions to disclose information regarding the distribution of public funds.

SB495 sponsored by Senator John Griesheimer modifies various provisions relating to employment security.

SB560 sponsored by Timothy P. Green removes the requirement that commissioners of the Administrative Hearing Commission be attorneys.

MFDEA Update, Legislative Proposals (Don Otto)

The Missouri Funeral Directors and Embalmers Association will hold its Annual Convention the last week of May 2009. There will be a seminar including an overview of the new law if it passes.

Chuck Renn – Missouri Insurance Guaranty Association

Chuck Renn, Missouri Insurance Guaranty Association, provided the Board with an overview of their current status in regards to paying claims.

As of April 1, 2009, the Missouri Life and Health Insurance Guaranty has funded 1724 claims in the aggregate amount of \$6,868,982. Further, the Special Deputy Receiver (“SDR”) has processed an additional 757 claims that are at various points in the approval process. These pending claims total an additional \$2,848,128. All claims are currently being processed within a 60 day time frame. The only exceptions to this statement are those claims that require additional information or documentation from the funeral homes.

The process for handling claims involves four major steps. They are:

- 1) The initial review by the SDR includes the coordination of the preneed contract with all associated insurance policies issued by Lincoln Memorial.
- 2) The next step is for the guaranty association auditors to review the claims for compliance to the governing statutes, the court approved liquidation plan, and general audit tests.
- 3) The audited claims are then subject to the SDR issuing the appropriate assignment and release forms to the funeral homes for their signature.
- 4) The final step is taken when the funeral homes return the signed assignment and release forms. At a point where there is a sufficient number of returned forms, but no longer than every two weeks, the SDR requests funds to enable the issuing of checks to pay the pending claims.

Protocols and procedures are being developed to guide the evaluation of orphan contracts.

Electronic Filing of Death Certificates (Ivra Cross and Sharon Ayers, General Counsel)

Ivra updated the Board on the web registration system to file death certificates. She explained that Department of Homeland Security has encouraged the states to develop electronic vital records systems to assist in deterring fraud and to provide a more timely and secure environment for collecting and sharing information. It was explained the Bureau of Vital Records (BVR) wrote an RFP for a base system and has now selected a vendor. The selected vendor is ManTech. They have served the vital records community for 20 plus years and were also awarded bids for the States of Kansas, Arkansas and Oklahoma for their electronic systems. Ivra explained that the system would pretty much mirror the Oklahoma system since our laws were similar so there would be minimal customization. The State of Kansas BVR has indicated that 30 plus Missouri funeral directors are using their electronic system and appear to like it. Missouri has identified at least 21 states that have implemented electronic systems and several are already reengineering to update in today’s environment. BVR’s vision for this system would be in two parts, the fact of death portion that showed the personal history information, then the medical certification part of the certificate the certifier would complete. The laws requiring the funeral director to collect the personal data, submit

to the certifier, and register the record with the registrar would not change in their responsibility.

Once the funeral director entered the fact of death information, they would no longer have to notify the local registrar, the system would provide notification. The system would also provide notification to SSA when the fact of death information is entered that included the SSN. BVR would also like to have the fact of death portion to issue even if the certification portion has not been completed. This process would be useful when the cause of death portion is not needed. An example would be to provide proof of death when conducting financial matters at the bank.

Implementation would be in phases. Not every facility would implement at the same time. To be in compliance with the statutory implementation date the pilot facilities would go live January 1, 2010. All other facilities would be phased onto the system gradually. Rural areas would be phased in last. Training would be conducted across the state by BVR field representatives starting sometime in September.

Concern was expressed by some funeral directors for physicians not certifying in a timely manner. System would have time sensitive dates and would prompt provider after so many days. If no response by data provider, state may have to assist funeral directors in notifying the Chief Medical Officer of the facility in getting the certificates completed and returned to funeral directors so that it could be registered. This is a current process that would also not require a change to the law. A sample of the 2003 revised Missouri Certificate of Death was shared. It was explained that the revision was designed using the recommendations and guidelines by the National Center for Health Statistics. The electronic certificate would be edited by the system for completeness and accuracy. If all edits were approved, the certificate would register and filter back through the system and made available to the local registrars for issuance within hours. This electronic system would allow more timely registrations. With the editing process, there would less likely be errors, certificates and/or certified copies would not have to be replaced as in a manual process. The system would not allow registration until the deficiencies were corrected and resubmitted. In some instances there would still be a paper process. BVR will need to have some discussions with State Board and MFDEA to resolve the issues of funeral directors and embalmer's signatures. However, Missouri is looking towards a totally paperless electronic system for the future. Ivra shared that BVR has enlisted several physicians and funeral directors that are very receptive towards piloting and looking forward to going live.

Carol Fischer, Deputy Secretary of State for Business Services – Entity/Fictitious Name

Carol Fischer, Deputy Secretary of State for Business Services, provided the Board information regarding Missouri Revised Statutes, Chapter 417.210.

Due to a change in Missouri law, fictitious name registrations now expire five years from the date they were filed. If you filed a fictitious name registration on or before August 28, 2004, your business must renew their registration with the Secretary of State's office no later than August 28, 2009 or the registration will expire. The Secretary of State office mailed all businesses that filed a fictitious name registration within this timeframe a notice. Beginning March 2009, a fictitious name registration may be renewed online, or print a fictitious renewal form for mailing. Businesses must renew their fictitious name registration by the due date in order to continue to legally do business in Missouri. If the business is no longer in existence

or if you wish to let your fictitious name registration expire, no action is required. Once expired, that registration cannot be reinstated or renewed; those wishing to continue their business will need to file new fictitious name registration and will be issued a new charter number. Attached is a brochure from the Secretary of State, Corporations Division that was distributed during the meeting.

Missouri Sales Tax Reporting Requirement

The Board reviewed the new Missouri Sales Tax Reporting Requirement. Effective January 1, 2009, Missouri state law requires that any licensed business selling retail products or equipment to verify compliance with section 144.083.4 RSMo and the Missouri Department of Revenue by providing a "no sales tax due" statement to the State Board of Embalmers and Funeral Directors prior to the issuance of all renewals and/or new establishment licenses.

Election of Officers

Chairman:

A motion was made by John McCulloch and seconded by Joy Gerstein to nominate and vote in by acclamation Martin Vernon as Chairman of the State Board of Embalmers and Funeral Directors. Motion carried with James Reinhard, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Vice-Chairman:

A motion was made by John McCulloch and seconded by Joy Gerstein to nominate and vote in by acclamation Gary Fraker as Vice-Chairman of the State Board of Embalmers and Funeral Directors. Motion carried with James Reinhard, Martin Vernon, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Secretary:

A motion was made by John McCulloch and seconded by Joy Gerstein to nominate and vote in by acclamation Todd Mahn as Secretary of the State Board of Embalmers and Funeral Directors. Motion carried with James Reinhard, Martin Vernon, Gary Fraker, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Future Meeting Dates

The Board reviewed a 2009 calendar in order to plan for future meeting dates. The Board asked the Executive Director to check into board meeting room availability for August 2009 in Jefferson City/Lake of the Ozarks, Missouri.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

Saponi Nation of Missouri, Mahenips Band

Earl Kraus, Senior Legal Counsel, advised the Board regarding the Saponi Nation of Missouri and the letter they sent relative to compliance with state laws as they conduct their own burials. The Board's concern is relative to the location of the embalming. The Board directed a letter be written to John Trullinger, Tribal Chairman, ensuring that the Arkansas embalmer is in compliance with Missouri laws if the embalming is being performed in Missouri.

Closed Meeting

A motion was made by Gary Fraker and seconded by Martin Vernon to move into closed session pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent for this portion of the meeting.

Adjournment

A motion was made by John McCulloch and seconded by Joy Gerstein to adjourn. Motion carried with Martin Vernon, Gary Fraker, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 12:40 p.m. on Wednesday, April 1, 2009. James Reinhard and Todd Mahn were absent from this portion of the meeting.

Executive Director: _____

Approved by the Board on: _____

SECRETARY OF STATE
ROBIN CARNAHAN
CORPORATIONS DIVISION
PO BOX 2050
JEFFERSON CITY MO 65102

ADDRESS SERVICE REQUESTED

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JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

CORPORATIONS
(573) 751-4153

Dear Business Owner:

As your Secretary of State, I am focused on helping Missouri businesses grow by providing the best service possible. Making sure you are informed about changes in our operations is a big part of providing good customer service.

It is a priority in my office to make it as easy and efficient as possible for you to complete all of your business filings. Due to a change in state law, you are now required to update your business's fictitious name registration.

Specifically, Missouri law now requires fictitious name registrations to renew every five years. Currently, your renewal is due by **August 28, 2009**. Please note that you must renew your fictitious name registration by the due date in order to continue to legally do business in Missouri. So please use the online filing system, print off a renewal form, or contact my office if you need assistance filing your fictitious name renewal before the deadline.

With our online filing system, you can file your renewal quickly from your home or office. Simply visit www.sos.mo.gov to file online or you can print a form for mailing. As part of the filing, you will need to enter your charter number (begins with the letter X) located on the mailing label of this notice.

However, if you wish to let your fictitious name registration expire, or the business is no longer in existence, no action is required on your part.

The Missouri Business Portal helps Missouri businesses navigate state government. It is Missouri's one stop shop that connects business owners with state government resources based on their needs. As a small business owner myself, I know how valuable it is in helping business owners access the resources they need from state government. Join over 500,000 users accessing the business portal at www.business.mo.gov.

Sincerely,

Robin Carnahan
Missouri Secretary of State

**YOUR BUSINESS'S
FICTITIOUS NAME RENEWAL
IS DUE AUGUST 28th**

600 West Main Street, PO Box 2050, Jefferson City, MO 65102
Telephone (866) 223-6535
www.sos.mo.gov

DON'T DELAY— FILE TODAY

Online filing is quick and easy:

- Go to www.sos.mo.gov
- Under "Featured Items," select the option of "**RENEW FICTITIOUS NAME ONLINE**"

Benefits of filing online:

- Available 24 hours a day, 7 days a week
- Major credit cards accepted: MC, Visa, American Express or Discover

OR

PRINT RENEWAL FORM FOR FILING

- Go to www.sos.mo.gov
- Or request a paper form by calling 1-866-223-6535
- Fee for filing is \$7.00

No action is required if:

- The business is no longer active, or
- You want the registration to expire

**IF YOU HAVE QUESTIONS,
COMMENTS OR NEED ASSISTANCE
PLEASE CALL US TOLL FREE AT
1.866.223.6535**

Since January 2005,
reduced fees for
online corporate reports
saved Missouri businesses
more than \$9.5 million!

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 4-5, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 4, 2009 – 12:00 p.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 12:00 p.m. on Tuesday, August 4, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

BOARD MEMBERS PRESENT:

Martin Vernon, Chairman
Todd Mahn, Secretary
John McCulloch, Member

BOARD MEMBERS ABSENT:

James Reinhard, Member
Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

STAFF PRESENT:

Becky Dunn, Executive Director
Lori Hayes, Inspector
Don Eggen, Chief Investigator

CLOSED SESSION

Motion was made by John McCulloch and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021

Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Martin Vernon, Todd Mahn and John McCulloch voting in favor with no votes in opposition. James Reinhard was absent for this portion of the meeting. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

Wednesday, August 5, 2009 – 9:23 a.m.

The Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:23 a.m. on Wednesday, August 5, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

BOARD MEMBERS PRESENT:

Martin Vernon, Chairman
Todd Mahn, Secretary
James Reinhard, Member
John McCulloch, Member

BOARD MEMBERS ABSENT:

Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

STAFF PRESENT:

Becky Dunn, Executive Director
Lori Hayes, Inspector
Tabatha Lenzini, Licensure Technician
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget and Legislation
Darcie Rehagen, Office Support Assistant
Don Eggen, Chief Investigator

GUESTS PRESENT:

Mark Warren, English & Monaco/Missouri Preneed Coalition
Bill Stalter, Stalter Legal Services
Chris Moody, SCI
Jim Moody, SCI
Representative Tim Meadows, self
Don Otto, MFDEA
Brad Speaks, Speaks Funeral Home

APPROVAL OF THE AGENDA

Motion was made by Jim Reinhard and seconded by John McCulloch to approve the open agenda as submitted. Motion carried with Todd Mahn, John McCulloch, and Jim Reinhard voting in favor with no votes in opposition. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

EXECUTIVE DIRECTOR REPORT

Becky Dunn, Executive Director, gave an overview of the rules for the meeting and informed the audience that any comments for upcoming meetings need to be submitted in writing to the Board office by the Friday prior to the next meeting date. Ms. Dunn also informed the Board that the website has been updated with SB1 comments from the public and legal counsel.

ASSISTANT ATTORNEY GENERAL REPORT

Sharon Euler, Assistant Attorney General, reported that the NPS claim packets have been mailed out and it appears as though some people who do not have NPS contracts are receiving the packets. Ms. Euler spoke with Chris Fuller, attorney with the Special Deputy Receiver's (SDR) office, who indicated that everyone in the company's database was mailed a packet and any questions should be directed to the SDR's office.

FUTURE MEETING DATES

Ms. Dunn informed the audience of the Board's upcoming meeting dates, which are as follows:

- August 11, 2009, 9:00 a.m.
- August 19, 2009, 9:00 a.m.
- August 25, 2009, 9:00 a.m.
- September 2, 2009, 9:00 a.m.

MID-AMERICA TRANSPLANT SERVICES

The Board reviewed a letter from Mid-America Transplant Services regarding some of its new harvesting procedures. This was provided for informational purposes only. Chairman Vernon advised that it is his belief this mailing was sent to all funeral homes by Mid-America Transplant Services.

SENATE BILL 1 IMPLEMENTATION PROCESS

The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- 333.011
- 333.091
- 333.315

- 333.320
- 333.325
- 333.330
- 333.335
- 333.340

CLOSED SESSION

Motion was made by Todd Mahn and seconded by John McCulloch to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

RECONVENE

The Board reconvened in open session at approximately 1:30 p.m.

SENATE BILL 1 IMPLEMENTATION PROCESS - CONTINUED

The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

ADJOURNMENT

A motion was made by Todd Mahn and seconded by John McCulloch to adjourn. Motion carried with Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 2:53 p.m. on Wednesday, August 5, 2009. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 11, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 11, 2009 – 7:30 a.m. to 7:31 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 7:30 a.m. on Tuesday, August 11, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
James Reinhard, Member

Board Members Absent

Todd Mahn, Secretary
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Sharon Euler, Assistant Attorney General
Don Eggen, Chief Investigator

Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual

employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Martin Vernon, Gary Fraker and Jim Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of meeting. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Tuesday, August 11, 2009 - 9:00 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:09 a.m. on Tuesday, August 11, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
John McCulloch, Member
James Reinhard, Member

Board Members Absent

Todd Mahn, Secretary
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget and Legislation
Don Eggen, Chief Investigator
Mark Stahlhuth, Division of Finance, joined at 1:00p.m.

Public Present

Stephen Zell, ACM
Dale Westby, ACM
Matt Whaley, SCI
John Moore, Moore Funeral Home
Representative Tim Meadows, State Legislature
Darlene Russell, CFL Preneed
Esther Bateman, Stewart Enterprise

Chris Moody, Moody & Associates and SCI
Jim Moody, Moody & Associates and SCI
Mark Warren, English & Monaco
Bill Stalter, Stalter Legal Services
Don Otto, MFDEA
Brad Speaks, Speaks Funeral Home
Ann Warren, English & Monaco

Approval of Agenda

Motion was made by Gary Fraker and seconded by John McCulloch to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker, John McCulloch, and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Approval of Minutes

No minutes were available for review.

Executive Director's Report

Becky Dunn had nothing to report at this meeting

Future Meeting Dates

Future meeting dates are scheduled as follows:

- August 19, 2009, 9:00 a.m.
- August 25, 2009, 9:00 a.m.
- September 2, 2009, 9:00 a.m.

Financials/Projections

Nothing to report at this meeting.

Brad Speaks/Scott Lindley Appearance (Robert Cowherd by Phone)

Brad Speaks addressed the board pursuant to an email request relating to the claim process and timely payout from National Prearranged Services, Inc (NPS). Mr. Speaks stated he had filed claims from NPS for 35 funerals and hasn't been paid for any of them. He is asking the State Board to make a formal request of the Attorney General to enforce the law. Mr. Speaks further requested that the State Board hire Robert Cowherd as the board's attorney so that he can work on this ongoing issue for the consumers of Missouri and the funeral providers who have been harmed.

Attorney General Update

Sharon Euler, Assistant Attorney General, provided the Board an update regarding National Prearranged Services Inc. (NPS). The Attorney General's website has a Consumer Alert regarding the NPS claim packets. The Special Deputy Receiver has filed a lawsuit to begin asset recovery process in the NPS liquidation action. Ms. Euler also advised that Randy Sutton was indicted on NPS related charges. This was provided for informational purposes only.

Senate Bill 1 Implementation Process

The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- 436.405 (2) Definition of Guaranteed Contract
- 436.405 (7) Definition of Preneed Contract
- 436.412 Grandfather Clause - clarify who gets paid what
- 436.415.1 Provider/Seller obligations
- 436.415 Provider/Seller obligations – clarify obligations
- 436.420.3 Provider/Seller contract
- 436.425.1 Consumer contract requirements
- 436.425.1(5) Consumer contract requirements
- 436.425.1(12) Consumer contract requirements
- 436.425.1(13) Consumer contract requirements
- 436.425.1(14) Consumer contract requirements
- 436.425.1(15) Consumer contract requirements
- 436.425.3 Consumer contract requirements
- 436.425.4 Consumer contract requirements
- 436.435.6 Trustee duties

12:00 p.m. – 1:05 p.m. – Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings.

Motion carried with Martin Vernon, Gary Fraker, John McCulloch and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Reconvene

The State Board of Embalmers and Funeral Directors reconvened in open session at approximately 1:05 p.m.

Senate Bill 1 Implementation Process - Continued

The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business
Nothing further to report.

Adjournment

A motion was made by Jim Reinhard and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, John McCulloch and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 4:32 p.m. on Tuesday, August 11, 2009. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 19, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Wednesday, August 19, 2009 - 7:30a.m. to 7:31 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 7:30 a.m. on Wednesday, August 19, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
James Reinhard, Member

Board Members Absent

Joy Gerstein, Public Member
John McCulloch, Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General

Closed Meeting

Motion was made by Gary Fraker and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a

disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

Wednesday, August 19, 2009 9:15 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:15 a.m. on Wednesday, August 19, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman

Gary Fraker, Vice-Chairman

James Reinhard, Member

Todd Mahn, Secretary

Joy Gerstein, Public Member (Was on conference call and left the call at 9:45 a.m.)

