

State Board of Embalmers and Funeral Directors

June 1-2, 2011
Division of Professional Registration
3605 MO Blvd
Jefferson City Missouri 65109

AMENDED OPEN AGENDA

June 1, 2011 - 1:00 p.m.

1. Call to Order
2. Roll Call
3. (Tab 1) Review and Approval of Open Agenda

CLOSED

June 2, 2011 at 9:00 a.m.

4. ~~Electronic Death Certificate Update – Ivra Cross~~
Update on situation in Joplin
Don Otto – MFDEA Executive Director

Tammy Meyer, Department of Social Services – Mo HealthNet Division
Burial Plan recovery presentation
5. Executive Director Report
6. (Tab 2) Preneed Financial Examination Processes
7. (Tab 3) Discussion Regarding Legislative Proposals for 2012
8. (Tab 4) Disciplinary Hearing – 10:45am
Case 09-0430 EM
Board vs. James D. “Lou” Moore

LUNCH BREAK
9. (Tab 5) Probation Violation Hearing – 1:15pm
Case EMB 11-003 PV
Board vs. Duane Harvey
- 10.(Tab 6) Probation Violation Hearing – 2:30pm
Case EMB11-004-PV
Board vs. Katherine Lewis-Bolch
11. Open Discussion/Dialogue

12. Adjournment

Closed Meeting. The Board may 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.

Seller Examination Guidelines

Prior to Onsite Visit:

- Request records from the seller including list of active preneed contracts, information about funding sources, trust agreements, provider agreements, etc.
- Once records are received from the seller, review and analyze the information provided by financial institution(s) as well as information provided by the third party seller.
- Contact seller by phone to make initial contact and set a mutually convenient date/time to meet and begin the onsite visit.

During Onsite Visit:

- Meet with the Manager in Charge and discuss examination procedure. (We will work with the seller to limit any effect we have on day-to-day operations.)
- Review 100% of all active preneed files to confirm compliance.
- If the seller has pre-need agents not on-site, contact preneed agents as needed to review a minimum of 10% of contracts sold by off-site preneed agents to confirm compliance.

In addition, for third party sellers:

- Obtain a historical listing of all providers (past and present), identify years of sales and annual sales for each of those years. Compare this list to PROMO records to identify providers not possessing a preneed seller license.
- Contact a minimum of 10% of these identified funeral homes to review files to confirm seller's compliance.

After Onsite Visit:

- Send letters (sample attached) to 100% of consumers still making payments and at least 5 % of consumers listed as "Paid in Full."
- Provide consumers 2 weeks to respond with any potential problems. If no contact is made by the consumer, the amounts documented as paid will be considered current and correct.
- Complete analysis of records received.
- Meet with seller to discuss any concerns/discrepancies.
- Prepare final report for Executive Director and Board.

date

Consumer Name
Address
City State Zip

Dear :

[Seller] has been selected by the State of Missouri Board of Embalmers and Funeral Directors to have their preneed contracts examined as authorized by Section 436.470, RSMo. This new law requires that the State Board routinely examine the financial records of each business that sells preneed funeral plans. I have been assigned by the State Board for this routine examination of the records of [Seller] to ensure that they are in compliance with state law. We would like your assistance to confirm their compliance.

Through the course of our examination we have determined that you have a preneed funeral contract with [Seller]. We would like to take this time to confirm that our records correctly reflect the total amount you have paid toward your preneed contract(s) as of [date]. Please verify the following information:

Contract Number:	####
Total Amount of Contract:	\$
Amount Paid as of 12/01/01:	\$

If your records match the above information provided, there is no need for further action on your part. If the information listed above is incorrect, or if you have any further questions please do not hesitate to contact me via email at michelle.hankinson@pr.mo.gov or by calling 314-909-1585.

Please contact me with any discrepancies by [date]. If you do not respond, we will assume that the amounts listed above are correct.

Thank you in advance for your time and consideration in this matter.

Michelle Hankinson,

Michelle Hankinson

Examiner

Applicability of law.

333.310. The provisions of sections 333.310 to 333.340 shall not apply to a cemetery operator **licensed pursuant to RSMo Section 214.275**, who sells contracts or arrangements for funeral merchandise **or** services for which payments received by, or on behalf of, the purchaser are **deposited either to an escrow account, or a preneed trust, governed by an agreement approved by the Office of Endowed Care Cemeteries** [required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo]; provided that a cemetery operator shall comply with sections 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

Registration as a preneed agent required--application procedure--renewal of registration--expiration of registration.

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

(2) Be eighteen years of age or older; **and possesses a high school diploma or equivalent thereof;**

(3) Be otherwise eligible for registration under section 333.330;

(4) Have successfully passed the Missouri law examination as designated by the board;

(5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

(6) Upon acceptance of the completed application and fees by the board, the applicant shall have twelve consecutive months to successfully complete the requirements for registration or the application for registration shall be canceled. Applicants shall serve an apprenticeship for at least twelve consecutive months under the supervision of a Missouri licensed preneed seller. Upon successful completion of the Missouri law examination as designated by the Board, the applicant will be eligible for registration and the apprenticeship may cease. Such applicant shall submit proof to the board, on forms provided by the board, that the applicant has served under the supervision of a Missouri licensed preneed seller.

3. Each preneed agent shall apply to renew his or her registration on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001, RSMo. A registration which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license renewal; and

(3) Provide the name and address of each seller for whom the preneed agent is authorized to sell, negotiate, or solicit the sale of preneed contracts for or on behalf of.

4. Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit the sale of

preneed contracts as part of their biennial renewal form. Each funeral director preneed agent shall be included on the board's registry.

5. Any registration which has not been renewed as provided by this section shall expire and the registrant shall be immediately removed from the preneed agent registry by the board. A registrant who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board.

Applicability exceptions.

436.410. The provisions of sections 436.400 to 436.520 shall not apply to any contract or other arrangement sold by a cemetery operator **licensed pursuant to RSMo Section 214.275** for which payments received by or on behalf of the purchaser are **deposited either to an escrow account, or a preneed trust, governed by an agreement approved by the Office of Endowed Care Cemeteries** [required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo]; provided that a cemetery operator shall comply with sections 436.400 to 436.520 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

Trust-funded preneed contract requirements.

436.430. 1. A trust-funded guaranteed preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges except as authorized by the provisions of chapter 333, RSMo, and this chapter or other state or federal law.

[3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after five percent of the total amount of the preneed contract has been deposited into the trust. The trustee shall make this distribution to the seller within fifteen days of the receipt of the request.]

[4. In addition to the origination fee, the trustee may distribute to the seller an amount up to ten percent of the face value of the contract on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.]

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

6. The financial institution referenced herein may neither control, be controlled by, nor be under common control with the seller or preneed agent. The terms "control", "controlled by" and "under common control with" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities. This presumption may be rebutted by a showing to the board that control does not in fact exist.

7. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trustee maintains adequate records that individually and separately identify the payments, earnings, and distributions for each preneed contract.

8. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, other circumstances of the trust, and all other requirements of sections 436.400 to 436.520.

9. All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the

investment of the trust assets. Principal of the trust shall not be used to pay the costs of administration. If the income of the trust is insufficient to pay the costs of administration, those costs shall be paid as per the written agreements between the seller, provider and the trustee.

10. The seller and provider of a trust-funded guaranteed preneed contract shall be entitled to all income, including, but not limited to, interest, dividends, capital gains, and losses generated by the investment of preneed trust property regarding such contract as stipulated in the contract between the seller and provider **upon performance of the contract**. Income of the trust, excluding expenses allowed under this subsection, shall accrue through the life of the trust, except in instances when a contract is cancelled. The trustee of the trust may distribute market value of all income, net of losses, to the seller upon, but not before, the final disposition of the beneficiary and provision of the funeral and burial services and facilities, and merchandise to, or for, the benefit of the beneficiary. This subsection shall apply to trusts established on or after August 28, 2009.

11. Providers shall request payment by submitting a certificate of performance to the seller certifying that the provider has rendered services under the contract or as requested. The certificate shall be signed by both the provider and the person authorized to make arrangements on behalf of the beneficiary. If there is no written contract between the seller and provider, the provider shall be entitled to the market value of all trust* assets allocable to the preneed contract. Sellers shall remit payment to the provider within sixty days of receiving the certificate of performance.

12. If a seller fails to make timely payment of an amount due a provider under sections 436.400 to 436.520, the provider shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the provider from the trust all amounts to which the seller would be entitled to receive for the preneed contract.

13. The trustee of a preneed trust, including trusts established before August 28, 2009, shall maintain adequate books and records of all transactions administered over the life of the trust and pertaining to the trust generally. The trustee shall assist the seller who established the trust or its successor in interest in the preparation of the annual report described in section 436.460. The seller shall furnish to each contract purchaser, within thirty days after receipt of the purchaser's written request, a written statement of all deposits made to such trust regarding such purchaser's contract including the principal and interest paid to date.

14. A preneed trust, including trusts established before August 28, 2009, shall terminate when the trust principal no longer includes any payments made under any preneed contract, and upon such termination the trustee shall distribute all trust property, including principal and undistributed income, to the seller which established the trust.

Compliance of contracts entered into prior to effective date--investment of trust property and assets--loans against assets prohibited.

436.435. 1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof and shall only be invested and reinvested in investments which have reasonable potential for growth or producing income. Funds in, or belonging to, a preneed trust shall not be invested in any term life insurance product.

3. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets.

4. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust is better served without diversification. **The trustee shall set out such determination in writing, to be included in the books and records that are made available to the Board and its agents and designees.**

5. In investing and managing trust assets, a trustee shall consider the following as are relevant to the trust:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio;
- (5) The expected total return from income and the appreciation of capital;
- (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

6. No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of ~~August 29, 2009~~ **August 28, 2009**, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

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

FILED
MAR 30 2009
ADMINISTRATIVE HEARING
COMMISSION

MISSOURI BOARD OF EMBALMERS)
AND FUNERAL DIRECTORS)
3605 Missouri Boulevard)
P.O. Box 423)
Jefferson City, MO 65102-423)
(573) 751 - 0813,)

Petitioner,)

v.)

JAMES D. "LOU" MOORE)
7575 W. 106th Street)
Overland Park, KS 66212)

Respondent.)

Case No. *09-0430 EM*

COMPLAINT

Petitioner, the Missouri Board of Embalmers and Funeral Directors ("Board"), by and through its attorney, the Attorney General of Missouri, for its cause of action states the following:

1. The Board is an agency of the State of Missouri, established and existing pursuant to § 333.151, RSMo, for the purpose of administering and enforcing Chapter 333, RSMo, and portions of Chapter 436, RSMo, and the regulations adopted thereunder.
2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and, RSMo.
3. Moore holds a funeral director's license, No. 2002012379, which was current and active at all times relevant hereto, though Moore allowed his license to lapse on May

31, 2005. Moore does not hold and has never held an embalmer's license or an embalmer apprentice's license in Missouri.

4. At all times relevant hereto, Moore was employed by DW Newcomers Son's, Inc. ("DW Newcomers"), d/b/a White Chapel Funeral Home ("White Chapel"), in Gladstone, Missouri.

5. Moore began working at White Chapel in January 2006, prior to his funeral director's license being renewed.

6. During the time he was employed at White Chapel, Moore performed the following activities on human remains at White Chapel: washing bodies; making incisions to open the body; setting the features by using an injunction gun to permanently close the mouth; raising arteries and/or vessels by making an incision and hooking up the artery and/or vessel and pulled them up for injection; and closing incisions in bodies.

7. Moore's performance of the above-described activities was sometimes supervised by licensed embalmers also employed by White Chapel.

8. The above-described activities constitute the practice of embalming, as defined by § 333.011(6), RSMo, which states: "Practice of embalming, the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work[.]"

9. Section 333.021, RSMo, states, in pertinent part: "No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter."

10. Moore's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license constitutes a violation of § 333.021, RSMo.

11. Moore's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license, while holding himself out as a person authorized to provide such services, constitutes misconduct, fraud, misrepresentation, and dishonesty in the performance of the functions or duties of a professional licensed under Chapter 333, RSMo.

12. Moore's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license constitutes a violation of a professional trust and confidence.

13. Cause exists to discipline Moore's license as a funeral director pursuant to § 333.121.2 (5), (6), and (13), RSMo, which states:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence[.]

WHEREFORE, Petitioner requests that the Administrative Hearing Commission conduct a hearing in this case pursuant to Chapter 621, RSMo, and issue its Findings of Fact and Conclusions of Law determining that Petitioner may take disciplinary action against Respondent, James D. "Lou" Moore, for the violations noted above, and for such other relief as the Commission deems appropriate.

Respectfully submitted,

Respectfully submitted,

CHRIS KOSTER
Attorney General

JONATHAN M. HENSLEY
Assistant Attorney General
Missouri Bar No. 59810

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ATTORNEYS FOR PETITIONER

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

FEB 07 2011

ADMINISTRATIVE HEARING
COMMISSION

MISSOURI BOARD OF EMBALMERS)
AND FUNERAL DIRECTORS,)

Petitioner,)

v.)

JAMES D. "LOU" MOORE,)

Respondent.)

No. 09-0430 EM

RECEIVED

FEB 07 2011

ADMINISTRATIVE HEARING
COMMISSION

**PETITIONER'S MOTION FOR SUMMARY DECISION AND
SUGGESTIONS IN SUPPORT**

Petitioner, the Missouri Board of Embalmers and Funeral Directors ("Board" or "Petitioner"), by and through its attorney, the Attorney General of Missouri, and pursuant to 1 CSR 15-3.446(5) of the rules governing practice and procedure before the Administrative Hearing Commission ("Commission") and § 536.073.3, RSMo.,¹ as it is made applicable to this Commission by § 621.135, RSMo, applies to this Commission for relief in the nature of summary decision. In support of its Motion, the Board states as follows:

1. On March 30, 2009, the Board filed its Complaint in this matter.
2. Following numerous, failed, attempts at services, service was achieved on Respondent on August 4, 2010.

¹ All statutory citations are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise stated.

2. On December 30, 2010, the Board propounded upon Respondent, James D. "Lou" Moore ("Mr. Moore" or "Respondent") its First Requests for Admissions.

3. To date, Mr. Moore has submitted neither an Answer nor Responses to Petitioner's Requests for Admissions, though his time to do both has long past.

4. This matter is currently set for hearing on March 21, 2011, a date which is slightly less than forty-five (45) days from the date upon which this motion is filed. Please see the accompanying Request for Leave to File Out of Time.

5. The Board seeks a decision by this Commission that cause exists for the Board to take disciplinary action against Mr. Moore's funeral director license as a result of his violation of § 333.121.2(5), (6), and (13), RSMo.

SUGGESTIONS IN SUPPORT

I. SUMMARY DECISION STANDARD

When a party moves this commission for decision without hearing, relying on matters outside the pleadings, the commission may grant a motion for summary decision if a party establishes facts, by admissible evidence, entitling a party to a favorable decision, and no party genuinely disputes such facts.²

II. STATEMENT OF FACTS

1. The Board is an agency of the State of Missouri, established and existing pursuant to § 333.151, RSMo, for the purpose of administering and enforcing Chapter 333,

² 1 CSR 15-3.446(5)(A) & (B)

RSMo, and portions of Chapter 436, RSMo, and the regulations adopted thereunder.

2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and, RSMo.

3. Mr. Moore holds a funeral director's license, No. 2002012379, the status of which fluctuated between current & active and expired during the period relevant hereto, but which has been expired since May 31, 2008. *Exhibit 1*, ¶ 4.

4. Mr. Moore does not hold and has never held an embalmer's license or an embalmer apprentice's license in Missouri. *Exhibit 1*, ¶ 5. Further, by failing to timely respond to paragraph 2 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a).

5. At all times relevant hereto, Mr. Moore was employed by DW Newcomers Son's, Inc. ("DW Newcomers"), d/b/a White Chapel Funeral Home ("White Chapel"), in Gladstone, Missouri. By failing to timely respond to paragraph 3 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a). See also, *Exhibit 3*, ¶¶ 6-12.

6. Mr. Moore began working at White Chapel in January 2006, prior to his funeral director's license being renewed. By failing to timely respond to paragraph 4 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*,

Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a). See also, *Exhibit 3*, ¶ 9. See also, *Exhibit 4*,³ p. 28, lines 12-20.

7. During the time he was employed at White Chapel, Mr. Moore performed the following activities on human remains at White Chapel: washing bodies; making incisions to open the body; setting the features by using an injunction gun to permanently close the mouth; raising arteries and/or vessels by making an incision and hooking up the artery and/or vessel and pulled them up for injection; and closing incisions in bodies. By failing to timely respond to paragraph 5 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a). See also, *Exhibit 3*, ¶¶ 10 – 12. See also, *Exhibit 4*, p. 65, line 7 through p. 67, line 2, and p. 71, line 17 through p. 72, line 17. See also, *Exhibit 5*.

8. In addition to his admissions to the Board's Investigator, Mr. Moore admitted, both in writing and in testimony before the Board, to assisting in the preparation of 30 human remains between March 2006 and June 2006; during which time he was left alone to embalm human remains with no supervision. *Exhibit 5*, ¶¶ 1-3. See also, *Exhibit 4*, p. 55, line 11 through p. 56, line 25. Exhibit 5 is a quarterly progress report submitted

3 Exhibit 4 contains relevant pages from the transcript of an Informal Conference between the Board and Mr. Moore which took place on December 4, 2006. Mr. Moore's testimony was given under oath, and the certification of the transcript is included. The meeting also involved discussion of possible unlicensed funeral direction in Missouri by Mr. Moore, transcription of which has been omitted from Exhibit 4.

by Mr. Moore to the Kansas Mortuary Arts Board on June 12, 2006, relating to his efforts to become licensed in Kansas. Mr. Moore confirms the validity of this report during his testimony as presented in Exhibit 4. Exhibits 4 and 5 reveal, however, that the embalming experience reported by Mr. Moore to the Kansas Board was gained by him in Missouri, when he possessed no licensure to perform such tasks in this state. Mr. Moore agreed with the Board that the "City" indication at the top of Exhibit 5 was incorrect in saying "Overland Park, KS," and that, in fact, during the period covered by Exhibit 5, Mr. Moore was working at White Chapel in Gladstone, Missouri. Please see *Exhibit 5, p. 58, line 18 through p. 59, line 15.*

9. The above-described activities constitute the practice of embalming, as defined by § 333.011(6), RSMo., which states: "Practice of embalming, the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work[.]" By failing to timely respond to paragraph 7 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a). See also, *Exhibit 3, ¶¶ 6-12.*

10. Section 333.021, RSMo, states, in pertinent part: "No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter."

11. Mr. Moore's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license constitutes a violation of § 333.021, RSMo. By failing to timely respond to paragraph 8 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a).