Board Members Absent

John McCulloch, Member

Staff Present

Becky Dunn, Executive Director

Lori Hayes, Inspector

Earl Kraus, Senior Legal Counsel

Sharon Euler, Assistant Attorney General

Public Present

Barb Neumann, Representative Timothy Meadows

Kalene Summerville, MFDEA/Summerville Funeral Home

Darlene Russell, CFL Preneed

Brad Speaks, Self/Speaks Family Legacy Chapels

Mark Warren, English & Monaco

Richard Brownlee, Assurant

Chris Moody, SCI

Bill Stalter, Stalter Legal Services

Don Otto, MFDEA/MFT

Doug Farrow, Stewart Enterprises

Approval of Agenda

Motion was made by Gary Fraker and seconded James Reinhard by to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, James Reinhard and Joy Gerstein

voting in favor with no votes in opposition. John McCulloch was absent from the meeting in its entirety.

Approval of Minutes

No minutes were available for approval.

Executive Director's Report

Becky Dunn had nothing to report at this meeting.

Future Meeting Dates

Future meeting dates are scheduled as follows:

- August 25, 2009, 9:00 a.m.
- August 26, 2009, 9:00 a.m. if needed
- September 2, 2009, 9:00 a.m.

Financials/Projections

Nothing was reported at this meeting.

Attorney General Update

Sharon Euler, Assistant Attorney General, stated she contacted Mark Gutchen, Counsel with the Division of Legal Services in regards to the Medicaid provision discussed last week for individuals qualifying for assistance, he was going to speak with his group and will get back in touch with Ms. Euler next week.

Senate Bill 1 Implementation Process

The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- | | |
|-----------|--|
| 436.455 | Purchaser cancellation |
| 436.456 | Seller cancellation |
| 436.457 | Purchaser change of provider |
| 436.458 | Seller annual reports |
| 436.465 | Record retention |
| 436.470 | Complaints/Inspections/Subpoenas/AG |
| 436.480 | Purchaser's death/incapacity |
| 436.485 | Criminal penalties/Ch. 407 violation |
| 436.490 | Provider cease business |
| 436.500 | Seller cease business |
| 436.505 | Credit life |
| 436.510 | Provider may demand payment from trustee |
| 436.520 | Rulemaking authority |
| Section 1 | Closed records |

The board voted if a contract is cancelled then all interest goes back to consumer. Jim Reinhard and Gary Fraker voted no and Todd Mahn voted yes. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted a refund less the origination fee would be returned on a cancelled contract. Gary Fraker and Todd Mahn voted yes, Jim Reinhard voted no. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted for further clarification on 436.457.4 regarding the amount that is returned to the consumer. Todd Mahn, Jim Reinhard and Gary Fraker voted in favor. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

12:10 p.m. – 1:30 p.m. – Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Martin Vernon, Gary Fraker, John McCulloch and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Reconvene

The State Board of Embalmers and Funeral Directors reconvened in open session at approximately 1:30 p.m.

Senate Bill 1 Implementation Process - Continued

The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

Notice of Intent

The board reviewed the draft of the Notice of Intent. A motion was made by Gary Fraker and seconded by Todd Mahn to approve the Notice of Intent as drafted with the changes of adding the boards email address to the top of the form and add the fax number. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. There is a finding of confident and substantial evidence to support the need for this rule.

It was the directive of the board to appoint a sub committee to approve the Applications for Preneed Provider/Seller and Preneed Agent.

The board was in agreement that the dates on the Proposed Emergency Rule Handout (5) should be changed to October 31, 2009. There is a finding of confident and substantial evidence to support the need for this rule.

Emergency Rules Following 8-5-09 handout:

- **Emergency rule: Corporation must be represented by an attorney:**
Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Payment is not determining factor of “practice of funeral directing”**
Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Pre-need seller and agent must be licensed in Missouri**
Motion was made by Gary Fraker and seconded by Todd Mahn is approve this rule with the change from license to register and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: “Final Disposition” as defined in Chapter 193**
Motion was made by Gary Fraker and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency Rule: “Provider” includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436:**
 Motion was made by Todd Mahn and seconded by Jim Reinhard to approve with the changes in (2) to “any provider” and need to specify new 436 with new numbers and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Display of License:**
 Motion was made by Todd Mahn and seconded by Gary Fraker to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Corporate ownership of a corporate licensee**
 Motion was made by Gary Fraker and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Licensee must file application for new license if change in ownership:**
 Motion was made by Todd Mahn and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Failure to renew a license within 2 years requires completion of application process:**
 Motion was made by Jim Reinhard to approve this rule, this motion was withdrawn. Motion was made by Gary Fraker and seconded by Todd Mahn to withdraw this emergency rule that there is not a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent:**
 Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Pre-need agents must take Missouri law exam.**
 Motion was made by Todd Mahn and seconded by Gary Fraker to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor

with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief:**

Motion was made by Todd Mahn and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with all voting in favor with no votes in opposition. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Financial welfare cause for injunction:**

Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

Nothing further to report.

Adjournment

A motion was made by Gary Fraker and seconded by Todd Mahn to adjourn. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. The meeting adjourned at 3:45 p.m. on Wednesday, August 19, 2009.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 25, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 25, 2009 - 7:30a.m. to 7:31 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 8:15 a.m. on Tuesday, August 25, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
John McCulloch, Member
James Reinhard, Member

Board Members Absent

Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget & Legislation

Closed Meeting

Motion was made by James Reinhard and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination

materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, John McCulloch and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Tuesday, August 25, 2009 - 9:28 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:28 a.m. on Tuesday, August 25, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
John McCulloch, Member
James Reinhard, Member

Board Members Absent

Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget & Legislation
Sherry Hess, Division of Professional Registration

Public Present

Darlene Russell, CFL Preneed
Amy Battagler, Stewart Enterprises
Don Otto, MFDEA/MFT
Brad Speaks, Self/Speaks Family Legacy Chapels
Chris Moody, SCI
Stephen Zell, ACM
Representative Timothy Meadows, Legislature
Bill Stalter, Stalter Legal Services
DJ Gross, Duncn Funeral Home
Jim Moody, SCI
Ann Monaco Warren, Insurance Coalition
Tom Reichard, Professional Registration

Approval of Agenda

Motion was made by Gary Fraker and seconded John McCulloch by to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Executive Director's Report

Becky Dunn had nothing to report at this meeting.

Future Meeting Dates

Future meeting dates are scheduled as follows:

- September 2-3, 2009, 9:00 a.m.

Financials/Projections

Sherry Hess, Division of Professional Registration, appeared to present the board a financial summary of the board's appropriation and fund balance.

Connie Clarkston, Director of Budget and Legislation, gave an overview of the legislative and rulemaking process. Ms. Clarkston also provided an overview of the fiscal note relating to SB1.

Senate Bill 1 Implementation Process

The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

Motion was made by John McCulloch and seconded by Gary Fraker that preneed seller reporting fees be paid prior to August 28, 2009 is \$2 per contract, and the new preneed seller reporting period is to be August 29, 2009 through August 29, 2010. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by John McCulloch that preneed seller reporting fee to be paid after August 29, 2009 will be set at \$36 per contract. Motion carried with Gary Fraker, John McCulloch, and James Reinhard voting in favor of the motion. Todd Mahn voted "no" in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by Gary Fraker and seconded by John McCulloch

Preneed Provider NonEstablishment - \$100.00

Preneed Provider that holds a Funeral Establishment License - \$10.00

Preneed Seller - \$200.00

Preneed Agent - \$50.00

Motion carried with Gary Fraker, John McCulloch, and James Reinhard voting in favor of the motion. Todd Mahn voted "no" in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by Gary Fraker and seconded by John McCulloch that preneed provider reporting fees prior to August 28, 2009 be \$0 (zero dollars) and with this reporting they set up the functions for funeral establishment/non funeral establishment. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by Gary Fraker to leave the amended provider/seller application fees at \$25.00. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by John McCulloch to do Highway Patrol Background Check for individual applicants at this time and look into fingerprinting down the road. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by Gary Fraker to withdraw the previous motion relative to Highway Patrol Background Check for individual applicants and rescind the motion that the Board shall require background check on every individual applicant and, at the Board's discretion, may request the corporate entities to submit to background check for key individuals. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch did not vote. Joy Gerstein was absent from the meeting in its entirety.

Tuesday, August 25, 2009 – 12:02 pm – 1:10 pm Closed Session

The Board reviewed **Emergency Rules for Group 1 following 8-5-09 meeting**. If the Board has approved the rule to go forward, the word **APPROVED** appears before the rule. Approved emergency rules appear as pages 2-7.

APPROVED

Page 2 - Emergency rule: Preened sellers and providers must be licensed and preneed seller agents must be registered in the State of Missouri to do business.

Title: Pre-need agent; requirements of the agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is licensed in the state of Missouri.

- (1) Any pre-need agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193

Title: Use of term "final disposition" consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term "final disposition" in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

- (1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
- (2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

When reviewing **Group 2 - Page #4 Rule re: meaning of final disposition** later in today's meeting, a motion was made by James Reinhard and seconded by Todd Mahn to amend **Group 1- Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193** to include statutory authority of Section 436.405, and also, instead of saying Chapter 436 in subsection 1 and subsection 2, that it says Section 436.400 through 436.520; and under authority to say Section 193.015. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 4 - Emergency rule: "Provider" includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436

Title: Provider to include funeral establishments engaged in pre-need

Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Sections 436.400 through 436.520, RSMo.

- (1) As defined by Section 333.011(10), the provider of services under any preneed contract pursuant to Sections 436.400 to 436.520, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo.
- (2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapter 333 and Sections 436.400 to 436.520, RSMo.

Authorized by 333.340 and 333.011(10), RSMo

A motion was made by James Reinhard and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 5 - Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

- (1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.
- (2) Any funeral director shall also identify him or herself as acting as a preneed agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

Authority: Section 333.340 and 333.325.4

A motion was made by James Reinhard and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 6 - Emergency rule: Pre-need agents must take Missouri law exam.

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for registration.

All pre-need seller agents registering with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to registration. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Sections 436.400 to 436.520, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

A motion was made by Todd Mahn and seconded by Gary Fraker to approve the final drafted rule with amendment to remove the word "seller" from preneed seller agents throughout. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 7 - Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

- (1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.
- (2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.

A motion was made by James Reinhard and seconded by Todd Mahn for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

The Board reviewed **Emergency Rules for Group 1 following 8-5-09 meeting.** Emergency rules still needing approval appear as pages 8 – 11.

Page 8 - Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider or seller's license.

- (1) If the applicant for a pre-need provider or seller's license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":
 - (a) each officer, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

Authority: 333.340 and 333.315

After discussion was held on this emergency rule, Sharon Euler, Assistant Attorney General did the following rewrite for board approval.

REVISED – Page 8 - Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporation application for a pre-need provider or seller's license.

- (1) A corporate applicant for either a seller or provider license shall certify to the Board that each of its officers, directors, managers and controlling shareholders would be eligible for licensure under Section 333.330, RSMo if he or she applied for licensure as an individual.
- (2) The applicant shall have the burden to demonstrate to the Board that its officers, directors, managers and controlling shareholders would be eligible for licensure under Section 333.330, RSMo.

Authority: 333.340 333.320, 333.315 and 436.456

A motion was made by Gary Fraker and seconded by Todd Mahn to approve the revised drafted rule with amendment to add the words "In any proceeding," to the beginning of (2) above, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page 9 - Emergency rule: Licensees must file application for new license if change in ownership.

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need provider or seller.

- (1) The pre-need seller or provider's license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. Whenever the ownership, location or name of the Missouri licensed pre-need seller or provider is changed, a new license shall be obtained.

- (A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new pre-need seller license. However, a new application for a pre-need seller license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.
- (B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Authority: 333.340 and 333.320

A motion was made by Todd Mahn and seconded by John McCulloch, to have Sharon Euler rewrite the rule to provide a change of address form and charge \$10. After discussion was held, Todd Mahn withdrew his motion and John McCulloch withdrew his second. Sharon Euler, Assistant Attorney General did the following rewrite for board approval.

REVISED – Page 9 - Emergency rule: Change I contact information

Title: Licensees shall be required to provide up to date contact information.

Purpose: This rule details the requirements for providers, sellers, and seller's agents for providing the Board with current contact information.

- (1) Providers, sellers, and seller's agents shall keep the Board notified of their current address, telephone number, facsimile number, and e-mail address, as applicable, at all times.
- (2) Providers, sellers, and seller's agents shall notify the Board within ten (10) business days of any such change by submitting written notice with the new information. The written notice shall comply with the Board's rules regarding written notice.

Authority: 333.340 and 333.320

A motion was made by Todd Mahn and seconded by Gary Fraker to approve the revised drafted rule with amendment to change "ten (10) business days" to "thirty (30) days", and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page 10 - Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that pre-need sellers, providers and seller's agents must prominently display their license or registration to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

- (1) All licenses or registrations, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.
- (2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.
- (3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a

licensee or registrant to display his or her license or registration as required by Section 333.091 and this regulation.

Authorized by 333.340, 333.091 and 333.330

A motion was made by James Reinhard and seconded by Todd Mahn to approve the rule as drafted, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page 11 - Emergency rule: Normal market fluctuation resulting in a shortage in a preneed trust is not a basis for injunctive relief.

Title: Normal market fluctuation is not a basis for injunctive relief.

Purpose: This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

- (1) Pursuant to Section 333.330.4, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller if there is a shortage in the preneed trust greater than twenty percent of the total amount required to be held or deposited into the trust pursuant to Sections 436.400 through 436.520, RSMo in the pre-need trust that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

It was the directive of the Board to stay with their original position that there is no need for this rule because this is already in the statute.

The Board reviewed the comments received from Joshua Slocum, Funeral Consumers Alliance, relative to his concerns about non-business activities. A motion was made by James Reinhard and seconded by Todd Mahn to have Sharon Euler and Earl Kraus, assist Becky Dunn, Executive Director, draft a response to Mr. Slocum that the Board is defining what it means to be in the business, by defining the scope of their authority, and there is no effort that this rule is to exercise control over somebody who is not in the business of funeral directing, and money is not the only determination to determine whether somebody is in the business or not. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

The Board reviewed **Group 2 rules.**

Page #1 Rule re: single premium annuity contracts

Title: Replacement single premium annuity contracts

Purpose: This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

- (1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.
- (2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.
- (3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.

- (4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, Sections 436.400 to 436.520, RSMo and any other requirements under state or federal law.

Authority: 333.340 and 436.405

A motion was made by James Reinhard and seconded by Gary Fraker to approve the drafted as an emergency rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page #2 Rule re: activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

Title: Activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

Purpose: This rule identifies activities that do not constitute preneed under Chapter 436 and do not require regulation for preneed under Sections 436.400 to 436.520, RSMo.

The following activities do not constitute a preneed contract under the terms and conditions of Sections 436.400 to 436.520, RSMo:

- (1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;
- (2) The preplanning of funeral arrangements with where there is no exchange of payment or anything of value for the future services; and
- (3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).

Authority: 333.340 and 436.405

A motion was made by Todd Mahn and seconded by Gary Fraker to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#3 Rule re: types of financing available; other financing still preneed

Title: Preneed contracts with non-compliant financing mechanisms are still subject to the provisions in Sections 436.400 to 436.520, RSMo.

Purpose: This rule identifies the acceptable funding mechanisms for preneed contracts.

- (1) Preneed contracts shall only be funded by:
 - (a) A preneed trust as defined by 436.405.1(8);
 - (b) An insurance policy or single premium annuity contract as defined by § 436.405.1(3); or
 - (c) A joint account as defined by § 436.405.1(4).
- (2) Preneed contracts funded by any other mechanism shall be non-compliant with the requirements of Sections 436.400 to 436.520, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the Board under Sections 436.400 to 436.520, RSMo.

Authority: 333.340 and 436.405

A motion was made by James Reinhard and seconded by Todd Mahn to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page #4 Rule re: meaning of final disposition

Title: Final disposition shall be used consistently with definition in § 193.015(3)

Purpose: This rule explains the use of the term final disposition as it relates to preneed contracts under Sections 436.400 to 436.520, RSMo.

For purposes of Chapter 333 and, Sections 436.400 to 436.520, RSMo, the definition and use of the term final disposition shall be consistent with the definition of the term final disposition contained in Section 193.015(3);

Authority: 193.015, 333.340 and 436.405

This rule was approved in Group 1-Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193 earlier in today meeting.

A motion was made by James Reinhard and seconded by Todd Mahn to amend Group 1-Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193. previously approved at today's meeting to include statutory authority of Section 436.405, and also, instead of saying Chapter 436 in subsection 1 and subsection 2, that it says Section 436.400 through 436.520; and under authority to say Section 193.015. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#5 Rule re: Cemetery exception

Title: Endowed care cemetery exception.

Purpose: This rule describes the exception to preneed contract requirements under Sections 436.400 to 436.520, RSMo for endowed care cemeteries.

- (1) The provisions of sections 436.400 to 436.520 shall not apply to contracts or other arrangements sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund, as defined by Chapter 214, or for which a deposit into a segregated account is required under Chapter 214.
- (2) The provisions of Sections 436.400 to 436.520, RSMo shall apply to the contract sold by the operator as described in (1) above if the contract or arrangement includes services that may only be provided by a licensed funeral director;
- (3) This exception to the requirements of Sections 436.400 to 436.520,

RSMo shall be contract specific.

Authority: 333.340 and 436.410

A motion was made by Todd Mahn and seconded by James Reinhard to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. After discussion was held, Todd Mahn withdrew his motion and Jim Reinhard withdrew his second.

A motion was made by James Reinhard and seconded by Todd Mahn to adopt Bill Stalter's proposal for substitute in #5 as follows:

Pursuant to RSMo. Section 333.310, a cemetery shall be exempt from the licensure requirements of RSMo. Sections 333.315 and 333.320 when all of the following conditions are satisfied:

- 1) The cemetery has a current and valid license issued pursuant to RSMo. Section 214.275;
- 2) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are made pursuant to a contract whereby such merchandise is either i) purchased in conjunction with an interment right or grave space subject to RSMo. Section 214.320, or ii) is to be delivered to an interment right or grave subject to RSMo Section 214.320 that is owned by the purchaser and identified in the contract;

3) The cemetery has not been found to be in non-compliance with RSMo. Sections 214.385 or RSMo. Section 214.387 by the Office of Endowed Care Cemeteries pursuant to a completed examination or audit; and

4) The cemetery does not offer for sale caskets or services that may only be provided by a Missouri licensed funeral director or embalmer.

Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#6 Rule re: seller obligations

Title: Provider and seller obligations under Sections 436.400 to 436.520, RSMo

Purpose: This rule clarifies the duties of the seller of a preneed contract.

Except as otherwise provided in Sections 436.400 to 436.520 and any rules validly promulgated pursuant to those sections:

- (1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
- (2) Alternatively, the preneed contract may permit the purchaser to make payment directly to the trustee or insurance company named in the contract in lieu of making payment to the trustee;
- (3) All sellers of preneed contracts in the State of Missouri shall designate an individual manager in charge within the seller's business at a Missouri address who will accept notice regarding any actions of the Board on behalf of the seller. The designation shall be made in writing and provided to the Board. If the designee changes, the seller shall make the Board aware of the change in writing five (5) business days prior to the change in designee becoming effective, or if the seller does not have notice five (5) days prior, then within three (3) business days of the change in designee.

Authority: 333.340 and 436.415

A motion was made by James Reinhard and seconded by Gary Fraker to approve the drafted rule with amendment to change the last word of subsection (2) from "trustee" to "seller"; and in subsection (3) if the designee changes, the seller shall notify the board in writing within 30 days of the change. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Sharon Euler, Assistant Attorney General did the following rewrite for board's final approval.

- (1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
- (2) A purchaser may make payment on any preneed contract by making the payment directly to the trustee, the insurance company, or the financial institution where the joint account is held, as applicable, in lieu of paying the seller.
- (3) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in it initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the Board within 30 days of the change.

A motion was made by Gary Fraker and seconded by Todd Mahn for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

The board reviewed the following.

Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapters 333 and 436.

For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirements of Section 436.460, RSMo, Supp. 2009.

Authority: 333.340 and 436.460

Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapters 333 and 436.

- (1) For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirements of Section 436.460, RSMo, Supp. 2009.
- (2) For all contracts entered into prior to August 28, 2009, preneed sellers who were registered with the Board shall, in addition to their annual report, pay the required fee for the annual report pursuant to 436.069, RSMo;
- (3) Beginning August 28, 2009, the reporting period for seller annual reports shall run from August 28 through August 27 of successive years.

Authority: 333.340 and 436.460

A motion was made by James Reinhard and seconded by Gary Fraker to have Sharon Euler, Assistant Attorney General, rewrite a draft rule that will encompass dates for annual reporting period. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch did not vote for this item of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#7 Rule re: clarification on pre-August 28, 2009 and post-August 28, 2009

Title: Grandfather clause

Purpose: This rule clarifies the treatment of contracts made prior to August 28, 2009.

- (1) Violations of Chapters 333 and 436 occurring prior to August 28, 2009 shall be governed by the law as it existed at the time of the violation;
- (2) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract that existed prior to August 28, 2009 shall be governed by the law as it existed on August 28, 2009;
- (3) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract executed on or after August 28, 2009 shall be governed by the law as it existed on August 28, 2009;
- (3) All preneed contracts executed on or after August 28, 2009 must meet all requirements contained in Chapter 333 and Sections 436.400 to 436.520 as the law existed on August 28, 2009.
- (4) Preneed contracts entered into prior to August 28, 2009 remain valid after August 28, 2009 to the extent they were valid under Sections 436.005 to 436.071 prior to August 28, 2009.

Authority 333.340, 436.412 and 436.415

A motion was made by James Reinhard and seconded by Todd Mahn to approve the drafted rule. After discussion was held, James Reinhard withdrew his motion and Gary Fraker seconded.

A motion was made by John McCulloch and seconded by Gary Fraker to remove subsections (1) (2) and the first (3) from the drafted rule and approve subsections second (3) and (4) as drafted. There is a finding of confident and substantial evidence to support the need for this

rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#8 Rule re: Provider and Seller requirements under the preneed contract

Title: Requirements for notice by provider under preneed contract

Purpose: This rule sets out the requirements for notice by a provider under a preneed contract.

- (1) A provider shall notify the Board within 15 days of authorizing or agreeing to allow a seller to designate himself or herself as the provider under a preneed contract. Such notice shall be in writing and shall include:
 - (a) Name and address of the seller;
 - (b) Name and address of the provider;
 - (c) License number of the seller;
 - (d) License number of the provider;
 - (e) Effective date of the authorization or agreement;
 - (f) Signature of the seller, provider, purchaser, and, if applicable, the seller's agent;
 - (g) Notice with the Board may be filed electronically but the original document shall be provided to the Board by mail following the electronic filing.
- (2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;
- (3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;
- (4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;
- (5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.
- (6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.
- (7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
 - a. One signature line indicating that signature belongs both to the seller and provider; or
 - b. Separate signature lines for the seller and provider.

Authority: 333.3.40 and 436.420

After discussion, the drafted rule was broken into two (2) separate rules as follows:

First Part of Rule #8 as Rewrite Draft (Will make own Rule)

- (1) After initial application, if there is a change in seller affiliation, the provider shall provide written notice to the board, pursuant to section 436.420.3, RSMo, that the provider has authorized a new seller to designate the provider on the seller's preneed contracts. This notice shall be provided to the board within fifteen (15) days after the provider authorizes the seller to act and the notice shall contain, at least:
 - (A) Name and address of the provider;
 - (B) License number of the provider;
 - (C) Name and address of the seller; and
 - (D) Effective date of the authorization or agreement.
- (2) This notice may be provided to the board electronically, but the original signed document

shall be provided to the board by mail or hand delivery.

A motion was made by John McCulloch and seconded by Gary Fraker to approve the rewrite as drafted. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Second Part of Rule#8 (Will make own Rule)

- (2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;
- (3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;
- (4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;
- (5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.
- (6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.
- (7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
 - a. One signature line indicating that signature belongs both to the seller and provider; or
 - b. Separate signature lines for the seller and provider.

A motion was made by Gary Fraker and seconded by James Reinhard to approve Subsection 2 – 7 as a rule of it own, with changes to subsections 3 and 4, where it says contract, to add the word "preneed" to make sure it is clear to be a preneed contract. Amend subsection 5 to read "(5) The purchaser of the preneed contract shall receive either a copy or original of the contract." Remove the rest of the line. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Todd Mahn was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#9 Rule re: Contract requirements

Title: Consumer contract requirements

Purpose: This rule identifies requirements of all preneed contracts.

- (1) All preneed contracts and any agreements necessary to the preneed contract shall be in writing in Times New Roman or similar font in at least 8-point font size;
- (2) A preneed contract can contain both guaranteed and non-guaranteed items. Any preneed contract containing both guaranteed and nonguaranteed items shall clearly identify in writing in the contract that the contract contains both guaranteed and non-guaranteed items;
- (3) A preneed contract is voidable by order of a court of competent jurisdiction. Upon order of the court, the contract is voidable. Notice of the voidable contract must be provided to the seller and provider. The purchaser, upon notice, may then exercise the right to void the contract. Upon a valid court order and notice, a preneed contract is void.
- (4) All money under the preneed contract, including but not limited to payments, interest payments, and fees, is recoverable by the purchaser only if the purchaser elects to void the contract following receipt of a valid court order and notice to the seller and provider;

- (5) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the final signature of the provider, purchaser, seller's agent or seller on the agreement;
- (6) The seller, or his agent, must provide the purchaser with a fully executed original or copy of the preneed contract within five business days of the effective date of the contract;
- (7) All preneed contracts executed in the State of Missouri shall be accompanied by a disclosure sheet containing all necessary consumer disclosures on a form prescribed by the Board;
- (8) Preneed contracts can be cancelled or rescinded pursuant to Sections 436.400 to 436.520. The process for concluding the affairs of the preneed contract that is rescinded or cancelled shall be the same and the purchaser, seller and provider shall have the same rights and obligations under cancellation and rescission.
- (9) PUBLIC ASSISTANCE STAFF WILL CHECK
- (10) In addition to all other requirements set out in Chapter 333 or Sections 436.400 to 436.520, RSMo, including but not limited to § 436.425 and any validly promulgated rule, all preneed contracts executed on or after August 28, 2009 shall:
 - (a) Be in writing;
 - (b) Be executed by a seller who is in compliance with Chapter 333 and Sections 436.400 to 436.520, RSMo;
 - (c) Identify the contract beneficiary and set out in detail the final disposition of the dead body and funeral services, facilities and merchandise to be provided;
 - (d) If the contract is trust funded, identify the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
 - (e) If the contract is trust funded, identify the terms of the trust and related agreements among two or more of the contract seller, provider and trustee of the trust and that those individuals are in compliance with Chapter 333 and Sections 436.400 to 436.520;
 - (f) Contain the name and address of the seller, his or her agent, the provider and the purchaser.
- (11) All preneed contracts shall be compliant with Chapter 333 and Sections 436.400 to 436.520 on or before December 31, 2009.
- (12) Any contract that does not comply with the requirements of Chapter 333 and Sections 436.400 to 436.520 after December 31, 2009 shall be voidable.

DISCLOSURE SHEET AND REQUIREMENTS

Authority: 333.340 and 436.425

Sharon Euler, Assistant Attorney General, drafted the following rewrite for board review, by taking **#7 Rule re: clarification on pre-August 28, 2009 and post-August 28, 2009**, along with what is in **Second Part of Rule#8, subsections (2)-(7)** and **#9 Rule re; Contract requirements**, and combined them so all the contract requirements are in one rule.

#7 & 9

- (1) All preneed contracts shall be in Times New Roman or a comparable easily read font and at least 8 point type.
- (2) A preneed contract may contain both guaranteed and non-guaranteed items, but the preneed contract shall clearly identify those items which are guaranteed and which are not.
- (3) A preneed contract is voidable by order of court of competent jurisdiction. Upon final judgment finding a preneed contract is voidable, the purchaser may then exercise his or her right to void the contract by providing written notice to the seller and the provider. The purchaser must exercise his or her right to void the contract within 30 days of final judgment.
- (4) The purchaser must be provided a fully executed original or copy of the preneed contract within 30 days of the effective date of the contract.
- (5) Preneed contracts may be either cancelled or rescinded pursuant to the provisions of sections 436.400 through 436.520, RSMo. The process for cancellation or rescission shall be the same and the purchaser,

seller, and provider rights and obligations shall be the same whether the contract is cancelled or rescinded.

- (6) Preneed contracts effective and valid prior to August 28, 2009 shall remain valid and effective after August 28, 2009.
- (7) Preneed contracts executed after August 28, 2009 shall comply with all requirements of Chapter 333 and Sections 436.400 through 436.520, RSMo. However, preneed contracts that were valid under the relevant provisions of Chapter 436 on August 27, 2009 may be used to enter into valid preneed contracts after August 28, 2009 so long as any additional requirements in Sections 436.400 through 436.520, RSMo, are provided to purchasers no later than December 31, 2009 by supplement addendum to the preneed contract.

A motion was made by James Reinhard and seconded by Gary Fraker to rescind the approval of #7, the second half of #8, and #9 and approve the rewrite language as drafted. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

A motion was made by John McCulloch and seconded by Gary Fraker for final approval of **First Part of Rule #8 - Rewrite Draft** above. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#10 Rule re: trust funded contract requirements

Title: Requirements for deposit of and verification of payments

Purpose: This rule identifies what payments must be deposited into the preneed trust under a trust funded preneed contract and the seller's reporting requirements for deposits.

- (1) The seller of a preneed contract funded by a trust shall deposit all payments received pursuant to the terms of the preneed contract into the trust within sixty days of receipt of the funds by the seller, his agent or designee.
- (2) Within 30 days of request by the purchaser, the seller shall provide to the purchaser under a preneed contract, a written statement of all deposits made to the trust. The written statement shall include a detailed description of all deposits made by type of deposit and date of deposit. The written statement shall also include the principal and interest paid to date for the trust. The written statement shall be signed by the seller.

Authority: 333.340 and 436.430

A motion was made by James Reinhard and seconded by John McCulloch to take out this rule, as this rule does not add anything substantive that is not already in the statute. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#11 Rule re: Trustee investment restrictions

Title: Trustee investment restrictions under a trust funded preneed contract

Purpose: This rule identifies the investment restrictions of a trustee under a trust funded preneed contract.

- (1) A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to the parties to that preneed contract or trust;
- (2) The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to the parties to other preneed contracts or trusts.

Authority: 333.340 and 436.445

A motion was made by James Reinhard and seconded by Gary Fraker to approve the rule as drafted. Motion carried with Martin Vernon, Gary Fraker, and James Reinhard voting in favor with John McCulloch voting "no" in opposition. Todd Mahn was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#11 ½ An additional potential emergency rule re: independent financial advisor is an agent of trustee

Title: Independent financial advisor is an agent of the trustee

Purpose: This rule clarifies that an independent financial advisor is an agent of the trustee in a trust funded preneed contract.

An independent financial advisor, as provided in section 436.440.6, is an agent, as provided in section 436.440, of the trustee.

Authority: 333.340 and 436.440.6

A motion was made by Gary Fraker and seconded by James Reinhard to approve the rule as drafted. Motion carried with Gary Fraker, and James Reinhard voting in favor with John McCulloch voting "no" in opposition. Todd Mahn abstained from voting as he was not a part of discussion for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#12 Rule re: Insurance funded contracts

Title: Insurance funded contracts

Purpose: This rule identifies payment issues in insurance funded preneed contracts.

- (1) Payments collected by or on behalf of the seller which must be promptly remitted to the insurer or the insurer's designee do not include administrative or other fees built into the preneed contract;
- (2) The purchaser of an insurance funded preneed contract, may, upon agreement with the seller and provider, submit payments directly to the insurer or insurer's designee;
- (3) For any overages under the preneed contract that exceed the costs under the contract, the overages shall be distributed:
 - a. To the estate of the beneficiary named in the insurance policy; or
 - b. If the policy holder received public assistance to the State of Missouri if the State of Missouri was named as beneficiary or to the estate of the beneficiary if the State of Missouri was not named.

Authority: 333.340 and 436.450

A motion was made by James Reinhard and seconded by Todd Mahn to have Sharon Euler and Earl Krause review this rule more closely and come back to the Board with another proposed rule at the next meeting. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Group 3 Rules – Page 1

Rule re: Requirements for Written Notice

Title: Requirements for Written Notification to the Board

Purpose: This rule details the requirements for written notification to the Board.

All written notice as required by Chapter 333, Sections 436.400 to 436.520 or any rule properly promulgated pursuant to Chapter 333 and Sections 436.400 to 436.520 shall include:

- (1) The name of the seller and, if applicable the seller's agent;
- (2) The current business address and telephone number of the seller and, if applicable the seller's agent;
- (3) The license number of the seller and, if applicable, the registration number of the seller's agent;
- (4) The name of the provider;
- (5) The current business address and telephone number of the provider;
- (6) The license number of the provider;
- (7) The name of the purchaser;
- (8) The current address and if available, the telephone number of the purchaser;
- (9) The date the written notice was executed;
- (10) The signatures of all parties necessary to the particular requirement for written notice.

Authority: 333.340, 436.456

A motion was made by John McCulloch and seconded by James Reinhard to take out this rule, as this rule is not an emergency. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Group 3 Rules – Page 8

Rule re: Fees

Title: Fees pursuant to Chapter 333 and Sections 436.400 to 436.520

Purpose: This rule sets out all fees contained in Chapter 333 and Sections 436.400 to 436.520.

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

(A) Embalmer Practicum Student Registration Fee	\$25
(B) Embalmer Application Fee	\$200
(C) Embalmer Oral Examination Fee	\$125
(D) Embalmer Reciprocity Application Fee	\$300
(E) Embalmer Biennial Renewal Fee	\$200
(F) Funeral Director Application Fee	\$200
(G) Funeral Director Limited License Application Fee	\$200
(H) Funeral Director Reciprocity Application Fee	\$300
(I) Funeral Director Biennial Renewal Fee	\$200
(J) Reactivation Fee (up to one year lapse)	\$100
(K) Reactivation Fee (up to two year lapse)	\$200
(L) Establishment Application Fee	\$300
(M) Amended Establishment Application Fee	\$25
(N) Establishment Biennial Renewal Fee	\$250
(O) Reciprocity Certification Fee	\$10
(P) Duplicate Wallhanging Fee	\$10
(Q) Collection Fee for Bad Checks	\$25
(R) Law Book Requests (after initial request)	\$5
(S) Examination Review Fee	\$25
(T) Background Check Fee (determined by MSHP)	\$
(U) Provider License Application Fee	\$
(V) Provider Biennial Renewal Fee	\$
(W) Seller License Application Fee	\$

(X) Seller Biennial Renewal Fee	\$
(Y) Seller Agent Registration Fee	\$
(Z) Seller Agent Biennial Registration Renewal Fee	\$
(AA) Seller Annual Report Fee	\$
(BB) Seller Annual Report Late Fee	\$
(CC) Seller Agent Law Examination Fee	\$

- (2) All fees are nonrefundable.
- (3) The provisions of this rule hereby are declared severable. If any fee fixed by this rule is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions of this rule shall remain in full force, unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission

Authority: 333.340

A motion was made by Gary Fraker and seconded by Todd Mahn to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Adjournment

A motion was made by James Reinhard and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety. The meeting adjourned at 8:27 p.m. on Tuesday, August 25, 2009.