12. Mr. Moore's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license, while holding himself out as a person authorized to provide such services, constitutes misconduct, fraud, misrepresentation, and dishonesty in the performance of the functions or duties of a professional licensed under Chapter 333, RSMo. By failing to timely respond to paragraph 9 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a).

13. Mr. Moore's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license constitutes a violation of a professional trust and confidence. By failing to timely respond to paragraph 10 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a).

14. Cause exists to discipline Mr. Moore's license as a funeral director pursuant to § 333.121.2 (5), (6), and (13), RSMo, which states:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence[.]

By failing to timely respond to paragraph 11 of Petitioner's Requests for Admissions, a copy of which is attached hereto as *Exhibit 2*, Respondent has admitted the content of this paragraph, pursuant to Missouri Rule of Civil Procedure 59.01(a).

III. ARGUMENT

Imposition of Discipline is Proper Pursuant to § 333.121.2(5), (6), and (13), Where

Mr. Moore Repeatedly Practiced Embalming in Missouri Without Proper Licensure

As stated in its Complaint, and above in this Motion, the Board seeks a decision from

this Commission that cause exists to discipline the funeral director's license of Mr. Moore.

Section 333.021, RSMo, states, in pertinent part: "No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter." For purposes of this case, § 333.011(6), RSMo., defines 'Practice of embalming,' as "the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work[.]" As Mr. Moore has admitted several times, during the time he was employed at White Chapel, Mr. Moore performed the following activities on human remains at White Chapel: washing bodies; making incisions to open the body; setting the features by using an injunction gun to permanently close the mouth; raising arteries and/or vessels by making an incision and hooking up the artery and/or vessel and pulled them up for injection; and closing incisions in bodies. Mr. Moore performed these tasks in Missouri, though he did not possess the necessary licensure to do so. Mr. Moore's unlicensed practice violates § 333.021, RSMo., and must subject his funeral director's license to discipline pursuant to § 333.121.2 (5), (6), and (13), RSMo.

Section 333.121.2(5), RSMo., permits the Board to discipline the holder of any license issued pursuant to Chapter 333, RSMo., as a result of such person's incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by Chapter 333, RSMo. "Competence" is defined as having sufficient knowledge, judgment,

skill or strength to perform a task.⁴ “Incompetency” is a general lack of, or a lack of disposition to use, a professional ability.⁵ “Misconduct” means the willful doing of an act with a wrongful intention.⁶ “Gross negligence” is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.⁷ “Dishonesty” is a lack of integrity, a disposition to defraud or deceive, and also includes actions that reflect adversely on trustworthiness.⁸ “Fraud” means a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.⁹ “Misrepresentation” means the act of making a false or misleading statement about something, usually with the intent to deceive.¹⁰

The professions of funeral direction and embalming are both licensed and regulated by Chapter 333, RSMo. While he held a license to do one, Mr. Moore, in fact, practiced both – which must subject the one license he held pursuant to Chapter 333, RSMo., to discipline, as a result of his performance of those acts for which he was not licensed. To hold one’s self out as if he or she is permitted to practice embalming in

4 *Id.*

5 *Johnson v. Missouri Board of Nursing Administrators*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004)

6 *Missouri Board for Architects, Professional Engineers & Land Surveyors v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n, November 15, 1985) at 125, affirmed 744 S.W.2d 524 (Mo. App., E.D. 1988.)

7 *Duncan v. Missouri Board for Architects, Professional Engineers & Land Surveyors*, 744 S.W.2d at 533.

8 *Missouri Board for Architects, etc., v. David Fenton*, Case No. 08-1745 AR (Decision March 19, 2009)

9 Black’s Law Dictionary (7th Ed., 1999)

Missouri, and worse, to actually engage in such practices, when such person is not in fact licensed to do so practically defines dishonesty, misrepresentation, fraud, and misconduct. The stakes and emotions are simply too high in this field to permit individuals to lie about licensure, and to allow them to practice without licensure without a serious disciplinary response. Further, to engage repeatedly (and admittedly) in professional conduct for which a person lacks necessary licensure necessarily constitutes both incompetency and gross negligence, as a person cannot be allowed through the door of practical consideration – to have the quality of their work judged – if they lack the basic credentials required in order to engage in the subject profession. This Commission must construe disciplinary statutes broadly to further their remedial purpose, which is to protect the public.¹¹ In the case of *Missouri Board for Architects, etc., v. David Fenton*, Case No. 08-1745 AR (Decision March 19, 2009), this Commission concluded that David Fenton assisted or enabled Fenton Engineering in the unlicensed practice of engineering, thereby demonstrating incompetence and committing misconduct subjecting him to discipline. The same must be true in this case, perhaps even more so, as Mr. Moore himself engaged in the unlicensed practice of embalming himself. If one is not licensed to practice a profession requiring licensure, it cannot be said that they practice such profession competently, but that their actions are grossly negligent. Because Mr. Moore's actions in

¹⁰ *Id.*

¹¹ *State ex rel. Webster v. Myers*, 779 S.W. 286, 290 (Mo.App. W.D. 1989); *Lane v. State Comm. of Psychologists*, 954 S.W.2d 23, 25 (Mo.App. E.D. 1997.)

engaging in the practice of embalming human remains in Missouri without the required licensure, his funeral director's license must be subject to discipline pursuant to § 333.121.2(5), RSMo.

Section 333.121.2(6), RSMo., permits the Board to discipline the holder of any license issued pursuant to Chapter 333, RSMo., as a result of such person's violation of any provision of Chapter 333, RSMo. Section 333.021, RSMo, states, in pertinent part: "No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter." By his own repeated admission, Mr. Moore performed the tasks described above in Missouri, though he did not possess the necessary licensure to do so. Mr. Moore's unlicensed practice violates § 333.021, RSMo., and must subject his funeral director's license to discipline pursuant to § 333.121.2(6),RSMo.

Section 333.121.2(13), RSMo., permits the Board to discipline the holder of any license issued pursuant to Chapter 333, RSMo., as a result of such person's violation of any professional trust or confidence. Professional trust or confidence is the reliance on the special knowledge and skills that professional licensure evidences.¹² A professional has a duty to be honest and forthright.¹³ In *Fenton*, this Commission found that Mr. Fenton's enabling or assisting his company's unlicensed practice of engineering also constituted his violating of a professional trust or confidence. The same must be true in this case, where Mr.

¹² *Trieseler v. Hemlbacher*, 168 S.W. 2d 1030, 1036 (Mo. 1943.)

¹³ *Missouri Board for Architects, etc., v. David Fenton*, Case No. 08-1745 AR

Moore himself engaged in the unlicensed practice of embalming. Among the most basic expectations, trusts, and confidences placed by the families of the newly-departed in those offering to take on the burden of preparing and preserving their loved one's remains is that the embalmer is legally permitted to do so. It should be expected that an individual learning that the last person to handle the body of their loved one was skirting the law, and not subject to standards, when they did so, should have their already intense grief multiplied. Further, the responsible licensed professionals practicing alongside individuals they believe to be licensed place their trust and confidence in such other individuals to be honest regarding their credentials and licensure. To say the very least, the unlicensed practice of embalming by one violates the trust and confidence of all. Mr. Moore violated the trust and confidence of countless individuals by practicing embalming in Missouri without a license, and his funeral director's license must be subjected to discipline pursuant to § 333.121.2(13), RSMo., as a result.

Based upon the pleadings and all exhibits attached hereto, no genuine issue of material fact exists as to whether the Board should be permitted to discipline Mr. Moore's funeral director's license pursuant to § 333. 121.2(5), (6), and (13), RSMo.

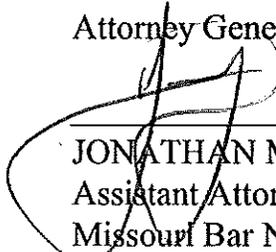
CONCLUSION

No genuine issue of material fact remains in this case, and the Board is entitled to a decision as a matter of law that cause exists for the Board to discipline Mr. Moore's funeral director license because he engaged in the unlicensed practice of embalming human remains in Missouri, and pursuant to § 333.121.2(5), (6), and (13), RSMo. The

Board respectfully requests that this Commission grant its Motion for Summary Decision for the relief requested above.

Respectfully submitted,

CHRIS KOSTER
Attorney General

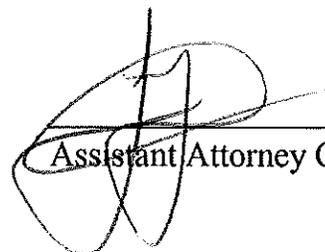


JONATHAN M. HENSLEY
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Jonathan.Hensley@ago.mo.gov
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was mailed, postage prepaid, this 7th day of February, 2011, to:

James D. "Lou" Moore
1706 Golfview Dr.
Urbana, IL 61801
Respondent



Assistant Attorney General

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

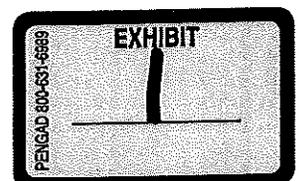
MISSOURI BOARD OF EMBALMERS AND FUNERAL DIRECTORS,)	
)	
Petitioner,)	
)	
v.)	No. 09-0430 EM
)	
JAMES D. "LOU" MOORE,)	
)	
Respondent.)	