Executive Director: _____

Approved by the Board on: _____

Board of Embalmers			
Financial Statement - FY 2010			
as of February 28, 2010			
	Year-To-Date	Projected	Remaining
FY 2010 Beginning Fund Balance	1,111,382.33		
Revenue	346,279.86	1,023,412.00	677,132.14
Expense and Equipment	76,205.02	145,393.00	69,187.98
Total Transfers	276,560.22	583,800.19	307,239.97
Ending Fund Balance	1,104,896.95		

FY 2010 OA Cost Allocation					
Board Cost:					
	Auditor	Governor	Lt. Governor	Sec of State	
OA Expenditures	Expenditures	Expenditures	Expenditures	Expenditures	
\$578.36	\$0.00	\$119.16	\$24.22	\$576.75	
Atty General	Gen Assembly	Capitol Police	DOR Receipts		Total
Expenditures	Expenditures	Expenditures	Expenditures		
\$0.00	\$1,694.34	\$88.12	\$3,935.85		\$7,016.80

FY 2010 OA Cost Allocation					
Division Cost:					
	Auditor	Governor	Lt. Governor	Sec of State	
OA Expenditures	Expenditures	Expenditures	Expenditures	Expenditures	
\$82.40	\$0.00	\$16.98	\$3.45	\$82.17	
Atty General	Gen Assembly	Capitol Police	DOR Receipts		Total
Expenditures	Expenditures	Expenditures	Expenditures		
\$0.00	\$241.40	\$12.55	\$0.00		\$438.95

FY 2010 Total Cost:	\$7,455.75
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7004 1350 0003 1344 5655

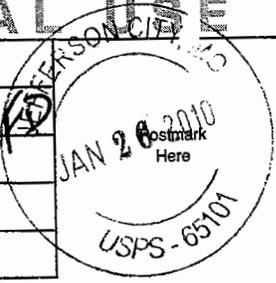
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OFFICIAL USE	
Postage	
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Return Receipt Fee (Endorsement Required)	
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Total Postage & Fees	\$

Sent To
Duane E. Harvey
 9100 Blue Ridge Boulevard
 Kansas City, MO 64138

PS Form 3800, June 2002 See Reverse for Instructions.



Harvey

THIS IS TO NOTIFY THE MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS THAT

RECEIVED

I WILL I WILL NOT

FEB 08 2010

ATTEND THE BOARD MEETING ON:

STATE BOARD OFFICE

Wednesday, March 31, 2010

AT 10:00 (A.M.) / P.M.

DUANE E. HARVEY
NAME



Jeremiah W. (Jay) Nixon
Governor
State of Missouri

Jane A. Rackers, Division Director
DIVISION OF PROFESSIONAL REGISTRATION

Department of Insurance
Financial Institutions
and Professional Registration
John M. Huff, Director

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
3605 Missouri Boulevard
P.O. Box 423
Jefferson City, MO 65102-0423
<http://pr.mo.gov/embalmers.asp>

Becky Dunn
Executive Director

573-751-0813
573-751-1155 FAX
800-735-2966 TTY
800-735-2466 Voice Relay Missouri

January 26, 2010

Duane E. Harvey
9100 Blue Ridge Boulevard
Kansas City, MO 64138

Dear Mr. Harvey:

Enclosed you will find the Notice of Disciplinary Hearing to be held on March 31, 2010 at 10:00 am in Festus, Missouri.

The details of the hearing are enclosed on the notice.

Please confirm that you will be available to attend this hearing by completing and returning the enclosed card for our files.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Becky Dunn".

Becky Dunn
Executive Director

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF EMBALMERS AND)
FUNERAL DIRECTORS,)

Petitioner,)

vs.)

DUANE E. HARVEY,)

Respondent.)

No. 08-2031 EM

DECISION

There is cause to discipline Duane E. Harvey for issuing nine death certificates with forged signatures in the medical certifications, for refusing to pay life insurance proceeds to the company entitled to them, and for obtaining and refusing to pay life insurance proceeds that he had no right to obtain or keep.

Procedure

On December 4, 2008, the State Board of Embalmers and Funeral Directors ("Board") filed a complaint to establish cause to discipline Harvey as a funeral director. On January 7, 2009, we consolidated for hearing and decision the Board's complaint against Harvey filed in Case No. 08-0594 EM with the complaint in this case.

On February 11, 2009, we granted leave for the Board to file an amended complaint as of February 10, 2009. We had served Harvey personally with the complaint in Case No. 08-0594 EM on May 28, 2008. On June 10, 2009, the Board filed Harvey's signed acceptance of service of the amended complaint in the consolidated Case No. 08-2031 EM, as we acknowledged in our order of June 11, 2009. Harvey did not respond to the complaints or the amended complaint.

On June 16, 2009, we held a hearing. Assistant Attorney General Edwin R. Frownfelter represented the Board. Harvey appeared without counsel. On June 19, 2009, the Board filed, with our leave, a corrected version of its Exhibit 7, which we admit as a substitute for the Exhibit 7 offered at the hearing.

The Board filed its written argument on August 27, 2009. Although we gave Harvey until September 28, 2009, to reply, he did not.

Findings of Fact

1. The Board licensed Harvey as a funeral director on August 22, 1993. His license has remained current and active through the present. Unless renewed, his license expires on May 31, 2010.

2. Harvey is the manager and licensed funeral director in charge of Duane E. Harvey Funeral Directors and the 9100 Group, LLC, which operates a funeral establishment with a business address at 9100 Blue Ridge Avenue, Kansas City, Missouri, 64138 ("Harvey Funeral Directors").

Count I – Death Certificates

3. As the funeral director in charge of Harvey Funeral Directors, Harvey is responsible for all aspects of the funeral establishment, including the responsibility to assure the accuracy and authenticity of death certificates that his staff prepares.

4. A death certificate is registered for any death that occurs in the state. The funeral director responsible for a decedent's funeral arrangements obtains the decedent's personal and demographic information required by 19 CSR 10-10.050(1). The funeral director enters the information on a form for the death certificate. The funeral director signs this portion of the death certificate as the "funeral service licensee or person acting as such."

5. The funeral director sends the death certificate to a physician, medical examiner or coroner, who completes the medical certification portion with the cause and manner of death and signs as the "certifier." The certifier returns the death certificate to the funeral director.

6. The funeral director files the death certificate with the local registrar.¹ The local registrar files the death certificate with the State Registrar at the Bureau of Vital Records, Department of Health and Senior Services.

7. Thomas Young, M.D., was the Chief Medical Examiner of Jackson County. In 2005, the staff at his office asked Harvey Funeral Directors for a copy of a death certificate for which Young's office had forgotten to keep an office copy. Upon receiving the copy from Harvey Funeral Directors, Young's staff noticed that the signature in the medical certification that purported to be Young's was not his signature. Further inquiry revealed that the copy was of a death certificate that had been filed with the local registrar but was not a copy of the death certificate whose medical certification Young had signed.

8. On the same day, Young's staff discovered another death certificate whose medical certification Young had signed but that now displayed Young's forged signature. The death certificate had not yet been filed with the local registrar.

¹Before being filed with the local registrar, the death certificate must contain a statement as to whether the deceased was embalmed. If the deceased was embalmed, a licensed embalmer must sign a statement that he or she did the embalming. 20 CSR 2120-2.030(4).

9. On June 29, 2005, Young's staff informed Irva J. Cross, State Registrar, of the forged signatures. Cross investigated. She found that since mid-2003, there had been other death certificates signed by Harvey, as the licensed funeral director, that had forged signatures on the medical certification.

10. On August 4, 2005, after unsuccessful attempts to speak with Harvey by telephone, Cross spoke with a member of Harvey Funeral Directors' staff, Anthony Milligan. Milligan asked if she was calling about the "two certificates," giving Cross the names of the decedents. Milligan explained that the secretary had just "re-did" the death certificates after some mistakes had been made on them.

11. On August 17, 2005, Cross met with Harvey about the issue of forged signatures. Harvey informed Cross that when the forged signatures were discovered, he had sanctioned the person responsible by withholding pay. When Cross informed Harvey that her investigation had revealed other forged signatures on death certificate medical certifications filed since mid-2003, Harvey offered the same explanation that Milligan had, that the secretary "re-did" some certificates on which mistakes had been made. Harvey also said that he could not monitor all staff activities.

12. Cross informed Harvey that she was referring the matter to the Board. She notified the Board of the results of her investigation on September 26, 2005.

13. During 2003 through 2005, Harvey employed Willie Meeks. Meeks' responsibilities included completing the personal and demographic portion of the death certificate, sending it to the physician or medical examiner to complete and sign the medical certification, having the death certificate returned to him, and then filing the signed death certificate with the local registrar.

14. On occasion, Harvey signed some of the death certificates in blank before Meeks completed the personal and demographic information.

15. Sometimes Meeks made mistakes in the preparation of death certificates. Harvey had instructed Meeks not to file any death certificates with corrections made on them. So when Meeks caught any errors after the medical certification was signed, he prepared a new certificate free of errors and sent it to the medical examiner or physician to complete and sign the medical certification again. This resulted in delays that Harvey found unacceptable.

16. Harvey had developed a practice of disciplining Meeks when his errors resulted in delays, including docking Meeks' pay or reducing his hours. So when Meeks found errors after the certifier had signed, Meeks typed a new certificate and forged the certifier's signature on the medical certification.

17. Meeks forged the certifier's signature on the medical certification of the death certificate for each of the following decedents:

<u>Forged Signature</u>	<u>Decedent</u>	<u>Date of Death</u>
a. Thomas Young	Rueben E. Clinton	May 25, 2005
b. Thomas Young	Ajay P. Udehan	August 11, 2004
c. Thomas Young	Daniel D. Johnson	October 10, 2004
d. Thomas Young	Jerry R. Watkins	June 10, 2005
e. Thomas Young	DeMarco M. Thompson	November 3, 2004
f. Thomas Young	Josephine E. Walker	November 12, 2004
g. Nicholas Comminellis	Belinda Pennington	December 20, 2002
h. James M. Stoddard	Nellie Marshall	November 11, 2004
<u>Forged Signature</u>	<u>Decedent</u>	<u>Date of Death</u>
i. Julie M. Alvarez	Benita Johnigan	August 22, 2004

18. Harvey signed each of these death certificates. Harvey did not know that the signatures on the medical certifications were forged.

19. All nine of the death certificates were filed with the local registrar.

Count II – Life Insurance Proceeds

20. Jackman Financial Corporation (“Jackman”) is a corporation located in Chicago, Illinois.

21. Among its services, Jackman offers insurance assignment financing to funeral homes. Funeral assignment financing is intended to assist funeral homes in financing the funerals of decedents who have life insurance, but whose estates or families are unable to pay the costs of funerals.

22. Jackman funded funerals performed by Harvey Funeral Directors through insurance assignment agreements on 28 occasions.

23. When requested to arrange a funeral for a decedent with life insurance, Harvey obtained from the beneficiary a guarantee and an assignment of the insurance proceeds to Jackman. Harvey then sent the assignment to Jackman. Jackman verified the information on the assignment form with the insurer. Jackman paid an advance to Harvey in the amount of the assignment, less a 4.5 percent fee, and submitted the assignment as a claim to the insurer. The insurer sent the entire amount of the proceeds to Jackman as the assignee. Jackman kept the entire amount of the proceeds.

24. The arrangement contemplated that Harvey was paid almost immediately after Jackman received the assignment and that the insurer delivered the proceeds to Jackman rather than to the beneficiary or Harvey.

Decedent Walter R. Barbour

25. On May 23, 2005, Harvey submitted to Jackman an assignment of insurance

benefits in the amount of \$10,577.95 for decedent Walter R. Barbour, who was insured by CUNA Mutual Insurance Company ("CUNA"). Betty Hogan, Barbour's common law wife, guaranteed and signed the assignment.

26. On May 27, 2005, based on this assignment, Jackman advanced to Harvey the sum of \$10,241.21, calculated as \$10,557.95 minus a fee of \$316.74, for payment of the Barbour funeral expenses.

27. On June 15, 2005, CUNA mistakenly sent the check for the proceeds in the amount of \$10,557.95 to Betty Hogan.

28. When Hogan received the check, she contacted Harvey and asked him for confirmation of the amount of the check and to whom it should be made payable. Harvey specifically instructed Hogan to write a check to "Duane E. Harvey Funeral Directors" for \$10,557.95.

29. Hogan delivered a check for \$10,557.95 to Harvey on June 27, 2005. Harvey deposited this sum into the account of his funeral home.

30. Jackman asked Harvey for the proceeds. On or about September 26, 2005, Harvey sent Jackman a check for \$10,557.95, drawn upon the account of Duane E. Harvey Funeral Directors at Bank of America. However, this check was returned as drawn on insufficient funds.

31. Jackman spoke with Harvey several times and requested that Harvey pay the \$10,557.95 to Jackman.

32. Harvey failed to pay the funds to Jackman. As a result, Jackman filed a lawsuit against Harvey and Betty Hogan in the Circuit Court of Jackson County.

33. On March 14, 2008, Harvey settled the lawsuit by paying the sum of \$10,557.95 to counsel for Jackman on the eve of trial. Jackman's counsel sent the amount to Jackman, minus \$3,177 for attorney fees and court costs.

Decedent Charlotte Robinson-Richie

34. On July 8, 2005, Harvey submitted to Jackman an assignment of life insurance benefits in the amount of \$8,000 for decedent Charlotte Robinson-Richie, who was insured by Reassure America Insurance Company ("Reassure"). Dora A. Taylor, the deceased's daughter, signed and guaranteed the assignment.

35. On July 11, 2005, based on this assignment, Jackman advanced the sum of \$7,760, calculated as \$8,000 minus a fee of \$240, to Harvey for payment of the Robinson-Richie funeral expenses.

36. On August 8, 2005, Reassure mistakenly paid the sum of \$8,000 to Harvey. Harvey received the check and deposited it into the account of Harvey Funeral Directors.

37. Despite requests to do so, Harvey never repaid the overpayment of \$8,000 either to Jackman or to Reassure.

Decedent Calvin Lee Goulden

38. On September 2, 2005, Harvey submitted to Jackman an assignment of life insurance benefits in the amount of \$5,622.16 for decedent Calvin Lee Goulden, who was insured by Caremark Insurance Company ("Caremark"). Dana Goulden, the deceased's widow, guaranteed and signed the assignment.

39. The Caremark claim was handled by Unum Life Insurance Company ("Unum").

40. On September 14, 2005, based on this assignment, Jackman advanced the sum of \$5,369.16, calculated as \$5,622.16, minus a fee of \$253 to Harvey, for payment of the Goulden funeral expenses.

41. On October 13, 2005, Caremark/Unum mistakenly paid the sum of \$5,622.16 to Dana Goulden, who delivered the funds to Harvey on October 23, 2005. Harvey deposited the funds into the account of his funeral home.

42. Despite requests to do so, Harvey did not disburse the overpayment of \$5,622.16 either to Jackman or to Caremark and benefited by failing to deliver those funds.

43. In the Reassure and Caremark matters, Harvey received \$13,622.16 in insurance payments that had been assigned to Jackman, and benefited by failing to deliver those funds either to Jackman or to the insurance companies who mistakenly distributed them to him.

44. Reassure and Caremark both suffered financial losses as they were never reimbursed by Harvey for the amounts they had mistakenly disbursed to Harvey or to the beneficiaries.

45. Although the principal amounts that Jackman advanced were ultimately repaid to Jackman in all three cases, Jackman suffered financial losses in all three cases due to lost opportunity to use the erroneously distributed funds, interest costs of 10 percent paid on the advanced amounts, and attorney fees and costs of litigation.

Conclusions of Law

We have jurisdiction of the complaint.² The Board has the burden to prove facts for which the law allows discipline.³

I. Count I – Death Certificates

Section 333.011 provides:

(3) “**Funeral director**”, any individual licensed to engage in the practice of funeral directing;

* * *

(7) “**Practice of funeral directing**”, engaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human

²Section 621.045, RSMo Supp. 2008. Statutory references are to RSMo 2000, unless otherwise noted.

³*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

bodies or engaging in the general control, supervision or management of the operations of a funeral establishment[.]

The practice of funeral directing includes complying with the laws on the preparation of death certificates. Section 193.145.4⁴ provides:

The funeral director or person acting as such in charge of final disposition of the dead body shall file the certificate of death. The funeral director shall obtain:

- (1) The personal data from the next of kin or the best qualified person or source available; and
- (2) The medical certification from the person responsible for such certification.

The person responsible for the medical certification is the appropriate physician, medical examiner or coroner, as provided in subsections 5 through 8 of § 193.145.

The Board contends that Harvey failed to supervise the activities of his staff in the preparation and submission of death certificates and that such failure resulted in the filing of death certificates containing forged signatures on the medical certifications.

The Board contends that these facts are cause for discipline under § 333.121.2(5), which authorizes discipline for:

[i]ncompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter[.]

Section 193.145.4(2) expressly makes its requirements a part of the functions or duties of a licensed funeral director.

⁴The amendments to § 193.145.4 in 2005 became effective on August 28, 2005. Laws 2005, at vii. S.B. 49, 93rd Gen. Assembly, 1st Reg. Sess'n. Meeks forged the certifiers' signatures on all of the death certificates listed in Finding of Fact 17 before the effective date. Even so, the amendments did not change the substance of the provisions as far as a licensed funeral director is concerned.

During closing argument, the Board's counsel stated:

. . . . What the statute requires is that the supervising funeral director bears responsibility for assuring the accuracy of the certificate that's filed.

And I think that we have a situation here where it's pretty clear that there weren't checks, there weren't procedures in place that made that possible. **That's not a matter of dishonesty as much as an issue of competence** in general oversight of the funeral home. Again, I'll stress that in the brief.

But I think it's a different case than the one we initially pleaded but still one where there are issues under the section of the statute 333.121.2, especially Section (5). Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty. That's a fairly broad definition. **I think we're talking mainly about competence issues rather than dishonesty issues** because the procedures were not in place.⁵

Accordingly, in the Board's proposed conclusions of law, it contends that Harvey's conduct constitutes incompetency, misconduct, and gross negligence.

Misconduct is the commission of wrongful behavior, intending the result which actually comes to pass or being indifferent to the natural consequences.⁶ On the other hand, gross negligence is a deviation from the standard of care so egregious as to demonstrate a conscious indifference to a professional duty. We may infer the requisite mental state from the conduct of the licensee "in light of all surrounding circumstances."⁷

Harvey also knew, or at least was responsible for knowing, that as part of the running of a funeral establishment it was his duty to obtain the medical certification from the doctor or medical examiner. The Board offered no evidence to show that Harvey should have known that a trusted employee was regularly forging signatures on medical certifications. Unless Harvey had been comparing the medical examiner's and private physicians' signatures to exemplars, he

⁵Tr. at 98.

⁶*Grace v. Missouri Gaming Commission*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001).

would have no way of discovering forgeries. There is no evidence that making such comparisons was a standard practice among funeral directors, especially in a metropolitan area where there are many physicians. Harvey's reliance on his employee, without more, fails to establish misconduct or gross negligence under § 333.121.2(5).

Incompetence is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.⁸ Incompetence is a state of being.⁹ Therefore, proving incompetence involves a broader-scale analysis, requiring more than proving incompetent acts. It must be shown that the complained-of acts flowed from the funeral director's incompetence – that is, being unable or unwilling to function properly as a funeral director.¹⁰

As just explained in regard to the misconduct and gross negligence issues, there is no evidence that Harvey's supervision of and reliance upon Meeks to properly prepare the death certificates was anything out of the ordinary. Significantly, we had no testimony from experts that Harvey's conduct was incompetent.¹¹ Therefore, we find no cause to discipline Harvey under § 333.121.2(5) for incompetence.

The Board contends that Harvey's conduct is cause for discipline under § 333.121.2(15), which authorizes discipline for “[v]iolation of any of the provisions of chapter 193[.]” Although other causes for discipline set forth in § 333.121.2 contain language requiring a scienter element, subdivision (15) contains none. Therefore, Harvey's failure to meet his duty under § 193.145.4 to obtain medical certifications from the proper person violates that statute regardless of whether

⁷*Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988).

⁸*Tendai v. Missouri Bd. of Regis'n for Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

⁹*Id.*

¹⁰*Albanna v. State Bd. of Regis'n for the Healing Arts*, 293 S.W.3d 423, 435-36 (Mo. banc 2009).

¹¹See *Tendai*, 161 S.W.3d at 370.

he knew or should have known that Meeks was forging the signatures on the nine death certificates at issue.¹² Those violations are cause for discipline under § 333.121.2(15).

The Board also contends that Harvey's conduct constituted criminal violations of Chapter 193 pursuant to § 193.315, which provides:

2. Any person who, without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by sections 193.005 to 193.325, certified copy of such certificate, record, or report shall be guilty of a class D felony.

* * *

7. Any person who knowingly neglects or violates any of the provisions of sections 193.005 to 193.325 or refuses to perform any of the duties imposed upon him by sections 193.005 to 193.325 shall be guilty of a class A misdemeanor.

The Board's burden of proving a criminal offense in a professional licensing proceeding is a preponderance of the evidence.¹³

“Preponderance of the evidence” is defined as that degree of evidence that “is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not.”¹⁴

The Board has failed to establish any violation of § 193.315.2 because it failed to show that Harvey had any intent to deceive. Further, the Board has failed to show that Harvey “knowingly neglected or violated” § 193.145.5 or that he refused to perform his duties.

The Missouri Supreme Court has interpreted the term “knowingly neglected,” as used in § 198.070.11, when reviewing convictions for knowing neglect of residents in a long-term care

¹²*Seeger v. Downey*, 969 S.W.2d 298, 299-300 (Mo. App., E.D. 1998).

¹³*State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000) (citation omitted).

¹⁴*Id.*

facility. The defendants had held ownership or supervisory positions in the home. An inspector had brought to their attention after several inspections that sanitation and medical conditions were unacceptable and, in some cases, deteriorating both generally in the facility and for specific residents. Eventually, the defendants were charged and convicted of having knowingly neglected three of the residents, all of whom had died.

The court held that proving knowing neglect requires more than showing that a defendant has ownership or supervisory authority over the facility.¹⁵ The court relied on the definition of knowingly provided in § 562.016.3:¹⁶

3. A person “acts knowingly”, or with knowledge,

(1) With respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist; or

(2) With respect to a result of his conduct when he is aware that his conduct is practically certain to cause that result.

The court held that the State proved a defendant had knowingly neglected a resident when the State showed that although the inspector had repeatedly made the defendant aware of the inadequate sanitary and medical conditions of the resident, the conditions remained inadequate or got worse.¹⁷

The Board presented no evidence showing that Harvey's conduct was tantamount to being “practically certain” that Meeks would produce death certificates with forged signatures on the medical certifications. The Board has failed to prove that Harvey violated subsection 2 or 7 of § 193.315 and, therefore, failed to establish such violations as cause for discipline under § 333.121.1(15).

¹⁵*State v. Dale*, 775 S.W.2d 126, 131 (Mo. banc 1989).

¹⁶RSMo 1986. Section 562.016 has remained unchanged to the present.

¹⁷*Id.* at 133-34.

Count II – Life Insurance Proceeds

The Board contends:

By accepting funds from an insurance company and beneficiaries which he knew had been assigned to Jackman and for which he had already received an advance payment, depositing those funds into his business account, using them for his own use and benefit, and failing to disburse the funds upon request to their rightful owner, Harvey committed acts of misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a licensed funeral director, in violation of Section 333.121.2(5), RSMo.[¹⁸]

Fraud is an intentional perversion of truth to induce another to act in reliance upon it.¹⁹ It requires the intent that others rely on the misrepresentation.²⁰ “Concealment of a material fact of a transaction, which a party has the duty to disclose, constitutes fraud as actual as by affirmative misrepresentation.”²¹ That duty arises when the concealer is a fiduciary or has superior knowledge.²² We may infer fraudulent intent from the circumstances of the case.²³ A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.²⁴ To “deceive” is “to cause to accept as true or valid what is false or invalid.”²⁵

We have already set forth the definitions of misconduct and gross negligence regarding Count I, above.

The Court of Appeals interpreted “functions or duties” in an identical licensing statute, as:

The ordinary meaning of “function” applicable here is: “1: professional or official position: OCCUPATION, 2: the action for which a person or thing is specially fitted or used or for which a

¹⁸ Amended Compl. ¶ 46.

¹⁹ *Hernandez v. State Bd. of Regis’n for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

²⁰ *Sofka v. Thal*, 662 S.W.2d 502, 506 (Mo. banc 1983); see also *Missouri Dental Board v. Bailey*, 731 S.W.2d 272, 274-275 (Mo. App., W.D. 1987).

²¹ *Daffin v. Daffin*, 567 S.W.2d 672, 677 (Mo. App., K.C.D. 1978).

²² *Nigro v. Research College of Nursing*, 876 S.W.2d 681, 686 ((Mo. App., W.D. 1994).

²³ *Essex v. Getty Oil Co.*, 661 S.W.2d 544, 551 ((Mo. App., W.D. 1983).

²⁴ *Hernandez*, 936 S.W.2d *supra* at 899 n.3.

²⁵ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 321 (11th ed. 2004).

thing exists.” The shared meaning elements of synonyms of “function” is “the acts or operations expected of a person or thing.” *Webster’s New Collegiate Dictionary*, 465 (1977). The ordinary meaning of “duty” applicable here is: “2a: obligatory tasks, conduct, service, or functions that arise from one’s position (as in life or in a group). 3a: a moral or legal obligation.” *Webster’s New Collegiate Dictionary*, 355 (1977).^[26]

The practice of funeral directing includes “engaging in the general control, supervision or management of the operations of a funeral establishment.”²⁷ The evidence makes clear that the arrangement that Harvey had with Jackman was to the funeral establishment’s advantage because it provided funds to pay for the funeral almost immediately, without having to wait for the insurer to pay out the proceeds. This arrangement was an integral part of Harvey’s provision of funeral arrangements for decedents and their families. Therefore, Harvey’s conduct with regard to his arrangements with the beneficiaries and Jackman was in the performance of his functions or duties as a licensed funeral director.

Robinson-Richie and Goulden

Harvey admits that the insurers mistakenly sent him the proceeds from the Robinson-Richie and Goulden policies. The Board also showed that Harvey refused to pay the proceeds to their right owner. Harvey emphasized in his testimony how he ran the equivalent of a “mom and pop” business and was always in need of money. Accordingly, Harvey had every reason to keep track of which funerals were paid for and which were not. The transactions between Harvey and Jackman were a regular feature of Harvey’s functions or duties as a funeral director, which made Harvey familiar with the procedures. The evidence establishes misconduct and dishonesty on the part of Harvey because he knew that the funds did not belong to him and yet retained them.

Section 333.121.2(5) authorizes discipline for such conduct.

²⁶*Board of Regis’n for the Healing Arts v. Levine*, 808 S.W.2d 440, 442 (Mo. App., W.D. 1991), interpreting § 334.100.2(5), RSMo Supp. 1983 and RSMo 1986.

²⁷Section 333.011(7).

We do not believe Harvey's protestations at the hearing that sloppy bookkeeping prevented him from knowing what was going on. Even if that were the reason, his conduct would constitute gross negligence, for which 333.121.2(5) also allows discipline.

The Board has also failed to establish fraud and misrepresentation. The evidence shows that his receipt of the proceeds regarding Robinson-Richie and Goulden was the result of the insurers' mistakes. We have no evidence of how he retained the funds other than that he just refused to pay them to Jackman. This fails to establish fraud and misrepresentation.

The Board also cites § 333.121.2(4), which allows discipline for "[o]btaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation." As just stated, the Board failed to establish fraud, deception or misrepresentation regarding the Robinson-Richie and Goulden proceeds. Therefore, Harvey's conduct is not cause for discipline under § 333.121.2(4).

The Board contends that his conduct with Jackman over the insurance proceeds for the deaths of Robinson-Richie and Goulden is cause for discipline under § 331.121.2(13) for "[v]iolation of any professional trust or confidence." Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.²⁸ It may exist not only between the professional and his or her clients, but also between the professional and his or her employer and colleagues.²⁹ As we have already stated, Harvey's actions were in the performance of his licensed functions or duties. The special skills that a funeral director has include those relating to financial arrangements unique to the funeral business and allowing survivors to obtain a timely funeral for their decedent. Jackman, as the company providing the financing service, had a right to rely on Harvey's integrity as a licensed funeral director in regard to these matters.

²⁸ *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

²⁹ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

Jackman's personnel tried to work these matters out with Harvey by asking for the money, but Jackman had to eventually obtain replacement proceeds from the insurers. In the meantime, Jackman lost interest that it was paying on the money and the opportunity to use the money to further its business. Harvey's conduct is cause for discipline under § 333.121.2(13).

Barbour

Harvey's conduct in regard to the insurance proceeds for the Barbour funeral differs from the other two. When Harvey instructed Hogan to give him the proceeds, he knew that he had already received payment for the funeral pursuant to the usual assignment-based agreement with Jackman. Harvey kept the full amount of the proceeds despite requests from Jackman to send it the amount, as it was entitled. Because Harvey refused to pay over the amount, Jackman had to file suit. Harvey did not pay Jackman until the eve of trial.

Harvey's defense at the hearing, that his retention of undeserved proceeds was the result of sloppy bookkeeping, simply does not hold up. Harvey had obtained the assignment for Jackman from Hogan, sent it to Jackman, received Jackman's advance on the proceeds minus its fee, and later directed Hogan to send the full amount of the proceeds to his funeral home. This shows that Harvey knew that he obtained and was refusing to turn over proceeds that belonged to Jackman.

Harvey's conduct is cause for discipline as misconduct and dishonesty, and in the alternative, gross negligence, under § 333.121.2(5). However, the Board, in its argument, fails to identify any evidence that constitutes fraud and misrepresentation regarding either how Harvey got Hogan to write him the check or the nature of his communications with Jackman. There is no basis to consider Harvey's insufficient funds check as a misrepresentation because there is no evidence that Harvey knew that he did not have sufficient funds in the checking account.

Therefore, the Board has failed to prove that Harvey's conduct constitutes fraud and

misrepresentation under § 333.121.2(5). For the same reason, we conclude that the Board failed to show cause for discipline under § 333.121.2(4).

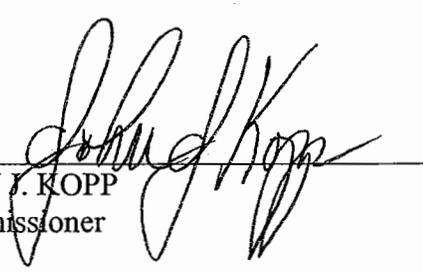
As already explained, Jackman had a right to rely on Harvey's integrity as a licensed funeral director regarding financial arrangements unique to the funeral business. Harvey violated this professional trust or confidence when he obtained the amount of the insurance proceeds from the beneficiary/assignee and then for a long while refused to pay that amount to Jackman. This is cause for discipline under § 333.121.2(13).

Hogan also had a relationship of professional trust or confidence with Harvey. However, there is no evidence as to how Harvey got Hogan to write him the check. She had no right to the funds, and Harvey's obtaining them may not have violated her trust in him as far as her part in the financing of the funeral was concerned. The Board has failed to show that Harvey's conduct violated the professional trust or confidence that Hogan had in him.

Summary

There is cause to discipline Harvey under § 333.121.2(5), (13) and (15).

SO ORDERED on December 9, 2009.



JOHN J. KOPP
Commissioner

SB1 Rule Tracking

Rule Number	Rule Name	Priority	Emergency	Internal Process						Filed w/ SB, JCAR & SOS	Emergency Rule Effective Date	Emergency Rule Expires	Appear in Missouri Register	End of Comment
				Sent to DIFP for Approval	DIFP Approval Received	Courtesy Copy Sent to SOS/JCAR	Pre-Approval Received from SOS	SBS Completed	Fiscal Notes Completed					
20 CSR 2120-2.100	Fees	2	X	8/31/2009	9/4/2009	9/14/2009	9/23/2009			9/24/2009	10/4/2009	4/1/2010	11/2/2009	
				8/31/2009	9/4/2009			9/15/2009	9/15/2009	9/24/2009			11/2/2009	12/2/2009
20 CSR 2120-2.130	Final Disposition as Defined in Chapter	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009			1/15/2010	2/14/2010
20 CSR 2120-2.140	Final Welfare cause for Injunction	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009			1/15/2010	2/14/2010
20 CSR 2120-2.150	Payment not determining factor of practice of funeral	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009			1/15/2010	2/14/2010
20 CSR 2120-2.160 Tabled until March, 2010 Meeting	Cemetery exception	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009							
				8/31/2009	9/4/2009			12/2/2009						
20 CSR 2120-3.100	Notice of Intent to Apply	1	X	8/27/2009	8/27/2009					8/28/2009	9/7/2009	3/5/2010	10/1/2009	NA
20 CSR 2120-3.105	Filing of Annual Report	2	X	8/31/2009	9/23/2009	9/11/09 (retracted on 9/14/09) NEED 9/23/09 SOS reviewed with the other, no separate review is needed.	9/23/2009			9/24/2009	10/4/2009	4/1/2010	11/2/2009	
				8/31/2009	9/4/2009			9/5/2009	9/14/2009	9/24/2009				11/2/2009
20 CSR 2120-3.115	Contact Information Up to Date	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	11/30/2009	12/4/2009				1/15/2010
20 CSR 2120-3.120	Display of License	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.125	Corporate Ownership of License	2	X	8/31/2009	9/4/2009	9/14/2009	9/23/2009			9/24/2009	10/4/2009		11/2/2009	
				8/31/2009	9/4/2009			9/15/2009	none needed	9/24/2009				11/2/2009
20 CSR 2120-3.200	Mandatory Consumer Disclosure	4		9/14/2009										
				9/14/2009				12/2/2009	12/2/2009					
20 CSR 2120-3.205	Seller Obligations	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.210	Seller Requirements Upon Change of Provider	4	X	9/14/2009										
				9/14/2009				3/25/2010	3/26/2010					
20 CSR 2120-3.215	Seller Ceasing Business	4	X	9/14/2009										
				9/14/2009				3/29/2010	3/25/2010					
20 CSR 2120-3.220	Seller Cancellation of Contracts	4	X	9/14/2009										
				9/14/2009				3/25/2010	none needed					

Rule Number	Rule Name	Priority	Emergency	Internal Process						Filed w/ SB, JCAR & SOS	Emergency Rule Effective Date	Emergency Rule Expires	Appear in Missouri Register	End of Comment
				Sent to DIFP for Approval	DIFP Approval Received	Courtesy Copy Sent to SOS/JCAR	Pre-Approval Received from SOS	SBS Completed	Fiscal Notes Completed					
20 CSR 2120-3.225	Seller Annual Report Requirements	4	X	9/14/2009										
				9/14/2009				3/25/2010	none needed					
20 CSR 2120-3.230	Disposition of Funds: Cancellation by Purchaser	4	X	9/14/2009										
				9/14/2009				3/25/2010	none needed					
20 CSR 2120-3.235	Seller Obligations Regarding Payments	4	X	9/14/2009										
				9/14/2009				12/2/2009	none needed					
20 CSR 2120-3.240	Record Retention	4	X	9/14/2009										
				9/14/2009				3/25/2010	none needed					
20 CSR 2120-3.300	Provider include funeral	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.305	Funeral Director Agent Registration	3	X	8/31/2009	9/4/2009		12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.310	Change in Seller Affiliation	3	X	8/31/2009	9/4/2009		12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.315	Provider Ceasing Business	4	X	9/14/2009										
				9/14/2009				3/25/2010	none needed					
20 CSR 2120-3.400	Preneed Agent: Requirement of Agent's Seller	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/2/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.405	Preneed Agents Must Take Missouri Law Examination	2	X	8/31/2009	9/4/2009	9/14/2009	9/23/2009	9/14/2009	9/14/09 (private) 9-15-09 (public)	9/24/2009	10/4/2009	4/1/2010	11/2/2009	
				8/31/2009	9/4/2009						9/24/2009			
20 CSR 2120-3.410	Preneed Agent's Seller Must Be Licensed	3	X	8/31/2009	9/4/2009		12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/3/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.500	Activities that do not constitute preneed	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009							
				8/31/2009	9/4/2009			12/2/2009	none needed					
20 CSR 2120-3.503	Irrevocable Contracts	4	X	9/14/2009										
				9/14/2009				3/25/2010	none needed					
20 CSR 2120-3.505	Types of Financing; other financing still preneed	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/3/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.510	Requirements of preneed contracts	3	X	9/14/2009										
				9/14/2009				3/25/2010	none needed					
20 CSR 2120-3.515	Single Premium Annuity Contracts	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/3/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.520	Trustee Investment Restrictions	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/3/2009	none needed	12/4/2009				1/15/2010
20 CSR 2120-3.525	Independent Financial Advisor is agent of Trustee	3	X	8/31/2009	9/4/2009	10/20/2009	12/1/2009			12/4/2009	12/14/2009	6/11/2010	1/15/2010	
				8/31/2009	9/4/2009			12/3/2009	none needed	12/4/2009				1/15/2010

This section has been requested to be included on the agenda for further discussion.

HCS SS SCS SB 1

24

21 agent for more than thirty days from the date of receipt.

22 4. It is unlawful for a seller, provider, or preneed agent to
23 procure or accept a loan against any insurance contract used to fund
24 a preneed contract.