AFFIDAVIT OF SANDY SEBASTIAN

STATE OF MISSOURI)
)
COUNTY OF COLE)

Before me, the undersigned authority, personally appeared Sandy Sebastian, and after being duly sworn stated as follows:

1. My name is Sandy Sebastian; I am of sound mind, capable of making this Affidavit, and over the age of 18.
2. I have personal knowledge of the matters contained in this Affidavit.
3. I currently am employed as the Executive Director for the Missouri Board of Embalmers and Funeral Directors ("Board").
4. James D. "Lou" Moore holds a funeral director's license, No. 2002012379, the status of which fluctuated between current & active and expired during the period relevant hereto, but which has been expired since May 31, 2008.



5. James D. "Lou" Moore does not hold and has never held an embalmer's license or an embalmer apprentice's license in Missouri.

Further, affiant says not.

Sandy Sebastian

LORI A. HAYES
Notary Public, State of Missouri
Marion County
Commission # 10394857
My Commission Expires August 17, 2014

Sandy Sebastian
Executive Director
Missouri Board of Embalmers and Funeral Directors

Subscribed and sworn to before me this 26 day of January 2011.

Lori A Hayes
Notary Public

My commission expires 8-17-14.

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

**MISSOURI BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,**)

Petitioner,)

v.)

JAMES D. "LOU" MOORE,)

Respondent.)

No. 09-0430 EM

FILED

DEC 30 2010

ADMINISTRATIVE HEARING
COMMISSION

**CERTIFICATE OF SERVICE OF PETITIONER'S FIRST REQUEST FOR
ADMISSIONS DIRECTED TO RESPONDENT**

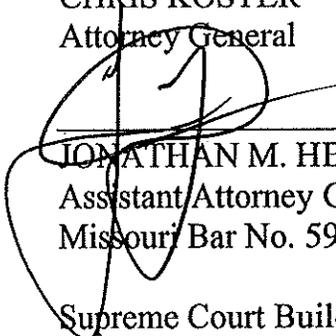
The undersigned hereby certifies that Petitioner's First Request for Admissions and a copy of this certificate were served by first-class mail, postage prepaid, on this 30th day of December, 2010, and that an electronic copy of this Petitioner's single set of First Requests for Admissions was provided in accordance with Missouri Rule of Civil Procedure 59.01(c)(3) by 3.5" Diskette in Word format upon, and a response thereto within 30 days is required by:

James D. "Lou" Moore
1706 Golfview Dr.
Urbana, IL 61801
Respondent



Respectfully submitted,

CHRIS KOSTER
Attorney General



JONATHAN M. HENSLEY
Assistant Attorney General
Missouri Bar No. 59810

Supreme Court Building
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-9163
Fax: 573-751-5660
Jonathan.Hensley@ago.mo.gov

Attorneys for Petitioner

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

MISSOURI BOARD OF EMBALMERS AND FUNERAL DIRECTORS,)	
)	
)	
Petitioner,)	
)	
v.)	No. 09-0430 EM
)	
JAMES D. "LOU" MOORE,)	
)	
)	
Respondent.)	

**PETITIONER'S FIRST REQUEST FOR ADMISSIONS
DIRECTED TO RESPONDENT**

Pursuant to Missouri Supreme Court Rule 59.01, as made applicable to actions before the Administrative Hearing Commission by § 536.073.2, RSMo 2000, and 1 CSR 15-3.420, Petitioner, the Missouri Board of Embalmers and Funeral Directors ("Petitioner"), propounds the following request for admissions upon Respondent, James D. "Lou" Moore ("Respondent.")

Each matter for which an admission is requested shall be admitted unless, **within thirty days after service of this request**, Respondent serves upon Petitioner a written answer or objection addressed to each matter and signed by Respondent or Respondent's attorney as allowed and required by Missouri Supreme Court Rule 59.01. (A copy of Rule 59.01 is attached hereto.) **A FAILURE TO TIMELY RESPOND TO REQUESTS FOR ADMISSIONS IN COMPLIANCE WITH RULE 59.01 SHALL RESULT IN EACH**

MATTER BEING ADMITTED BY YOU AND NOT SUBJECT TO FURTHER DISPUTE. If Respondent's response to any paragraph is anything other than an unequivocal "Admit", Respondent shall provide an explanation of, and supporting documentation for, the basis of such response.

PLEASE ADMIT:

1. Respondent holds a funeral director's license, No. 2002012379, which was current and active at all times relevant hereto, though Moore allowed his license to lapse on May 31, 2005.

RESPONSE:

2. Respondent does not hold and has never held an embalmer's license or an embalmer apprentice's license in Missouri.

RESPONSE:

3. At all times relevant hereto, Respondent was employed by DW Newcomers Son's, Inc. ("DW Newcomers"), d/b/a White Chapel Funeral Home ("White Chapel"), in Gladstone, Missouri.

RESPONSE:

4. Respondent began working at White Chapel in January 2006, prior to his funeral director's license being renewed.

RESPONSE:

5. During the time he was employed at White Chapel, Respondent performed the following activities on human remains at White Chapel:

- a. Washing bodies – RESPONSE:
- b. Making incisions to open bodies – RESPONSE:
- c. Setting the features by using an injunction gun to permanently close the mouth – RESPONSE:
- d. Raising arteries and/or blood vessels by making an incision and hooking up the artery and/or blood vessel and pulled them up for injection – RESPONSE:
- e. Closing incisions in bodies - RESPONSE:

6. Respondent's performance of the above-described activities was sometimes supervised by licensed embalmers also employed by White Chapel.

RESPONSE:

7. The above-described activities constitute the practice of embalming, as defined by § 333.011(6), RSMo.

RESPONSE:

8. Respondent's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license constitutes a violation of § 333.021, RSMo.

RESPONSE:

9. Respondent's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license, while holding himself out as a person authorized to provide such services, constitutes misconduct, fraud, misrepresentation, and dishonesty in the performance of the functions or duties of a professional licensed under Chapter 333, RSMo.

RESPONSE:

10. Moore's conduct in practicing embalming without a valid Missouri embalmer's or embalmer's apprentice license constitutes a violation of a professional trust and confidence.

RESPONSE:

11. Cause exists to discipline Moore's license as a funeral director pursuant to § 333.121.2 (5), (6), and (13), RSMo.

RESPONSE:

Attestation to Responses:

James D. "Lou" Moore, or Attorney Date

Respectfully propounded,

CHRIS KOSTER
Attorney General

Jonathan M. Hensley
Assistant Attorney General
Missouri Bar No. 59810

Supreme Court Building
P. O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-9163
Fax: 573-751-5660
Email: jonathan.hensley@ago.mo.gov

ATTORNEYS FOR PETITIONER

including its original paragraph number, and immediately thereunder state that the requested items will be produced or the inspection and related activities will be permitted as requested, unless the request is objected to, in which event each reason for objection shall be stated in detail.

(3) *Objections and Privileges.* If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for the objection, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) *Method of Production.* A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(5) *Signing.* The response shall be signed by the attorney or by the party if the party is not represented by an attorney.

(6) *Service.* The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default.

The certificate of service shall state the name of the party who issued the requests and the number of the set of requests.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 58.01(d).

(d) *Filing.* The request and responses thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and responses are served, the party serving them shall file with the court a certificate of service. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, and the signature of the serving party or attorney. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(e) *Enforcement.* The party submitting the request may move for an order under Rule 61.01(b) with respect to any objection or other failure to respond to the request or any part thereof or any failure to permit inspection as requested.

(Adopted March 29, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; June 21, 2005, eff. Jan. 1, 2006; Oct. 25, 2005, eff. Jan. 1, 2006.)

RULE 59. ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS

Rule

59.01. Request for and Effect of Admissions.

59.01. Request for and Effect of Admissions

(a) *Scope.* After commencement of an action, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 56.01(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

A failure to timely respond to requests for admissions in compliance with this Rule 59.01 shall result in each matter being admitted.

(b) *Effect of Admission.* Any matter admitted under this Rule 59.01 is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

Subject to the provisions of Rule 62.01 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy

the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits.

Any admission made by a party under this Rule 59.01 is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

(c) Issuance.

(1) *Form.* In consecutively numbered paragraphs, the request shall set forth each matter for which an admission is requested. Copies of documents about which admissions are requested shall be served with the request unless copies have already been furnished. The title shall identify the party to whom the request for admissions are directed and state the number of the set of requests directed to that party.

(2) *When Requests May be Served.* Without leave of court, requests may be served on:

(A) A plaintiff after commencement of the action,

(B) A defendant on motion of 30 days after t
entering an appeara
cess, and

(C) Any other par
served with process,
a pleading.

(3) *Service.* Copies
on all parties not in d
requests shall also pro
electronic copy in a cor
diskette, CD-ROM or
format that can be rea
processing programs,
WordPerfect 5.x or hi
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(A) Name of each
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(B) Number of th

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At the time of ser
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(d) *Response.* Th
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(B) Being serv

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(2) *Form.* Th

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(A) Admit the

(B) Deny the

(C) Object to

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(D) Set forth

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A denial shall

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(B) A defendant or respondent upon the expiration of 30 days after the first event of the defendant entering an appearance or being served with process, and

(C) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) *Service.* Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests,

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 59.01(d).

(d) *Response.* The requests shall be answered by each party to whom they are directed.

(1) *When Response is Due.* Responses shall be served within 30 days after the service of the requests for admissions. A defendant or respondent, however, shall not be required to respond to requests for admissions before the expiration of 60 days after the earlier of the defendant:

(A) Entering an appearance, or

(B) Being served with process.

The court may allow a shorter or longer time.

(2) *Form.* The title of the response shall identify the responding party and the number of the set of the requests for admissions. The response shall quote each request, including its original paragraph number, and immediately thereunder specifically:

(A) Admit the matter; or

(B) Deny the matter; or

(C) Object to the matter and state each reason for the objection; or

(D) Set forth in detail the reasons why the responding party cannot truthfully admit or deny the matter.

A denial shall fairly meet the substance of the requested admission.

When good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as true and qualify or deny the remainder.

A responding party may give lack of information or knowledge as a reason for failure to admit or deny if such party states that the party has made reasonable inquiry and the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; such party may deny the matter, subject to the provisions of Rule 61.01(c), or set forth reasons why the party cannot admit or deny it.

(3) *Objections and Privileges.* If an objection is asserted, then each reason for the objection shall be stated. If a failure to admit or deny a request is based on a privilege or the work product doctrine, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) *Signing.* The response shall be signed by the party or the party's attorney.

(5) *Service.* The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 59.01(d).

(e) *Filing Request and Responses.* The request and response thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and the response are served the party serving them shall file with the court a certificate of service. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

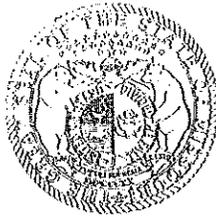
(f) *Enforcement.* The party who has requested the admissions may move to have determined the sufficiency of the answers or objections. Unless the court determines that an objection is proper, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule 59.01, it may order either that:

(1) The matter is admitted, or

(2) An amended answer be served.

The provisions of Rule 61.01(c) apply to the award of expenses incurred in relation to the motion.

(Adopted March 29, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; Dec. 30, 1994; June 21, 2005, eff. Jan. 1, 2006.)



ATTORNEY GENERAL OF MISSOURI

CHRIS KOSTER
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. BOX 899
(573) 751-3321

December 30, 2010

James D. "Lou" Moore
1706 Golfview Dr.
Urbana, IL 61801

**Re: Missouri Board of Embalmers and Funeral Directors
v. James D. "Lou" Moore
Case No. 09-0430 EM**

Dear Mr. Moore:

I have enclosed the Board's first set of Requests for Admissions, a copy of the applicable Supreme Court Rule and 59.01, and a diskette containing an electronic copy of these requests. Please note that you must respond to these Requests for Admissions within 30 days of the date of service. You should send your responses to me at 221 W. High Street, P.O. Box 899, Jefferson City, MO 65102.

You have the right to retain or consult an attorney at your expense to assist you with this matter. Please contact me if you have any procedural questions, or have your attorney contact me if you are presently represented by counsel.

Sincerely,

CHRIS KOSTER
Attorney General

Jonathan M. Hensley
Assistant Attorney General
573-751-9163
573-751-5660(fax)
jonathan.hensley@ago.mo.gov

JMH/km
Enclosures

www.ago.mo.gov

www.ago.mo.gov

JMH

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

**MISSOURI BOARD OF EMBALMERS)
AND FUNERAL DIRECTORS,)**

Petitioner,)

v.)

No. 09-0430 EM

JAMES D. "LOU" MOORE,)

Respondent.)

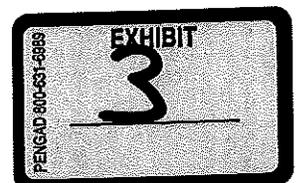
AFFIDAVIT OF KEVAN LAGER

STATE OF MISSOURI)

COUNTY OF COLE)

Before me, the undersigned authority, personally appeared Kevan Lager, and after being duly sworn stated as follows:

1. My name is Kevan Lager; I am of sound mind, capable of making this Affidavit, and over the age of 18.
2. I have personal knowledge of the matters contained in this Affidavit.
3. I currently am employed as an Investigator within the Central Investigations Unit with the Missouri Division of Professional Registration.
4. In this role, I regularly investigate complaints and alleged violations by professional licensees on behalf of the licensing agency.
5. I have been employed in this role since January 6, 2006.



6. I investigated the current matter, involving James D. "Lou" Moore's actions as an employee of DW Newcomer's Sons, Inc., White Chapel, in Gladstone, Missouri, on behalf of the Missouri Board of Embalmers and Funeral Directors.
7. As part of my investigation, I contacted Mr. Moore and other employees of White Chapel to determine whether Mr. Moore had engaged in the practice of embalming in Missouri without a license issued by the State of Missouri.
8. On September 15, 2006, I went to White Chapel Funeral Home in Gladstone, Missouri, where I met with Mr. Moore.
9. Mr. Moore told me that he started working at White Chapel on or about January 24, 2006.
10. I asked Mr. Moore to tell me exactly what he has done in the embalming preparation room while employed at White Chapel, and he responded:
"I have washed the body, made incisions to open the body, set the features, closed eyes, mouth and raised arteries or vessels."
11. I then asked Mr. Moore what he meant by "raising arteries", and he told me that he has made an incision and hooked an artery and pulled it up for arterial embalming injection.
12. Additional conversations with Mr. Moore's co-workers, including one confidential informant, confirmed that Mr. Moore had been embalming bodies at White Chapel without a license. The confidential informant

indicated that (s)he had personally witnessed Mr. Moore embalm as many as five bodies.

Further, affiant says not.

Kevan Lager

Kevan Lager
Investigator
Central Investigations Unit
Missouri Division of Professional Registration

Subscribed and sworn to before me this 28th day of January 2011.

Lori A Broderick
Notary Public

My commission expires

[Signature] 4-10-2013.



LORI A. BRODERICK
My Commission Expires
April 10, 2013
Clinton County
Commission #09693540

RECEIVED

JAN 02 2007

STATE BOARD OFFICE

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

ORIGINAL

INFORMAL CONFERENCE
REGARDING JAMES DEMONTE MOORE

INTERCONTINENTAL HOTEL
401 WARD PARKWAY
KANSAS CITY, MISSOURI

DECEMBER 4, 2006
6:20 P.M. - 7:30 P.M.



1 CHAIRMAN: We will begin this informal
2 conference. Could you state for the record your
3 name?

4 MR. MOORE: James DeMonte Moore.

5 CHAIRMAN: Okay. Would you be so kind
6 to go ahead and get sworn in.

7 JAMES DEMONTE MOORE

8 having been called as a witness, and
9 having been first duly sworn to tell the truth,
10 the whole truth and nothing but the truth,
11 testified as follows:

12 CHAIRMAN: Let the record reflect that
13 today's date is December 4, 2006, and James
14 DeMonte Moore is present for an informal
15 conference with the State Board of Embalmers and
16 Funeral Directors. This informal conference is
17 to inquire further into information submitted to
18 the Board.

19 James DeMonte Moore has been notified of
20 this informal conference by letter from the State
21 of Embalmers and Funeral Directors. The letter
22 informed James DeMonte Moore directly that
23 counsel could represent him. No disciplinary
24 action will be taken directly as a result of this
25 informal conference; however, information

1 possessed by the Board and information obtained
2 during the course of an informal conference can
3 be used by the Board. Do you understand this?

4 MR. MOORE: Yes. So, you're saying Bill
5 could be in here?

6 CHAIRMAN: He could be if he's
7 representing you.

8 MR. MOORE: Hmm. Okay.

9 CHAIRMAN: Is Bill representing you?

10 MR. MOORE: No. He represents the
11 company which I work for. I don't know how that
12 totally works.

13 CHAIRMAN: But he's not representing you
14 personally, is he?

15 MR. MOORE: He represents the -- oh. I
16 don't know how that works. I don't know --

17 CHAIRMAN: Did he tell us he was --

18 MS. GRINSTON: He said he wasn't.

19 MR. MOORE: No. Okay. No, that's fine.
20 I was just asking.

21 CHAIRMAN: Okay. He told us he wasn't
22 representing you, so --

23 MR. MOORE: Oh, okay. Yeah. He told me
24 to ask that, so, you know, I just figured I'd
25 ask.

1 CHAIRMAN: Okay. Okay. Funeral-director
2 apprentice and embalmer's apprentice, as well?

3 MR. MOORE: I had my funeral-director's
4 license, and I just had to get it back --
5 reinstated, funeral director/apprentice.

6 CHAIRMAN: Okay. And you had your
7 funeral-director's license with Kansas, Missouri
8 or --

9 MR. MOORE: This was with Missouri. I
10 just had to get it reinstated because it had
11 lapsed while I was over in Iraq.

12 CHAIRMAN: Okay. And when was this that
13 you started your employment with --

14 MR. MOORE: I think it was January 27th.

15 CHAIRMAN: So, you're --

16 MR. MOORE: With White Chapel, you're
17 saying, or with --

18 CHAIRMAN: Yeah. White Chapel.

19 MR. MOORE: Okay. Yes. January 27, I do
20 believe.

21 CHAIRMAN: Okay. So, you had to get it
22 reinstated, so what steps did you take? What
23 did you do?

24 MR. MOORE: Called the Board, talked to
25 -- I can't remember. I think her name was Lori

1 MR. MOORE: Uh-huh.

2 CHAIRMAN: Are those your check marks
3 there?

4 MR. MOORE: Those are.

5 CHAIRMAN: Is this true and accurate?

6 MR. MOORE: Yes.

7 CHAIRMAN: Okay. I'm just making sure
8 that assisted and performed, and I'm just making
9 sure that we're clear on that.

10 MR. MOORE: Yeah.

11 CHAIRMAN: Okay. And this fourth-quarter
12 report was sent in, it shows that they received
13 it on June 12th?

14 MR. MOORE: It was sent in on June 6th.

15 CHAIRMAN: Okay. But it was due -- you
16 sent it in actually three days early, but it was
17 due on --

18 MR. MOORE: The 15th.

19 CHAIRMAN: -- June 15th? And I just
20 have to ask you this: Number one, it says, "The
21 number of remains that you assisted in
22 preparation this quarter."