25 5. Laws regulating insurance shall not apply to preneed
26 contracts, but shall apply to any insurance or single premium annuity
27 sold with a preneed contract; provided, however, the provisions of this
28 act shall not apply to single premium annuities or insurance policies
29 regulated by chapters 374, 375, and 376, RSMo, used to fund preneed
30 funeral agreements, contracts, or programs.

31 6. This section shall apply to all preneed contracts including
32 those entered into before August 28, 2009.

33 7. For any insurance-funded preneed contract sold after August
34 28, 2009, the following shall apply:

35 (1) The purchaser or beneficiary shall be the owner of the
36 insurance policy purchased to fund a preneed contract; and

37 (2) An insurance-funded preneed contract shall be valid and
38 enforceable only if the seller or provider is named as the beneficiary
39 or assignee of the life insurance policy funding the contract.

40 8. If the proceeds of the life insurance policy exceed the actual
41 cost of the goods and services provided pursuant to the nonguaranteed
42 preneed contract, any overage shall be paid to the estate of the
43 beneficiary, or, if the beneficiary received public assistance, to the
44 state of Missouri.

436.455. 1. A joint account-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. In lieu of a trust-funded or insurance-funded preneed contract,
5 the seller and the purchaser may agree in writing that all funds paid
6 by the purchaser or beneficiary for the preneed contract shall be
7 deposited with a financial institution chartered and regulated by the
8 federal or state government authorized to do business in Missouri in an
9 account in the joint names and under the joint control of the seller and
10 purchaser, beneficiary or party holding power of attorney over the
11 beneficiary's estate. There shall be a separate joint account established
12 for each preneed contract sold or arranged under this section. Funds
13 shall only be withdrawn or paid from the account upon the signatures

STALTER LEGAL SERVICES, LLC

WILLIAM R. STALTER
wastal@swbell.net

9300 METCALF AVENUE, SUITE 202
OVERLAND PARK, KANSAS 66212

TELEPHONE (913) 378-9920
FAX (913) 378-9924

000099 JAN 13 2010

January 11, 2010

Becky Dunn
Missouri State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
PO Box 423
Jefferson City, MO 65102-0423

RECEIVED
JAN 13 2010
STATE BOARD OFFICE

Re: Insurance Assignments

Dear Becky:

I continue to receive inquiries about whether the assignment of an insurance policy for a spend down is subject to Chapter 436.

The discussion of this issue at the December 9th meeting focused on whether the consumer and the funeral home enter into a contract. I suggested to the Board that issuance of a contract should not be conclusive of whether Chapter 436 applies. One factor the Board should consider is whether the transaction is made as an accommodation to the consumer. Another factor raised by Darlene and Greg Russell is whether the insurance policy was purchased in contemplation of the contract.

Enclosed are copies of forms that I provide to funeral directors who are willing to accept insurance assignments as an accommodation. The fundamental purpose of the forms is to allow the consumer to exclude the policy from resources. But I would also ask the Board members to note that the forms allow the consumer to also transfer the policy if he/she becomes dissatisfied with the funeral home. Consequently, the funeral home has not received consideration in the form of a commission or the assurance of providing a future funeral. It was not the Legislature's intent to have SB1 applied to this type of transaction.

Similarly, I have suggested to the Division of Professional Registration that a master trust could be established for the same purpose. But that suggestion begs the question of how many funeral homes have accepted funds or a certificate of deposit under the same circumstances? Accordingly, I would ask that this letter be included on the agenda for the next Board meeting.

Sincerely,



William Stalter

XYZ FUNERAL HOME, INC.
123 Main, AnyTown, MO 63333
FUNERAL AGREEMENT
(Insurance Funded - Non-guaranteed)

Date: _____

Contract No.: 000100 JAN 13 9

Purchaser : _____ Address: _____ City: _____ State: _____ Zip: _____ SS No.: _____ Date of Birth: _____	Beneficiary: _____ Address: _____ City: _____ State: _____ Zip: _____ SS No.: _____ Date of Birth: _____
--	---

XYZ Funeral Home, Inc., a Missouri corporation ("XYZ "), and Purchaser hereby enter into this Contract, and agree as follows:

1. **XYZ AND PURCHASER PROMISES.** Purchaser wants XYZ to provide the "Prearranged Funeral" set out on the "Statement of Goods and Services" attached hereto as Exhibit A. In conjunction with the execution of this Agreement, Purchaser has assigned one or more life insurance policies to XYZ (a copy of which assignment is attached hereto and incorporated by this reference, hereinafter referred to as the "Assignment"). XYZ agrees that XYZ shall apply all proceeds received from the life insurance policies set out in the Assignment towards the price of the Prearranged Funeral (and/or any other services or goods selected by Purchaser). Purchaser agrees that the price of the Prearranged Funeral (and/or any other services or goods selected by Purchaser) shall be determined pursuant to XYZ's General Price List and other price lists in effect on the date of Beneficiary's death. XYZ shall refund to Purchaser any excess life insurance proceeds. XYZ has no obligation to pay any premium on the life insurance. XYZ represents to Purchaser that XYZ shall not borrow from, or surrender, the life insurance. If the proceeds from the life insurance are less than the purchase price of the Prearranged Funeral, XYZ shall apply the life insurance's proceeds towards those goods and services selected by Purchaser that have a purchase price equal to or less than the proceeds and Purchaser shall be liable for any unpaid balance owed on Beneficiary's funeral. ***Purchaser may transfer this Contract at any time prior to XYZ having provided any funeral goods or services towards the disposition of Beneficiary's remains by giving written notice to XYZ, and upon receipt of such notice, XYZ agrees to execute in favor of the funeral home identified in the notice an assignment of the insurance policies designated by the Assignment.***

2. **PURCHASER'S SUCCESSORS.** Upon a Purchaser's death or legal incapacity, all rights and remedies granted to Purchaser under this Contract shall be enforceable by and inure to the benefit of Purchaser's surviving spouse, and if none, then to Purchaser's executor, guardian, or other legal representative, and if none, then to Purchaser's closest next-of-kin by blood willing to assume the financial responsibility for Beneficiary's funeral.

3. **OTHER PROVISIONS.** This Contract (including the attachments) constitutes the entire agreement between Purchaser and XYZ regarding the Prearranged Funeral and inures to the benefit of, is binding upon and is enforceable by such parties and their respective personal representatives, heirs, successors and permitted assigns. Purchaser's rights and obligations under this Contract are not assignable, voluntarily or involuntarily, without the prior written consent of XYZ. If any provision of this Contract or any application thereof is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application thereof shall not be affected or impaired thereby.

In Witness Whereof, XYZ and Purchaser has executed this Contract as of the date first above written.

XYZ Funeral Home, Inc.

by: _____

Purchaser: _____

Print Name: _____

Print Name: _____

RECEIVED

JAN 13 2010

XYZ FUNERAL HOME, INC.

101 Main Street
Town, MO 64000

**Assignment of Insurance Proceeds
and
Power of Attorney**

Funeral Agreement:

Contract Date _____

Beneficiary _____

Insurance Policy:

Policy No. _____

Insured _____

Insurance Company _____

As consideration to induce XYZ Funeral Home, Inc., a Missouri corporation ("XYZ") to issue the above described "Funeral Agreement", I hereby: certify that I am the owner of the Insurance Policy attached hereto and described above; certify that I have not borrowed against the Insurance Policy or made any surrender of the Insurance Policy; irrevocably assign to XYZ all of my rights in the Insurance Policy including its death benefits and other proceeds which may be payable under the Insurance Policy; direct that all such proceeds be paid and delivered directly to XYZ; constitute XYZ as my attorney-in-fact to endorse and collect in my name all checks and other payments of such proceeds, and to effect a change of the ownership and beneficiary designation of the Insurance Policy on the Insurer's records; and authorize the Insurance Company to release all information regarding the Insurance Policy to XYZ.

I have signed this document on _____, _____.

Owner's Signature

State of _____)

)

County of _____)

On this ____ day of _____, _____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, known to me to be the person who executed the within Assignment of Insurance Proceeds and Power of Attorney, and acknowledged before me and to me that he/she executed the same for the purposes therein stated.

My Commission Expires:

Notary Public

Print Notary Name

RECEIVED
JAN 13 2010

STALTER LEGAL SERVICES, LLC

WILLIAM R. STALTER
wastal@swbell.net

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OVERLAND PARK, KANSAS 66212

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FAX (913) 378-9924

February 17, 2010

Martin Vernon
Missouri State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
PO Box 423
Jefferson City, MO 65102-0423

Re: SB1 contract compliance

Dear Martin:

I receive calls and e-mails from Missouri funeral directors who question the actions taken (or not taken) by the State Board. Few understand the legal significance of SB1's licensing requirements, and how the Board's emergency rules enabled the preneed industry to continue to operate. But, the emergency rules are a temporary fix, and the Board must now prioritize the issues. I believe the Board acted appropriately on February 4th by making financial exams and the safety of consumer funds one of its priorities. However, the February 11th meeting about preneed agents and the Missouri Law Exam served as an important reminder that the Board must address many SB1 issues that are crucial to the different groups that comprise the preneed industry.

Many important SB1 issues are interrelated, and therefore may need to be addressed collectively. For example, the Board's approval of an internal/expedited financial review system (to reduce the role of the outside auditor) could delay the review of the 'preneed paper' that has been sold to Missouri consumers. Fiduciary institutions are being required to assume a greater role in administering that 'preneed paper', and need more guidance from the Board. The preneed paper issues should also influence the Board's next discussion of the Missouri Law Exam and preneed agent licenses.

Two basic positions emerged during the February 11th conference call. The funeral directors' camp views the preneed contract as the sale of a funeral, which requires the skills of a licensed funeral director. The proactive preneed seller views the preneed contract as a funding vehicle to pay for the goods and services described in the contract, which requires the skills of either a licensed insurance agent or a fiduciary.

Historically, most Missouri preneed contracts were of the guaranteed variety. If the preneed contract was performed with little or no variation to the prearranged funeral, then the contract represents the purchase of a funeral. But, some preneed contracts are not performed according to their terms. Families change the selections. Under those circumstances the contract represents a funding vehicle. Another fact to consider is that the number of non-guaranteed contracts and final expense products are increasing. The non-guaranteed preneed contract does not involve the sale of a funeral. It is a funding vehicle that uses a description of goods and services as a preference list.

February 17, 2010

Page 2

Licensing preneed salesmen will curb consumer abuses. But, did SB1's drafters incorporate the Missouri Law Exam because of convenience or because the Exam represents a fair measure of what a preneed salesman should know? If the preneed contract is in the nature of a funding vehicle, how many funeral directors can explain the laws that govern the administration and taxation of insurance and trusts? Should the Missouri Law Exam be expanded to address those issues?

The preneed paper issue should be assigned a high priority, but the ramifications are far reaching. With the exception of the Missouri Law Exam, I would suggest tabling the 'paper issues' until they can be identified and studied. My recommendation would include the mandatory consumer disclosures.

As much as it pains Don Lakin, the days of a uniform preneed contract form are long gone. And if the days of a single contract form are gone, a single, mandatory disclosure form will be problematic.

I have enclosed a redlined copy of mandatory disclosures. Preneed contracts can be very difficult to understand, and the one document the consumer is likely to read will be the disclosures. Sellers should be allowed to tailor the disclosures so long as the end product complies with the spirit of the law. And if they do so, the Board could require the seller to file both their contract and the disclosure for review.

In response to a Board member's remark that SB1 is not difficult to follow, I have enclosed two contract forms from prominent funeral homes who enlisted the help of their attorneys. With their permission, I have deleted the funeral home names and addresses, and highlighted questionable provisions. The attorneys found SB1 to be confusing, and certain contract provisions reflect that confusion.

It has been suggested that the industry's compliance with SB1 contract requirements (and the prior law's requirements for that fact) should be a low priority. In one respect, I agree. Many, if not most, funeral homes honor a preneed contract purchaser's demands regardless of what 'their paper' provides. But the same is not necessarily true when the funeral home is asked to service someone else's contract. SB1's portability requirements will cause more funeral homes to service a competitor's contracts. What the preneed paper says will become very important.

Sincerely,

William Stalter

Mandatory Preneed Contract Disclosures to Consumer

This Contract is a Legally Binding Document

~~Before you sign this contract, you~~ You should read it the preneed contract and ask questions to make sure you understand all terms and conditions before signing it. You may ~~wish to consult with your~~ legal counsel before you signing this contract.

Right to Receive a Copy of this Contract

~~The funeral home must provide you~~ You have a right to receive a copy of this contract. The preneed contract is funded by a trust at _____ Bank, -and you may contact the Preneed Resource Company by email to request a summary of the trust agreement at no charge. any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

Right to Change Providers

The law gives you the right to change the funeral home named as provider named in this the contract. The provider is the ~~funeral home or other service provider entity that -who will~~ has agreed to provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. The seller ~~You may NOT be billed you~~ for any additional fees or charges to change providers. The trustee may charge an administrative fee if the new provider does not have a trust to accept transfer of your account. A change in providers requires the agreement of the new provider and may require a new preneed contract unless the new provider agrees to assume the contract. ~~Your seller and provider~~ The Preneed Resource Company can help you determine whether a new contract ~~is~~ may be required or not.

Qualifying for Public Assistance

If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this irrevocable as part of your qualification for public assistance, you still may change providers at any time (subject to the conditions set out above) and make changes to the goods and services at any time (subject to possible price changes). However, you cannot cancel this contract and ~~cannot~~ receive any refund.

Your Right to Cancel this Contract

You have a right to cancel this contract at any time before your death. If you cancel this contract, you ~~may~~ are not be entitled to receive all of the funds you paid on this contract. The law allows the seller to retain the first 5% of your payments. If you want to cancel this contract, you must give the seller ~~named in this contract~~ and trustee written notice that you wish to cancel this contract. The Preneed Resource Company will provide a cancellation form for your use. Within 15 days of the receipt of the completed cancellation form, the trustee will make the refund distribution.

~~If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you the principal in the account within 15 days of your request. Interest will be distributed as provided in this contract.~~

~~If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance companies to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.~~

~~If your contract is funded with a trust, you must also provide written notice to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within 15 days.~~

Seller's Right to Cancel This Contract

The law provides that t~~The seller may cancel this contract if you fail to make any installment payment within 60 days of when it is due. The contract provides a 90 day grace period for late payments. If you fall more than 90 days behind on a payment, the Preneed Resource Company will provide notice to you. If you are unable to bring your account current within 30 days of the notice, your contract will remain in force, but all promises by the seller to guarantee the prices of services and merchandise will terminate. Your payments will remain in trust, earning income, and you will be able to use those funds against the purchase of funeral goods and services at the time of death. If the seller should decide to terminate the contract, the trustee will refund to you all payments in excess of the first 15% of the purchase price (or 5% for non-guaranteed items). Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within 30 days of notice. If you don't pay the balance within 30 days, then the seller can provide the funds to the provider at the time of death to be credited towards your~~

~~funeral services or the seller can cancel the contract and will refund you 85 percent of your contract payments made.~~

What Happens if I Die Before My Contract is Paid in Full?

~~If you die before the contract is paid in full, your survivors have the option in trust funded or joint account funded contracts to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract value of your trust account will be applied to the price of your funeral based on the provider's current prices.~~

~~If your preneed contract is funded through an insurance policy, you should consult your insurance policy.~~

Funeral Home, Inc.
 Prearrangements, Inc.
 , MO 6 Phone: (816)

Trust Funded Preneed Funeral Contract No.

Purchaser: _____ Address: _____ City: _____ State: _____ Zip: _____ SS No.: _____ Date of Birth: _____ Phone no. _____ email _____	Beneficiary: _____ Address: _____ City: _____ State: _____ Zip: _____ SS No.: _____ Date of Birth: _____ Phone no. _____ email _____
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 Funeral Home, Inc., a Missouri corporation ("Funeral Home"); 's Prearrangements, Inc., a Missouri corporation ("Seller") and the undersigned (the "Purchaser") enter into this Contract for the performance of funeral services and goods for the above-named Beneficiary as set out on page 3 (the "Pre-Arranged Funeral"). Funeral Home, Seller and Purchaser agree as follows:

1. PREARRANGED FUNERAL . If the Total Contract Purchase Price has been paid in full, then Funeral Home shall provide the Prearranged Funeral services and merchandise set out in Sections A and B on page 3 without additional cost to Purchaser (the "Guaranteed Services and Merchandise"). The services and merchandise described in Section C as "Non-Guaranteed Items" on page 3 are those that Purchaser intends to purchase from Funeral Home at Beneficiary's death, or to be used for cash advance expenses such as flowers. Purchaser's Account funds allocated to Non-Guaranteed Items pursuant to Paragraph 2, together with the income credited to such funds, shall be used at Purchaser's discretion. Funeral Home will refund to Purchaser any Non-Guaranteed Items funds not applied to Beneficiary's final funeral arrangements. If the Beneficiary dies before the Total Contract Purchase Price has been paid, the Purchaser shall pay the Seller the remaining amount due.

Purchaser acknowledges that style, construction and ornamentation of funeral merchandise, including caskets, change from time to time, and that funeral merchandise available at Beneficiary's death may be somewhat different from that described in Sections A and B on page 3. Accordingly, this Contract shall be complied with if the funeral merchandise provided at Beneficiary's death is of at least the same quality as, and is as similar as reasonably possible to, that described herein, whether or not made by the same manufacturer.

2. PURCHASER PAYMENTS TO BE DEPOSITED IN TRUST. All payments made towards this Contract shall be deposited in a separate account ("Purchaser's Account") in the 's Prearrangements Trust ("Pre-Need Trust") at BANK, , Kansas City, Missouri, 64106, telephone serving as "Trustee". Funeral Home shall be entitled to recover from the Pre-Need Trust an Origination Fee of 5% of the Total Contract Purchase Price and a Sales Expense of 10% of the Total Contract Purchase Price. If the down payment is less than the Total Contract Purchase Price, Purchaser will pay the balance owed by making the "Monthly Payments" set out on the Pre-Arranged Funeral Plan. Payments deposited to Purchaser's Account will be allocated first to the purchase price of Guaranteed Services and Merchandise, and then to the Non-Guaranteed Items. The regulation and oversight of preneed contracts by the State of Missouri is funded in part by a Reporting Fee that is charged to each preneed contract. The Trustee also charges a Contract Fee as sponsor of the Preneed Trust.