23 MR. MOORE: Uh-huh.

24 CHAIRMAN: And that's 30 cases?

25 MR. MOORE: Yes.

1 CHAIRMAN: And that's your handwriting
2 there?

3 MR. MOORE: That is.

4 CHAIRMAN: Okay. Okay. This year -- and
5 I'm just going to go through this with you.

6 MR. MOORE: Uh-huh.

7 CHAIRMAN: This is your last report before
8 your license interview with the Board. "If left
9 alone, can you embalm to the satisfaction of
10 yourself and your supervising licensee," and you
11 said yes?

12 MR. MOORE: Uh-huh.

13 CHAIRMAN: "Please explain." You said
14 you had good supervision and been able to learn
15 -- now, you write worse than me. What does that
16 say? Is that an and?

17 MR. MOORE: And.

18 CHAIRMAN: "And prepare remains at own
19 pace with supervision." "At this point in time,
20 would your supervising embalmer leave you fully
21 in charge of the preparation room," and you said
22 yes. And then you put, "He has left me in
23 preparation checking on me to insure of no
24 problems."

25 MR. MOORE: Uh-huh. Okay.

1 says, "Evaluate your apprenticeship and include
2 any difficulties experienced." And you put, "My
3 apprenticeship has been a learning" --

4 MR. MOORE: "A learning."

5 CHAIRMAN: Man, you are terrible with that
6 writing -- "experience. It has also been" -- I'm
7 worse, though, so --

8 MR. MOORE: Okay.

9 CHAIRMAN: "It has also been a long one
10 with my military break in between."

11 MR. MOORE: Uh-huh.

12 CHAIRMAN: Okay. "Are you aware of Kansas
13 laws relating to performance of funeral
14 agreements," and that's #9. You said yes, and
15 you read the laws?

16 MR. MOORE: Uh-huh. When they gave us
17 the right test, yes.

18 CHAIRMAN: Okay. This is a true and
19 accurate form that you sent in then?

20 MR. MOORE: Yes.

21 CHAIRMAN: It reflects what you had done?

22 MR. MOORE: Yes.

23 CHAIRMAN: Okay.

24 MS. DUNN: Lou, was the fourth-quarter
25 report served at White Chapel?

1 MR. MOORE: Excuse me?

2 MS. DUNN: Was your fourth-quarter
3 service for Kansas or your report completed at
4 service you completed at White Chapel?

5 MR. MOORE: Yes.

6 MS. DUNN: In Missouri?

7 MR. MOORE: Yes.

8 MS. DUNN: So, this, when it says,
9 "Overland Park, Kansas," was that an error?

10 MR. MOORE: That was, and I -- that one
11 there, you all must have got that from the wrong
12 person, because that one was a no-go.

13 MS. DUNN: Okay. But you completed your
14 fourth quarter in Missouri?

15 MR. MOORE: Yes.

16 MS. DUNN: Okay. So, when you supplied a
17 fourth-quarter report to Kansas that said, "Have
18 you been making at-need funeral arrangements,"
19 and you put yes?

20 MR. MOORE: Uh-huh.

21 MS. DUNN: So, in your fourth quarter --

22 MR. MOORE: Excuse me. He was pointing
23 something out. I didn't hear you.

24 MS. DUNN: Oh, I'm sorry.

25 CHAIRMAN: I'm showing him a copy of it.

1 MR. MOORE: Did you find it, Lori? I'm
2 sorry. MS. HAYES: Go ahead. I'll find
3 it.

4 MR. MOORE: Oh, I'm sorry.

5 CHAIRMAN: Where in Kansas?

6 MR. MOORE: Charter.

7 CHAIRMAN: Okay. Have you ever embalmed a
8 body in the state of Missouri?

9 MR. MOORE: According to you all, yes.

10 CHAIRMAN: I'm asking according to you,
11 have you ever embalmed a body in the state of
12 Missouri?

13 MR. MOORE: Oh, according to me, no.

14 CHAIRMAN: So, you never flipped a switch
15 in the state of Missouri?

16 MR. MOORE: That's correct. I'm sorry;
17 that's just a funny thing to hear you say "flip
18 a switch."

19 CHAIRMAN: Well, I'm just saying what you
20 said.

21 MR. MOORE: Okay.

22 CHAIRMAN: So, you never embalmed a body
23 in the state of Missouri at all?

24 MR. MOORE: I'd never say never, but, no.

25 CHAIRMAN: Well, I'm asking. I mean, this

1 isn't a James Bond movie. I need to know: Did
2 you --

3 MR. MOORE: No. The answer is no.

4 CHAIRMAN: So, your answer is no, you
5 never embalmed a body in Missouri?

6 MR. MOORE: Yes. That's correct. No.

7 CHAIRMAN: Okay. Where did you embalm
8 your bodies when you were under the supervision
9 of John Dale?

10 MR. MOORE: I didn't. I just did all the
11 grunt work. He came in and finished the
12 embalming.

13 CHAIRMAN: Okay. So, what did he do
14 when he came in?

15 MR. MOORE: When he would -- it wasn't
16 always John Dale, you know. It was different
17 embalmers, too.

18 CHAIRMAN: Okay. But what --

19 MR. MOORE: So --

20 CHAIRMAN: What did they do when they
21 came in, when they took over?

22 MR. MOORE: They'd come in, make sure I
23 did everything correct as far as setting the
24 features, things like that, you know, raise
25 vessels or whatever, make sure it was done

1 correctly, and then they would carry out the
2 rest of the process.

3 CHAIRMAN: Okay. Now, you stated
4 earlier, if I'm not mistaken, that you did some
5 embalming and you explained what the process
6 was; correct?

7 MR. MOORE: I never said I did -- never,
8 like you like to say, that I did embalming in
9 Missouri.

10 CHAIRMAN: Okay.

11 MR. MOORE: That was strictly from my
12 experiences at Charter and from school.

13 CHAIRMAN: Okay. So, at Charter, you did
14 embalming there at Charter?

15 MR. MOORE: Yes, because I was allowed to,
16 because it was part of my apprenticeship.

17 CHAIRMAN: Okay. Hmm. Any Board members
18 have any other questions? Jim?

19 MR. REINHARD: Well, I've got one. Where
20 did these records go that you lost? I mean,
21 what happened and what's --

22 MR. MOORE: They're in the Mississippi
23 River, probably.

24 MR. REINHARD: Okay. So, there was a
25 flood?

1 doing any embalming?

2 MR. MOORE: That's correct.

3 CHAIRMAN: But --

4 MR. MOORE: I mean, you can believe what
5 you want. I don't know how to explain that.

6 CHAIRMAN: No. I want to believe what
7 you're telling me.

8 MR. MOORE: Oh. Okay.

9 CHAIRMAN: But, you know, I'm looking at a
10 jigsaw puzzle, and I'm getting a little -- you
11 know.

12 MR. MOORE: I understand how that can
13 happen. I mean, I do understand how that could
14 happen. I talked to my attorney back home from
15 our funeral home, and he said he sees how it's
16 -- you know, could be misinterpreted, and that's
17 fine. That's all I can say. I mean, he left me
18 in there, yes. I set the features; I dis -- I
19 bathed them; I raised the vessels. I should --
20 you know, should I have done that? No.

21 CHAIRMAN: What did you start to say? You
22 disinfected them?

23 MR. MOORE: Disinfected. Well, that's --
24 washing is disinfecting, but that's not --

25 CHAIRMAN: Well, that's what -- I mean,

1 it's not pulling teeth here.

2 MR. MOORE: Right.

3 CHAIRMAN: Everybody here has been
4 through a mortuary-science school that's in the
5 industry here.

6 MR. MOORE: Right. That's what I was
7 going to say. That's what I said.

8 CHAIRMAN: On this Board. So, I mean,
9 everybody knows what the process of embalming is,
10 so, you know, we're just making sure that you
11 realize what the process of embalming is.

12 MR. MOORE: And I do. And like I was
13 saying, I mean, I took it that far. I probably
14 shouldn't have. Well, there's no probably to
15 it. I shouldn't have. I was -- I mean,
16 whatever. I don't know. I don't know what to
17 say. It's just like --

18 CHAIRMAN: Uh-huh.

19 MR. MOORE: -- I see the Missouri on
20 there with Kansas. I'm thinking Missouri and
21 Kansas, boom, boom, boom, to swap out. That's
22 fine, but I'm wrong. Everyone makes mistakes,
23 whatever.

24 CHAIRMAN: Okay. This was supposed to be
25 in Missouri and it says, "I have assisted and

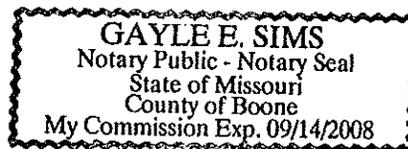
I, Gayle E. Sims, a Professional Reporter and Notary Public, within and for the County of Boone, in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on December 4, 2006; that the foregoing witness appeared before me and was duly sworn to testify the whole truth of his knowledge concerning the matter in controversy aforesaid; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 29th day of December, 2006.