3. PURCHASER'S RIGHT TO CANCEL. PURCHASER MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO THE THIRD BUSINESS DAY AFTER THE DATE SET OUT BELOW. Unless Purchaser makes the irrevocable election set out on page 3, Purchaser may cancel this Contract at any time prior to Funeral Home's delivery of any portion of the Prearranged Funeral, by providing written notice to Seller and Trustee, and Purchaser will receive a refund of all payments paid into Purchaser's Account, excluding income thereon and excluding the Origination Fee if it has been withdrawn.

4. DEATH OF BENEFICIARY BEFORE PAYMENT IN FULL. If Beneficiary dies before the Total Contract Price is paid in full, the Purchaser shall pay the Seller the remaining amount due. Otherwise the Funeral Home shall provide a full credit for all payments the Purchaser has made toward the cost of the Beneficiary's funeral at current prices.

Date: _____

Purchaser Signature: _____

_____ 's Prearrangements, Inc. (Seller) License NO. _____

Total Contract Purchase Price: \$ _____

By: _____

Preneed Agent Name: _____

_____ Funeral Home (/Provider) License NO. _____

Preneed Agent License NO. _____

By: _____

Preneed Agent Signature: _____

5. **SELLER'S RIGHT TO CANCEL CONTRACT.** Seller shall have the right to cancel the Contract if Purchaser is in default of any payment for over 60 days. Prior to cancelling the contract, Seller shall notify Purchaser of the default, and if the Purchaser fails to remit the required payment within 30 days of the postmarked date of the notice, Seller may, at its option, elect to (1) cancel the Contract and refund to Purchaser 85% of the payments made by Purchaser; or (2) continue the contract as a non-guaranteed contract, under which Purchaser will receive full credit toward the costs of the PreArranged Funeral or cremation in an amount equal to the value of the payments made.
6. **PRENEED TRUST ADMINISTRATION.** The Seller and Trustee shall maintain accounting records reflecting the deposit of Purchaser's payments, the allocations of income, losses and expenses generated by the Preneed Trust to Purchaser's Account, and all distributions from Purchaser's Account. All income, net of losses, earned by Purchaser's Account shall be the property of the Seller, except as required to pay Trustee's expenses. Trust expenses charged to Purchaser's Account may include Trustee's fees, legal and accounting fees, investment expenses, audit fees, income taxes, expenses associated with the establishment of the Preneed Trust, and other reasonable and proper expenses. The terms of the Preneed Trust are incorporated herein by this reference.
7. **FUNERAL HOME'S OBLIGATIONS DISCHARGED.** Upon providing the Prearranged Funeral (or other funeral benefits pursuant to special arrangements acceptable to Purchaser pursuant to Paragraph 9) Funeral Home shall have fulfilled all of its obligations under this Contract, and Funeral Home shall be entitled to receive all of the funds in Purchaser's Account.
8. **DEATH OUTSIDE FUNERAL HOME'S SERVICE AREA.** If Beneficiary's death occurs outside of a 50-mile radius of the Funeral Home, Seller shall at its option either (1) provide the Pre-Arranged Funeral, in which case Purchaser agrees to pay to Funeral Home the additional cost of transporting Beneficiary's remains to Funeral Home or other required services; (2) provide for the furnishing of comparable funeral services and merchandise by a licensed mortuary selected by next-of-kin of the Purchaser; or (3) pay over to Purchaser in fulfillment of all obligations under this Contract an amount equal to all sums actually paid in cash by the Purchaser under this Contract, except the Origination Fee.
9. **ALTERNATIVE PROVIDER.** Upon proper written notice, Purchaser may select an alternative funeral home to perform this Contract. Such notice must include the name, address and contact information of the alternative funeral home and its preneed trustee. The notice must adequately reflect the alternative funeral home's agreement to perform this Contract. If the alternative funeral home does not designate a preneed trust, the alternative funeral home agrees that Trustee shall continue to administer the Purchaser's Account, and the alternative funeral home thereby releases Trustee regarding the administration of the Purchaser's Account.
10. **EXCLUSION OF WARRANTIES.** The only warranties express or implied, granted in connection with the merchandise described herein, are the express written warranties, if any, extended by the manufacturers thereof. No representations or warranties, express or implied, including the implied warranties of merchantability or fitness for a particular purpose, are extended by Funeral Home. Purchaser understands that Funeral Home makes no representations or warranties, express or implied, that any of the merchandise purchased from Funeral Home will delay the decomposition of human or cremated remains or will protect such remains from, or be resistant to the entry of, gravesite substances or elements.
11. **OTHER PROVISIONS.** By rule, the Missouri State Board of Embalmers and Funeral Directors may require that certain disclosures be provided to Purchaser. Those disclosures will be provided by a separate document that may include additional disclosures by Funeral Home (the "Disclosure Addendum"). This Contract (including the Pre-Arranged Funeral, the Disclosure Addendum and the Preneed Trust) constitutes the entire agreement between Purchaser and Funeral Home regarding the Prearranged Funeral. Purchaser may obtain a summary of the Preneed Trust by making a written request of Trustee. The Contract inures to the benefit of, is binding upon and is enforceable by such parties and their respective personal representatives, heirs, successors and permitted assigns. Purchaser's rights under this Contract are not assignable, voluntarily or involuntarily, without the prior written consent of Funeral Home. This Contract is governed by Missouri law. If any provision of this Contract or any application thereof is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application thereof shall not be affected or impaired thereby. Upon a Purchaser's death or legal incapacity, all rights and remedies granted to Purchaser under this Contract shall be enforceable by and inure to the benefit of any individual granted the right of sepulcher by Beneficiary in writing pursuant to applicable Missouri law. In the absence of a written right of sepulcher, the Contract may be enforced by Purchaser's surviving spouse, and if none, then by Purchaser's legal representative, and if none, then to Purchaser's closest next-of-kin by blood.

Funeral Home
PreArranged Funeral Plan

A. SERVICES -- GUARANTEED PRICE Contract No. _____

Basic Services of Funeral Director/Staff	\$	_____
Embalming	\$	_____
Cremation	\$	_____
Use of Facilities		
Funeral	\$	_____
Visitation	\$	_____
Memorial Service	\$	_____
Graveside Service	\$	_____
Transfer of Remains(first call)	\$	_____
Hearse	\$	_____
Family Car	\$	_____
Pallbearer Car	\$	_____
Other Auto(s)	\$	_____
Cemetery Tent	\$	_____
Other Services	\$	_____
TOTAL SERVICES:		\$ _____

B. MERCHANDISE---GUARANTEED PRICE

Burial Casket, Description	\$	_____
Outer Burial Container/Vault	\$	_____
Other Memorial Supplies	\$	_____
Guestbook	\$	_____
Memorial Folders	\$	_____
Thank you cards	\$	_____
Rental Casket		
Urn	\$	_____
Urn Vault	\$	_____
Other	\$	_____
TOTAL MERCHANDISE:		\$ _____

PURCHASE PRICE OF GUARANTEED SERVICES AND MERCHANDISE: \$ _____

NON-GUARANTEED ITEMS:

Transportation	\$ _____	Clergy Honorarium	\$ _____	Flowers	\$ _____
Mileage	\$ _____	Music Honorarium	\$ _____	Police Esc.	\$ _____
Death Certificates	\$ _____	Monument Dates	\$ _____	TV/DVD	\$ _____
Grave Open/Close	\$ _____	Sales Tax Estimate	\$ _____	Obituary	\$ _____
TOTAL FUNDS ALLOCATED TO NON-GUARANTEED ITEMS:					\$ _____
TOTAL PREARRANGED SERVICES AND MERCHANDISE					\$ _____

CONTRACT SUMMARY AND PAYMENT SCHEDULE

Total PreArranged Funeral Services and Merchandise:	\$ _____
Missouri reporting fee:	\$ 36.00
Trustee Contract Fee:	\$ 5.00
Total Contract Purchase Price:	\$ _____
Down Payment Amount:	\$ _____
Balance Due:	\$ _____
If not paid in full, Invoice billing has a \$3.50 per month fee)	
First Payment Due Date:	_____ (month/day/year)
Number of Payments:	_____

Total Monthly Payment: \$ _____ **Purchaser's Initials:** _____

IRREVOCABLE CANCELLATION ELECTION

To become eligible to receive public assistance under applicable state or federal law, Purchaser hereby elects to make this Contract irrevocable. In doing so, the funding of this Contract shall be deemed irrevocable, and the Purchaser shall no longer be able to receive a refund of the payments. It is understood and agreed that as a result of this election, neither Purchaser nor Purchaser's estate shall have any right, title or interest in the funds paid under this Contract or any income earned thereon.

Date: _____ **Purchaser Signature:** _____

_____ *Funeral Home, Inc.*

_____ *St. Louis, Missouri* _____
(314) _____

_____ FUNERAL HOME, INC. PRE-NEED CONTRACT

Contract Date: _____

Contract No.: _____

Purchaser Information:	DOB	SS No.	Address	City	State	Zip Code
Beneficiary Information:	DOB	SS No.	Mail c/o:	Phone No.		

_____ Funeral Home, Inc. (ASeller) and the undersigned (APurchaser) hereby enter into this Contract for the performance of the APrearranged Funeral set out on the attached Addendum Of Funeral Goods And Services (the AAddendum), such services to be provided by _____ Funeral Home, Inc. (AFuneral Home). Seller and Purchaser agree as follows:

1. FUNERAL ARRANGEMENT. (a) Prearranged Funeral. The Prearranged Funeral to be provided pursuant to this Contract is defined and described by the Addendum. If the Sales Price has been paid in full at the time of Beneficiary's death, then Funeral Home shall provide the Beneficiary's Prearranged Funeral without additional cost to Purchaser. (Cash Advances described on the Addendum cannot be guaranteed. Purchaser will receive a credit equal to the cash advance amount reflected on the Addendum, together with the income earned by such funds.)

(b) Substitution. Purchaser acknowledges that style, construction and ornamentation of funeral merchandise, including caskets, change from time-to-time and that funeral merchandise available at Beneficiary's death may be somewhat different from that described on the Addendum. Accordingly, this Contract shall be complied with if the merchandise provided at Beneficiary's death is of at least the same quality as, and is as similar as reasonably possible to, that described to Purchaser, whether or not from the same manufacturer.

2. PURCHASER PAYMENTS. Funeral Home shall retain as its own money, and for its unrestricted use, all payments applied to this Contract until Funeral Home has retained 10% of the sales price of the Prearranged Funeral, excluding any amount designated for Cash Advances (the ASales Expense). After Funeral Home has retained the Sales Expense, Funeral Home shall deposit all subsequent payments (net of any administrative charges) into Funeral Home's Preneed Trust, to be administered as a separate sub account (APurchaser's Account) of the Preneed Trust. The term APreneed Trust refers to the trust governed by that certain A_____ Funeral Home Missouri Preneed Trust Agreement between Funeral Home and _____, as ATrustee, as from time-to-time amended. The Contract's Sales Price and down payment are set out on the Addendum. If the down payment is less than the Sales Price, Purchaser intends to pay the balance of the Sales Price by making the AMonthly Payments set out on the Addendum (which includes an administrative charge of \$6.00 unless payments are made by automatic withdrawals). If, at Beneficiary's death, the Sales Price has not been paid in full, or if Purchaser fails to make any Monthly Payment within 90 days of its due date, then Funeral Home shall provide funeral benefits for Beneficiary's final arrangements which then have a current retail price equal to Purchaser's Account, all pursuant to special arrangements made with Purchaser. Payments deposited to the Preneed Trust will be allocated first to the purchase price of merchandise and service selections, and then to the Cash Advance Credit. If the Cash Advance Credit exceeds the cash advance expenses incurred at Beneficiary's death, Funeral Home will refund the excess to Purchaser.

3. RIGHT TO CANCEL. PURCHASER MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO THE THIRD BUSINESS DAY AFTER THE DATE SET OUT BELOW. In addition, Purchaser may cancel the Preneed Contract within 30 days after the date set out below and receive a full cash refund of all payments. Unless Purchaser has elected to make the Contract irrevocable, Purchaser may also cancel this Contract at any time after the initial 30 days and Purchaser will receive a refund equal to that amount which has been deposited into trust regarding the Contract.

4. PRENEED TRUST ADMINISTRATION. All income earned by the Preneed Trust shall be accrued and allocated among all Purchaser's Accounts. If the Prearranged Funeral is provided pursuant to the terms of this Contract, Funeral Home shall be entitled to all trust funds allocated to Purchaser's Account. Trustee, or its agents, shall maintain accounting records showing all deposits allocated to Purchaser's Account, and all net income, losses and expenses generated thereby, and all distributions therefrom. Trust expenses charged to Purchaser's Account may include Trustee's fees, legal and accounting fees, investment expenses, audit fees, income taxes, and all other reasonable and proper expenses. The terms of the Preneed Trust are incorporated herein by reference as if set forth verbatim.

5. DEATH OUTSIDE FUNERAL HOME'S SERVICE AREA. If Beneficiary's death occurs outside a 50 miles radius of Funeral Home, the Purchaser may, subject to the terms of this paragraph, request either the Funeral Home's performance of the Prearranged Funeral or a distribution of Purchaser's Account pursuant to this paragraph. If Purchaser requests Funeral Home's performance of the Prearranged Funeral, Purchaser agrees to pay to Funeral Home the additional cost of transporting Beneficiary's remains to Funeral Home. Purchaser further agrees that Funeral Home may contract with another funeral home to provide some portion(s) of Beneficiary's Prearranged Funeral. If Purchaser requests a distribution of Purchaser's Account, Funeral Home shall instruct Trustee to distribute to Purchaser an amount equal to the payments deposited to the Preneed Trust, plus half of the earnings allocated to Purchaser's Account. Funeral Home agrees that the refund shall be not less than the aggregate payments (net of any monthly administrative charges) made by Purchaser to this Contract.

6. FUNERAL HOME'S OBLIGATIONS DISCHARGED. Upon providing the Prearranged Funeral (or other funeral benefits pursuant to special arrangements acceptable to Purchaser under earlier paragraphs hereof) to Purchaser's approval, Funeral Home shall be deemed to have performed this Contract and discharged of all of its obligations under this Contract. If Beneficiary's death occurs within a 50 mile radius of Funeral Home and Purchaser decides not to use Funeral Home to provide the Prearranged Funeral (or other funeral merchandise and services), Funeral Home may discharge its obligations to Purchaser by paying to Purchaser, or the funeral home which provided Beneficiary's final arrangements, an amount equal to the payments deposited to the Preneed Trust plus interest of 1% (computed annually on a simple basis from the January 1st following the date the Sales Price was paid in full). Upon Funeral Home's representation to Trustee that Funeral Home has fully performed its obligations under this Contract, Trustee shall distribute to Funeral Home (or as Funeral Home directs) all Preneed Trust funds allocated to Purchaser's Account.

7. EXCLUSION OF WARRANTIES. The only warranties, express or implied, granted in connection with the merchandise described herein, are the express written warranties, if any, extended by the manufacturers thereof. No representations or warranties, express or implied, including the implied warranties of merchantability or fitness for a particular purpose, are extended by Seller or Funeral Home. Purchaser understands that Seller and Funeral Home make no representations or warranties, express or implied, that any of the merchandise purchased from Funeral Home will delay the decomposition of human or cremated remains or will protect such remains from, or be resistant to the entry of, gravesite substances or elements.

8. IMPOSSIBILITY OF PERFORMANCE. Funeral Home expressly reserves the right, any time that it finds itself unable to fulfill any part of this Contract due to a labor dispute, war, epidemic, destruction by fire or flood, an Act of God, an order of court or any other unforeseen contingency or disaster, to refund to Purchaser the greater of (i) all monies paid hereunder with respect thereto or (ii) Purchaser=s Account, and , upon doing so, this Contract shall become null and void.

9. CANCELLATION. In the event of written notice of cancellation, Funeral Home will return 100% of the funds of a REVOCABLE pre-need trust, paid by the Purchaser, but excluding the interest, within 15 days of receiving the written notice. In the event of written notice of transfer (Paragraph 11 below), 100% of the funds and interest will be transferred to a consenting provider.

10. TRANSFER. Purchaser has the right to transfer the provider designation to another provider, provided such is in writing to Funeral Home.

11. NATURE OF CONTRACT. The funds cannot be returned to the Purchaser if this Contract is defined as an IRREVOCABLE pre-need contract pursuant to the provisions of Chapters 436.035, 436.053 or 208, RSMo when the Beneficiary is on public assistance (i.e., Medicaid). Then such funds may only be used toward funeral services and may not be returned to the Purchaser or Beneficiary.

This Contract is (circle one): [REVOCABLE] [IRREVOCABLE]

12. GUARANTEED/NON-GUARANTEED CONTRACTS. This is a AGuaranteed Contract.≡ The Guaranteed and Non-guaranteed sections of this pre-need Contract are clearly stated. AGuaranteed≡ means that Funeral Home guarantees to the Purchaser that all of the costs for those sections (i.e., A and B) will be no greater than the price designated in this Contract upon the pre-need Beneficiary=s death.

OTHER PROVISIONS.

13. This Contract (including the Addendum and the Preneed Trust) constitutes the entire agreement between Purchaser and Funeral Home regarding the Prearranged Funeral. The Contract inures to the benefit of, is binding upon and is enforceable by such parties and their respective personal representatives, heirs, successors, and permitted assigns. Purchaser=s rights under this Contract are not assignable, voluntarily or involuntarily, without the prior written consent of Funeral Home. This Contract is governed by Missouri law. If any provision of this Contract or any application thereof is deemed invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions, or any other application thereof, shall not be affected or impaired thereby. Upon a Purchaser=s death or legal incapacity, all rights and remedies granted to Purchaser under this Contract shall be enforceable by and inure to the benefit of any individual granted the right of sepulcher by Beneficiary in writing pursuant to applicable Missouri law. In the absence of a written right of sepulcher, the Contract may be enforced by Purchaser=s surviving spouse, and, if none, then by Purchaser=s legal representative, and, if none, then by Purchaser=s closest next-of-kin by blood.

14. (1) When this Contract is funded with a trust and the Beneficiary dies before all trust installments have been paid (dies prior to the agreed due date of the last installment), the Purchaser, or other authorized family representative, will owe the Funeral Home an extra amount for the funeral services. The extra amount will be equal to the total charges set forth in this Contract, less the amount payable out of the trust. (The Purchaser, or other authorized family representative, will owe added ANon-guaranteed≡ costs if those costs are greater at death than as listed in this Contract.) AND (2) if the Beneficiary dies before all trust installments have been paid (dies after the agreed due date of the last installment), all sections of this Contract become ANon-guaranteed≡ and the funds paid to date, plus interest, will be applied towards the full current at-need costs.

15. If, for any reason, Funeral Home is unable to provide the merchandise and services, as contracted for, Funeral Home may make reasonable substitution of comparable merchandise and services.

16. Prices listed on this Contract are for funeral services, ceremonies, rites, and/or burial on a weekday. Charges incurred on Saturdays, Sundays, holidays, or evening ceremonies may be additional. Prices listed are for a death and burial within a distance of 30 miles from any Funeral Home chapel. Charges for transportation and services beyond the 30 miles distance may be additional.

17. The Purchaser acknowledges receipt of a completed copy of this Contract, a General Price List, a Casket Price List, and an Outer Burial Container Price List, with attendant statements concerning embalming, required purchase of caskets or outer burial container and warranty disclaimers.

18. If charges for embalming services are included in this Contract, permission for the embalming is hereby given to Funeral Home.

In Witness Whereof, Seller and Purchaser have executed this Contract as of the date first above written.

Purchaser=s Signature: _____

Total Contract Sales
Price:

Print Purchaser=s Name: _____

Print Purchaser=s Phone Number: _____

Seller=s Representative Signature: _____

Seller=s Representative=s
Name and License No.: _____

Provider:
_____ Funeral Home, Inc.
License No. _____
Provider=s Representative Signature: _____

Existing Rule
20 CSR 2120-2.060 Funeral Directing

[13](14) An applicant shall be exempt from the requirement of successful completion of the Missouri Law examination if the applicant has successfully completed the Missouri Law examination for another **Missouri** license [*within twelve(12) months of the date that the board receives the new application*] **within the jurisdiction of the board if the current license remains in active status.**

Draft new language:

(14) An applicant shall be exempt from the requirement of successful completion of the Missouri Law examination if the applicant has successfully completed the Missouri Law examination for another Missouri license within the jurisdiction of the board if **(1) the current license remains in active status[.], or (2) the applicant was a registered funeral director apprentice at the time of the examination and such examination occurred within the last 24 months.**

Existing Rule

20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship

(8) Effective July 30, 2004 the Missouri State Board embalmers' examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science section, and Missouri Law section. Application, payment, scheduling and administration for the national board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or other designee of the board. An applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another **Missouri license and the license is in active status** . [within twelve (12) months of the date that the board receives the new application.] In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination results will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

Draft new language:

20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship

(8) Effective July 30, 2004 the Missouri State Board embalmers' examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science section, and Missouri Law section. Application, payment, scheduling and administration for the national board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or other designee of the board. An applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another Missouri license **within the jurisdiction of the board if (1) [and] the current license [is] remains** in active status, **or (2) the applicant was a registered embalmer apprentice at the time of the examination and such examination occurred within the last 24 months**. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination results will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

Existing Rule

20 CSR 2120-2.040 Licensure by Reciprocity

(F) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy five percent (75%) or better within twenty four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board [within twelve (12) months prior to applying for a license] for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license **if the original Missouri license remains in active status;**

Draft new language:

(D) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy five percent (75%) or better within twenty four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license if **(1) the original Missouri license remains in active status[;], or (2) the applicant successfully completed the reciprocity examination within the last 24 months;**

DRAFT RULE – NOT APPROVED

**Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 3—Preneed**

PROPOSED RULE

(rule #) Purchaser approval of payment certification after disposition

PURPOSE: This rule clarifies the certification and approval of payment process following disposition.

To the extent the purchaser must approve the certification that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, if the purchaser is deceased or is otherwise unavailable, ~~then the person taking financial responsibility for the final disposition expenses shall be authorized to act on behalf of the purchaser. If no person is taking financial responsibility,~~ then the person **with** ~~authorized to exercise~~ the right of sepulcher of the beneficiary shall be authorized to act on behalf of the purchaser to approve the certification required under the statute. ~~such approval is not required where the purchaser and the beneficiary are the same person.~~

AUTHORITY: sections 333.340 and 436.455.

**Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

**Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules**

PROPOSED RULE

20 CSR 2120-2.160 Cemetery Exception

PURPOSE: This rule describes the exception to preneed contract requirements under sections 436.400 to 436.520, RSMo for endowed care cemeteries.

- (1) Pursuant to section 333.310, RSMo, a cemetery shall be exempt from the licensure requirements of sections 333.315 and 333.320, RSMo when all of the following conditions are satisfied—
- (A) The cemetery has a current and valid license issued pursuant to section 214.275, RSMo;
- (B) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are either: ~~made pursuant to a contract whereby such merchandise is either~~
1. Subject to the provisions of Section 214.320 or other provision of Chapter 214 that requires the funds be deposited into an endowed care fund; or
~~Purchased in conjunction with an interment right or grave space subject to section 214.320, RSMo; or~~
 2. For funeral merchandise that is owned by the purchaser and before the death of the beneficiary the merchandise is either installed on the cemetery premises or delivered to the purchaser, such as grave markers, urns, monuments or tombstones.
~~Made to be delivered to an interment right or grave subject to section 214.320, RSMo that is owned by the purchaser and identified in the contract.~~
- (C) After completion of an examination or audit, the Office of Endowed Care Cemeteries has made no finding of non-compliance with sections 214.385 or 214.387, RSMo.
~~The cemetery has not been found to be in non-compliance with sections 214.385 or 214.387, RSMo by the Office of Endowed Care Cemeteries pursuant to a completed examination or audit; and~~
- (D) The contract does not include preneed payments for services that may only be provided by a licensed funeral director or embalmer nor does it include any funeral merchandise not exempted by this rule.
~~The cemetery does not offer for sale caskets or services that may only be provided by a Missouri licensed funeral director or embalmer.~~

*AUTHORITY: sections 333.340 and 436.410, as amended by Senate Bill 1, 95th General Assembly, First Regular Session (2009). Emergency amendment filed [REDACTED], effective [REDACTED], and expires [REDACTED]. *Original rule filed: [REDACTED].*

DRAFT

Rule re: Fingerprints upon initial application with the Board

Title: All applicants for licensure or registration with the Board shall provide proof of submitting fingerprints to the Missouri State Highway Patrol.

Purpose: This rule describes the requirement of all applicants for licensure or registration with the Board to provide proof of submitting his or her fingerprints to the Missouri State Highway Patrol or the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and a Federal Bureau of Investigation fingerprint background check.

(1) All applicants for licensure or registration with the Missouri Board of Embalmers and Funeral Directors shall, upon application with the Board after **(DATE)**, provide proof of having submitted fingerprints to the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and a Federal Bureau of Investigation fingerprint background check.

(2) Any fees due to fingerprint background checks shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor.

(3) Applicants seeking renewal of a license or registration with the Board shall be exempt from this requirement.

Authority: 333.031, 333.041, 333.042, 333.051, 333.061, 333.111, 333.315, 333.320, 333.325, 333.340, and 436.520.

CRIMINAL BACKGROUND CHECK

An applicant for licensure is subject to a criminal background check pursuant to section 43.543 RSMo. In addition to confirming the answers to criminal history questions on the application, the fingerprint cards provide a baseline identification to protect the applicant from identity theft.

This is done through the Missouri State Highway Patrol's vendor, Integrated Biometric Technologies (IBT) This company has partnered with the Patrol to collect and submit fingerprints. The cost for electronic fingerprinting is \$52.50, paid by the applicant to IBT. The company maintains various sites throughout the nation and requires an applicant schedule an appointment.

The average time to complete the fingerprinting process is ten (10) minutes. The prints are then transmitted to the Patrol for further processing. For information about this service please visit the website <http://www.iisfingerprint.com/> and click on Missouri.

You must provide IBT with the following information:

Board of Podiatric Medicine ORI Number: MO

The receipt issued by IBT must be attached to your application to verify fingerprints have been submitted.

UNTIL THE RESULTS OF THE FINGERPRINT CHECKS ARE RECEIVED, A LICENSE WILL NOT BE ISSUED.

ATTACH IBT RECEIPT HERE



Professional Registration Bill Status Report

03-29-2010 - 11:19:55

Embalmers

[HB 1582](#) [Sutherland](#) Requires statements of no tax due from the Department of Revenue as a prerequisite to the issuance or renewal of certain state and local licenses or the receipt of a payment from the State Legal Expense Fund.

Bill History: 02-04-10 H Public hearing completed

SUMMARY: Beginning January 1, 2012, this bill requires statements of no tax due from the Department of Revenue as a prerequisite to the issuance or renewal of state and local business and occupation licenses or to the receipt of payments from the State Legal Expense Fund. The department director may enter into an agreement with any state agency responsible for issuing business and occupation licenses to provide the names and tax identification numbers of applicants for these licenses. Tax delinquencies may result in the suspension of licenses.

NOTE: Possible amendment to the bill for a revision to section 324.010, RSMo to correct the intersection references for Chapter 436.

[HB 1845](#) [Wells](#) Changes the laws regarding endowed care cemeteries.

Bill History: 01-28-10 H Read second time

SUMMARY: The bill:

- 1) Allows the division to bring suit in Cole County against cemetery operators;
- (2) Requires all contracts sold by cemetery operators for cemetery services or for graves, cemetery markers, and crypts to meet certain requirements. If these requirements are not met, all payments will be recoverable by the purchaser plus 10% interest and any reasonable collection costs including attorney fees;
- (3) Requires any person, entity, or political subdivision that purchases, receives, or holds real estate used for the burial of human remains, excluding a family burial ground, to notify the Office of Endowed Care Cemeteries within the department of the name, location, and address of the real estate before October 1, 2010, or within 30 days of acquiring the land;
- (4) Exempts cemetery operators from the provisions of Chapter 436, RSMo, regarding prearranged funeral contracts but prohibits them from adjusting or establishing prices for items with the intent of evading the trust or escrow provisions of the chapter. Provisions related to deposits into endowed care trust funds based on the sales price of certain products are revised;

- (5) Removes the provisions requiring a financial institution serving as the trustee of an endowed care trust to be located in Missouri but requires all activities of the trust to be controlled by Missouri law and all funds held in trust to remain in Missouri;
- (6) Requires a cemetery operator to notify the division in writing at least 20 days prior to selling a majority of its assets;
- (7) Allows, for agreements entered into after August 28, 2010, a cemetery prearranged merchandise products contract to be canceled within 30 days of receipt of the executed contract and requires all payments to be fully refunded;
- (8) All expenses of administering a trust, including, without limitation, trustee's fees, expenses in establishing the trust, legal and accounting fees, investment expenses, taxes, and other necessary and reasonable expenses shall be paid from trust income, and shall not be paid from trust principal.
- (9) Allows the division to direct a trustee, financial institution, or escrow agent to suspend the distribution of money from an endowed care trust fund if the cemetery operator is not licensed, has failed to file an annual report, or has failed to file a corrective action plan after an audit has revealed a deficiency; and
- (10) Exempts, if a cemetery was owned by a city, any subsequent cemetery owner from liability for any deficiency existing prior to the city's ownership.

NOTE: Similar to SB754.

HB 2231 **Wasson** Changes the laws regarding the disposition of cremated human remains by a licensed funeral establishment.

Bill History: 03-23-10 H Set on the House Calendar

SUMMARY: Allows a licensed funeral establishment to dispose of cremated human remains in accordance with a cremation contract except if otherwise prohibited by law.

HB 2290 **Wasson** Specifies that the value of certain life insurance policies will not be considered an asset when determining eligibility and the amount of benefits under federally aided state public assistance programs.

Bill History: 03-23-10 H Set on the House Calendar

SUMMARY: Supporters say that life insurance policies which are used to pay the cost of irrevocable preneed funeral contracts are currently included as assets when determining eligibility for public assistance. The bill specifies that these policies should not be included in an applicant's current assets.

HB 2305 **Kelly** Authorizes the transfer of specified maximum amounts of money from a list of 23 state funds to the General Revenue Fund by June 30, 2011.

Bill History: 03-15-10 H Read second time

SUMMARY: This bill authorizes the transfer of specified maximum amounts of money from a list of 23 state funds to the General Revenue Fund by June 30, 2011. The following boards within Professional Registration are included in the bill: Endowed Care Cemetery Audit; State Board of Accountancy; State Board of Registration for the Healing Arts; State Board of

Nursing; Board of Pharmacy; Licensed Professional Counselors; State Board of Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects; Athletic Fund; Board of Cosmetology and Barber Examiners; Marital and Family Therapist Fund; Respiratory Care Practitioners Fund; Missouri Board of Occupational Therapy; and Dietitian Fund.

NOTE: Similar to SB1000.

HB 2320	Ruzicka	Allows \$9,999 in an irrevocable trust for certain funeral expenses to not be considered an asset when determining eligibility for public assistance.
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SUMMARY: This bill specifies that in determining eligibility and the amount of benefits to be granted under federally aided state public assistance programs, any amounts up to \$9,999 placed in an irrevocable trust to pay for funeral services, facilities, and merchandise which are not part of a preneed funeral contract will not be taken into account or considered an asset of the beneficiary. Funds remaining after paying the specified funeral expenses must be paid to the state up to the amount of public assistance provided with any remaining moneys given to those designated in the trust.

NOTE: Similar to SB1025.

SB 753	Dempsey	Allows county commissions to invest cemetery trust funds in certificates of deposit.
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Bill History: 03-03-10 H Read second time

SB 754	Dempsey	Modifies provision related to cemeteries.
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Bill History: 03-15-10 H Read second time

NOTE: Similar to HB8145.

SB 991	Scott	Eliminates, combines, and revises certain state boards, commissions, committees, and councils.
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Bill History: 03-23-10 S Set on the Senate Calendar

SB 1000	Green	Transfers certain stated amounts from twenty-three funds to the state general revenue fund.
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Bill History: 03-03-10 S Hearing conducted

NOTE: Similar to SB2305.

SB 1025	Goodman	Allows \$9,999 in an irrevocable trust for certain funeral expenses to not be considered an asset when determining eligibility for public assistance.
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Bill History: 03-04-10 S Referred to Senate Committee on Senate-General Laws

NOTE: Similar to HB2320.

No Document for this Agenda Item

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Schnieders, Pam

Subject: FW: open agenda item

Please include the below questions for this agenda item.

New Agenda Item for open

11:00 am Personal Appearance/Representative from MO HealthNet Program & Policy Unit /Question and Answers

The questions received from the Board and responses follow.

What is the process commonly called "spending down"? Is this the correct term to use? If not, what term should the Board use in discussing this with their licensees and the public? What term should preneed funeral contract sellers use when entering into a preneed contract with a person who is "spending down"? The process commonly referred to as "spending down" is the process by which an individual spends down their available resources to under the Medicaid maximum resource limit. In Missouri using the term "spend down" to refer to the spending of resources to under the maximum limit is a little confusing to use because Missouri has a MO HealthNet for the Aged, Blind, and Disabled program where individuals whose income exceeds 85% of the federal poverty level can still qualify for coverage by "spending down" their income by paying the difference between their net countable income and 85% FPL directly to the MO HealthNet Division or by incurring medical expenses equivalent to the difference. However as long as the distinction is made that you are referring to spenddown of assets, not income it is appropriate to use this term.

- Can a person who is spending down use their funds to purchase a preneed funeral plan? If so, what is the right way to go about this? What should one avoid? Are there any DSS procedures, policies or regulations of which the Board should be particularly aware? Yes, they can use their funds to purchase a preneed funeral plan. In fact there are no limitations on what they can purchase to spend down their funds, but they do need to keep an accounting of what the funds are spent on and keep receipts. One should avoid giving away or transferring funds to others as this can result in a transfer of property penalty.

- For individuals going on state aid who are purchasing a preneed funeral plan, should the preneed plan seller have the purchaser fill out and sign an irrevocable waiver? And that is all that will be required to satisfy spend down requirements? If that is not how to handle the situation then what is the procedure they should follow? If it is the right process, are there special waiver forms they should use? By signing an irrevocable waiver the preneed funeral plan is not considered to be an available resource when determining the individual's Medicaid eligibility. There are no special forms they need to sign, the irrevocable waiver is sufficient.

- What about where a person received public assistance, bought a preneed funeral plan and adhered to the proper spend down process. When this person died, her funeral was provided by another funeral home and the preneed contract provider (nor the funds) were utilized for her disposition. Many years later, the person's family discovers the existence of preneed funeral plan and funds and asks for a refund. Can the funeral home refund the money or should it go to the state? If the state, how would that work? This is a question more for the MO HealthNet Division's Third Party Liability Unit who work with Estate

recovery issues. I will defer this question to them for response.

- Is there a specific person, telephone number, or e-mail to whom licensees or the public may be referred by the Board regarding questions about spending down? They may contact Emily Rowe MO Family Support Division MO HealthNet Program and Policy Unit Manager at 573-526-0607 or Emily.S.Rowe@dss.mo.gov.

- Is there a descriptive document on this topic that the Board can make available or link to on its website? Policy regarding preneed funeral policies can be found in our Income maintenance Policy Manual at http://www.dss.mo.gov/fsd/iman/dec1973/1030-015-00_1030-025-00.html#1030.020.10.15.

- When a person who has a preneed funeral contract (who purchased the contract while following appropriate spend down requirements) dies, and the funeral services provider is paid from the preneed contract funds, and there is money left over, those extra funds go to the state. Is this correct? How does this work? What needs to be done to ensure this happens? This is a question more for the MO HealthNet Division's Third Party Liability Unit who work with Estate recovery issues. I will defer this question to them for response.

- Last legislative session, SB 1 was passed. It includes several references to chapter 208 or public assistance. Do you see any issues with these provisions as they relate to spend down? (e.g., sections 436.425.3, 436.450.8, RSMo) This was reviewed by FSD and no issues related to spend down were identified.

Thank you for passing this information/inquiry along to those who deal with this on a regular basis. Please let me know if those who deal with this (Sandy Nelson or Emily Rowe -- sorry if I've misspelled) think these are best responded to by letter or if they would rather attend a Board meeting and speak with the Board directly (or both). I am sure that the Board would be happy to meet in person as they may have follow up questions but please let me know your preference.

Emily Rowe
Unit Manager
MO HealthNet Program & Policy Unit
615 Howerton Court
P.O. Box 2320
Jefferson City, Mo 65102-2320

2010

JANUARY 2010	FEBRUARY 2010	MARCH 2010	APRIL 2010
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2011

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