Gayle E. Sims

GAYLE E. SIMS
Notary Public for Boone County

My Commission Expires: 9-14-08



FOR THE FOURTH QUARTER

MORTUARY ARTS BOARD

THIS IS THE PROGRESS REPORT OF THE APPRENTICE EMBALMER AND APPRENTICE (ASSISTANT) FUNERAL DIRECTOR

JUN 2 2006

RECEIVED

Apprentice's Name: James A. "Lou" Moore Date Due: 6-15-2006
 Embalmer's Name: Jon M. Dale License Number: 3140
 Funeral Director's Name: Jon M. Dale KS. License Number: 0151
 Funeral Home Name: SW Newcomers Of Chapel City: Overland Park, KS

- Number of remains that you have assisted in preparation this quarter: 30 cases.
- This is your last report before your licensure interview with the board. If left alone, can you embalm to the satisfaction of yourself and your supervising licensee? Yes No

Please explain: HAVE HAD GOOD SUPERVISION AND BEEN ABLE TO LEARN AND PREPARE REMAINS AT OWN PACE WITH SUPERVISOR.

- At this point in time, would your supervising embalmer leave you fully in charge of the preparation room? Yes No

Please explain: HE HAS LEFT ME IN PREPARATION, CHECKING ON ME TO ENSURE OF NO PROBLEMS.

- Are you able to make funeral arrangements with families WITHOUT the assistance of your supervising funeral director? Yes No

Please explain as to what extent you have been allowed to make funeral arrangements (Example: observed, assisted ...): I HAVE ASSISTED AND OBSERVED MANY ARRANGEMENTS. HAVE ALSO MET WITH FAMILIES ON MY OWN.

- Do you feel the training in the funeral service that you have now received in your apprenticeship has been helpful for your future? (Explain - not simply a "Yes" or "No" response, please.)

YES IT HAS, I HAVE BEEN ABLE TO OBSERVE MANY DIFFERENT FUNERAL DIRECTORS & EMBALMERS TO SEE DIFFERENT WAYS TO APPROACH DIFFERENT SITUATIONS.

- Do you believe that you're ready for licensure as an embalmer? Yes No
 Do you believe that you're ready for licensure as a funeral director? Yes No

Evaluate your apprenticeship and include any difficulties experienced: MY APPRENTICESHIP HAS BEEN A LEARNING EXPERIENCE. IT HAS ALSO BEEN A LONG ONE, WITH MY MILITARY BREAK IN BETWEEN.



EXHIBIT # 2-10-142

7. Indicate below the duties you have either performed or observed: (Check (P) for performed, (O) for observed, (NP) for no participation.)

- A) making funeral arrangements with families: (P) (O) (NP)
- B) making preneed arrangements with families: (P) (O) (NP)
- C) work in states (viewing): (P) (O) (NP)
- D) driving a family car on a service: (P) (O) (NP)
- E) working funeral services: (P) (O) (NP)
- F) working church services: (P) (O) (NP)
- G) working grave site/burial services: (P) (O) (NP)
- H) working chapel (with the funeral home) services: (P) (O) (NP)

Comments on any of these duties:

8. Have you prearranged any funerals without assistance? Yes No

Comments: *PRE ARRANGED SERVICES EVERYONE I HAVE BEEN HAS HAD COUNCORS.*

9. Are you aware of Kansas laws relating to prefinanced funeral agreements? Yes No

Comments: *READ THE LAWS RELATED*

10. How many hours have you studied for the upcoming funeral director written examination? 75 hours

The board is prepared to assist any apprentice in any problem which might arise in the course of his or her apprenticeship. Any apprentice is urged to call and visit with or to make an appointment with the Board's Executive Secretary at the Topeka office for assistance or advice.

I certify that this is an accurate report of my progress as an apprentice and that this report has been prepared without consultation with the supervising licensee(s) to whom I am registered.

J. A. Moore "LOU"
(Apprentice Signature)

Date: 5-31-06

Please feel free to submit any additional information on this page, or attach information as necessary.

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EXHIBIT # 2 p. 292

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS,

Petitioner,

vs.

JAMES D. "LOU" MOORE

Respondent.

No. 09-0430 EM

DECISION

There is cause to discipline James D. "Lou" Moore's funeral director license because he practiced embalming without a license.

Procedure

On March 30, 2009, the State Board of Embalmers and Funeral Directors ("Board") filed a complaint to establish cause to discipline Moore. After numerous attempts to serve the notice of complaint and notice of hearing on Moore, service was finally achieved on August 4, 2010. Moore did not answer the complaint.

The Board filed a motion for summary decision and suggestions in support ("the motion") on February 7, 2011. We gave Moore until February 22, 2011, to respond to the motion, but he did not respond.

The Board relies on affidavits attached to the motion and the request for admissions that was served on Moore on December 30, 2010.¹ Moore did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact or any application of law to fact.³ That rule applies to all parties, including those acting *pro se*.⁴ Section 536.073⁵ and our Regulation 1 CSR 15-3.420(1) apply that rule to this case. Therefore, the following facts are undisputed.

Findings of Fact

1. Moore held a Missouri funeral director license that expired on May 31, 2008. The status of that license fluctuated between current and active and expired during 2006, the time period relevant to this case. He does not hold, and has never held, an embalmer license or an embalmer apprentice license in Missouri.
2. Moore began working for DW Newcomers Son's, Inc., d/b/a White Chapel Funeral Home in Gladstone, Missouri ("White Chapel") in January 2006.
3. While employed there in 2006, Moore performed the following activities on human remains at White Chapel:
 - a. washing bodies;
 - b. making incisions to open bodies;
 - c. setting the features by using an injunction gun to permanently close the mouth;

¹The Board also attached an unauthenticated progress report that Moore filed with the Kansas Board of Embalmers and a transcript of an "informal conference" held with Moore on December 29, 2006. We rely on neither. The progress report is internally contradictory: it states that Moore's embalming activity took place in Kansas, although it also states that it took place at White Chapel, which is located in Missouri. Although Moore's testimony before the Board was sworn and reported by a professional reporter, the transcript appears to be substantially incomplete.

²*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³*Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

⁴*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁵RSMo 2000. Statutory references, unless otherwise noted, are to RSMo Supp. 2010.

- d. raising arteries and/or blood vessels by making an incision and hooking up the arteries and/or blood vessels and pulling them up for injection; and
 - e. closing incisions in bodies.
4. Moore's performance of these activities was sometimes supervised by licensed embalmers also employed by White Chapel.

Conclusions of Law

We have jurisdiction of the complaint.⁶ The Board has the burden to prove facts for which the law allows discipline.⁷ The Board contends that these facts are cause for discipline under § 333.121.2,⁸ which authorizes discipline for:

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence[.]

Moore admitted that his conduct is cause for discipline under all of the subdivisions. But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline.⁹ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

⁶Section 621.045, RSMo Supp. 2010. Statutory references are to RSMo 2000, unless otherwise noted.

⁷*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁸RSMo 2000. Section 333.121 was repealed in 2009 by SB 1. The complaint was filed, and the conduct occurred, prior to this repeal. We apply the substantive law in effect at the time of the conduct. Section 1.170; *Comerio v. Beatrice Foods Co.*, 595 F. Supp. 918, 920-21 (E.D. Mo. 1984).

⁹*Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

333.121.2(5) – Professional Standards

The Board argues that Moore's conduct constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation and dishonesty. Incompetency is a "state of being" showing that a professional is unable or unwilling to function properly in the profession.¹⁰ Misconduct is the commission of wrongful behavior, intending the result that actually comes to pass or being indifferent to the natural consequences.¹¹ Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.¹² Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.¹³ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.¹⁴ Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹⁵ We may infer the requisite mental state from the conduct of the licensee "in light of all surrounding circumstances."¹⁶

In particular, the Board argues that Moore's holding himself out as a person permitted to practice embalming in Missouri, and engaging in embalming when not licensed to do so, constituted dishonesty, misrepresentation, fraud and misconduct. There is no evidence in the record that Moore held himself out as a licensed embalmer or that he made any affirmative misrepresentations to that effect. We do not find dishonesty, misrepresentation, or fraud. However, as a licensed funeral director, Moore certainly should have known that only a licensed

¹⁰*Albanna v. State Bd. of Regis'n for the Healing Arts*, 293 S.W.3d 423, 436 (Mo. banc 2009).

¹¹*Grace v. Missouri Gaming Commission*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001).

¹²*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).

¹³*State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹⁴MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹⁵*Id.* at 794.

¹⁶*Duncan*, 744 S.W.2d at 533.

embalmer could, in fact, practice embalming. When he engaged in the practice of embalming with no license to do so, he committed misconduct.

The Board also argues that:

to engage repeatedly (and admittedly) in professional conduct for which a person lacks necessary licensure necessarily constitutes both incompetency and gross negligence, as a person cannot be allowed through the door of practical consideration – to have the quality of their work judged – if they lack the basic credentials required in order to engage in the subject profession. . . . If one is not licensed to practice a profession requiring licensure, it cannot be said that they practice such profession competently, but that their actions are grossly negligent.^[17]

We have already found that Moore’s unlicensed embalming was misconduct. Because the mental states for misconduct and gross negligence are mutually exclusive, we find no cause to discipline for gross negligence. We do, however, find incompetency, as Moore practiced embalming without a license numerous times and over an extended time period. As a licensed funeral director, he would have known better than to do this. This demonstrates an unwillingness to practice properly in his profession. There is cause for discipline under § 333.121.2(5).

333.121.2(6) – Violation of Chapter 333 or its Rules

Section 333.021¹⁸ states: “No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.” The practice of embalming is defined by § 333.011(6)¹⁹ as:

the work of preserving, disinfecting and preparing by arterial embalming, or otherwise of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work[.]

¹⁷Motion, at 10.

¹⁸RSMo 2000.

¹⁹RSMo 2000.

While employed at White Chapel, Moore performed a number of tasks that fall into the category of “preserving” or “preparing” dead human bodies. At no time did he have an embalmer license. He is subject to discipline under § 333.121.2(6).

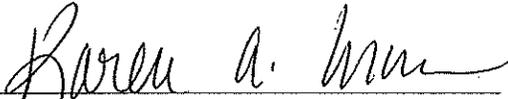
333.121.2(13) – Violation of Professional Trust or Confidence

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.²⁰ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.²¹ The performance of a task that requires a license to perform, by one who does not possess such a license, violates the trust and confidence of those who rely upon him to perform that task properly. Moore violated the trust and confidence of the families who used White Chapel’s embalming services when he engaged in the practice of embalming without a license.

Summary

There is cause to discipline Moore under § 333.121.2(5), (6) and (13).

SO ORDERED on March 9, 2011.



KAREN A. WINN
Commissioner

²⁰*Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

²¹*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

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

FILED

APR 26 2011

Board of Embalmers
& Funeral Directors

STATE BOARD OF EMBALMERS AND)
FUNERAL DIRECTORS,)

PETITIONER.)

v.)

DUANE E. HARVEY,)
9100 BLUE RIDGE BOULEVARD)
KANSAS CITY, MISSOURI 64138)

RESPONDENT.)

CASE NO. EMB 11.003.PV

PROBATION VIOLATION COMPLAINT

COMES NOW, the State Board of Embalmers and Funeral Directors (the "Board") and for its Probation Violation Complaint against Respondent Duane E. Harvey ("Harvey" or "Licensee"), states:

The Parties and Licenses

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo¹, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.
2. Duane E. Harvey is an individual who has registered his address with the Board as 9100 Blue Ridge Boulevard, Kansas City, Missouri 64138.
3. Harvey holds funeral director license number 005131.

¹ All statutory references are to the Revised Statutes of Missouri (2000), as amended, unless otherwise indicated.

4. 9100 Group LLC, doing business as Duane E. Harvey Funeral Directors, has registered Harvey with the Board as its funeral director in charge of the funeral establishment per Section 333.061.2, RSMo and 20 CSR 2120-1.030 (20).

5. As funeral director in charge, Harvey is responsible for the general management and supervision of Duane E. Harvey Funeral Directors funeral establishment.

6. By Order issued by the Administrative Hearing Commission (the "AHC") on December 9, 2009, the AHC found cause for the Board to discipline Harvey's funeral director's license pursuant to Section 333.121.2 (5), (13), and (15), RSMo, for issuing nine death certificates with forged signatures, for refusing to pay life insurance proceeds to the company entitled to them and for refusing to pay life insurance proceeds he had no right to obtain or keep.

7. On March 31, 2010, the Board held a disciplinary hearing to determine the appropriate level of discipline to impose on Harvey's funeral director's license.

8. By Order dated May 4, 2010, the Board issued its "Findings of Fact, Conclusions of Law and Disciplinary Order" (the Board's Order"). Attached as Exhibit A to this Complaint is a true and accurate copy of the Board's Order.

9. The Board's Order placed the funeral director license held by Harvey on probation, subject to certain terms and conditions, for a period of two years from the date of the Board's Order.

Jurisdiction and Venue

10. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to Section III, paragraphs H, I, and L on page 4 of the Board's Order.

11. Venue is proper.

Relevant Statutes

12. Section 193.145, RSMo, requires a funeral director to file a death certificate within five days of death and states, in relevant portion:

1. A certificate of death for each death which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within five days after death and shall be registered if such certificate has been completed and filed pursuant to this section.

* * *

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

(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.

* * *

13. Section 324.010, RSMo, imposes a mandatory suspension of a funeral director's license if the licensee is delinquent on payment of any state taxes or fails to file an state income tax return for the prior three years, and states:

All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, sections 214.270 to 214.516, sections 256.010 to 256.453, section 375.014, sections 436.005 to 436.071, and chapter 317 and chapters 324 to 346 shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. The director of revenue shall, within ten business days of notification to the governmental entity issuing the professional license that the delinquency has been remedied or arrangements have been made to remedy such delinquency, send written notification to the licensee that the delinquency has been remedied. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.

14. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

15. Section 333.061, RSMo, states, in pertinent portion:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

16. Section 333.330, RSMo, sets forth specific conduct for which the Board may impose discipline and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

* * *

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436;

* * *

17. Rule 20 CSR 2120-1.040(14) states:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

18. Rule 20 CSR 2120-2.070(10) states, in relevant portion:

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. . . .

Relevant Terms and Conditions of Probation

19. The terms and conditions of probation set forth in the Board's Order include the following found in Section III, pages 3 and 4 of the Board's Order:

A. During the probationary period, Respondent shall comply with all applicable provisions of Chapter 333 and §§ 436.400 – 436.525, RSMo, as amended, all applicable Board regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.

C. Respondent shall submit written reports to the Board by no later than January 1 and July 1, during each year of the Disciplinary period, stating truthfully whether there has been compliance with all terms and conditions of this Order. A copy of the required report may be obtained from the Board.

F. During the probationary period, Respondent shall timely renew his license(s), timely pay all fees required for licensure and comply with all other requirements necessary to maintain his license(s) current and active.

Conduct Supporting Probation Violations

Suspension of license due to non-compliance with tax laws

20. On October 12, 2010, Harvey's funeral director's license was suspended by operation of law due to his failure to pay taxes pursuant to Section 324.010, RSMo.

21. Harvey's funeral director's license was reinstated on November 1, 2010, RSMo.

Failure to file bi-annual compliance reports

22. Harvey submitted no written compliance report due to the Board on or before July 1, 2010.

23. Harvey submitted no written compliance report on or before January 1, 2011. However, Harvey did submit the required report of compliance to the Board on January 4, 2011. Attached as Exhibit B to this Complaint is a true and accurate copy of the January 4, 2011 compliance report.

Failure to file death certificate timely

24. Joseph Prince Melsaac died on July 2, 2004.

25. The filed death certificate shows final disposition of Mr. Melsaac's body on July 6, 2004, in Kansas City, Missouri.

26. Harvey was funeral director in charge of the establishment that provided funeral services for Mr. Melsaac.

27. Harvey signed the death certificate as the funeral director responsible for the disposition of Mr. Melsaac's body.

28. Harvey provided notice to the Board that the death certificate for Mr. Melsaac was filed on December 7, 2010.

Violations of terms and conditions of probation

29. Harvey violated condition "A." of his probation in the following ways:

- a. Harvey failed to comply with state laws that required him to pay state taxes and/or to file state income tax returns;

- b. Harvey failed to comply with provisions of Chapter 333, RSMo, and its regulations in that he continued to serve as the funeral director in charge of the funeral establishment during the time he lacked the qualifications to serve as such because he was not a Missouri licensed funeral director because his license was suspended. This conduct violates Section 333.061, RSMo, and 20 CSR 2120-2.070(10).
- c. Harvey violated the provisions of Section 193.145 by filing Mr. Melsaac's death certificate on December 7, 2010, 7 years, 6 months and 5 days after death rather than within 5 days of death as required by statute.

30. Harvey violated condition "C." of his probation in that he failed to submit a written compliance report on or before July 1, 2010 and on or before January 1, 2011.

31. Harvey violated condition "F." of his probation in that, by allowing his license to be suspended for non-compliance with Missouri tax laws, Harvey failed "to comply with all other requirements necessary to maintain his license(s) current and active.

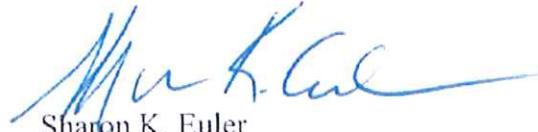
32. The conduct alleged above also provides cause to discipline pursuant to Section 333.330.2(6) and (19), RSMo.

33. Cause exists to impose further discipline on the funeral director license of Duane E. Harvey.

WHEREFORE, Petitioner asks that the Board provide notice and opportunity to be heard to Respondent pursuant to the provisions of Chapters 333 and 536, RSMo, and thereafter issue its findings of fact, conclusions of law and order imposing further

discipline on the licenses of Respondent and for such other relief as the Board deems just and proper.

Respectfully submitted,



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ATTORNEY FOR THE BOARD

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

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS,)	
)	
Petitioner,)	
)	Case no.: 08-2031 EM
v.)	
)	
DUANE E. HARVEY)	
)	
Respondent.)	

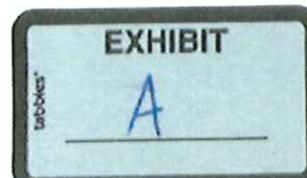
**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about December 9, 2009, the Administrative Hearing Commission entered its Decision in the case of *State Board of Embalmers and Funeral Directors v. Duane E. Harvey*, Case No. 08-2031 EM. In that Decision, the Administrative Hearing Commission found cause for the State Board of Embalmers and Funeral Directors ("Board") to discipline Duane E. Harvey ("Harvey" or "Respondent") under § 333.121.2(5), (13), and (15), RSMo.¹

The Board has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice, §§ 621.110 and 333.121.3, the Board held a hearing on March 31, 2010, at approximately 11:30 a.m., at the Best Western, 1200 Gannon Drive, Festus, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent. The

¹ Unless otherwise noted, all statutory references are to the Revised Statutes of Missouri as amended.



Board was represented by Assistant Attorney General Sharon Euler. Respondent received proper notice and opportunity to appear and appeared in person without legal counsel. After being present and considering all of the evidence presented during the hearing, the Board issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Board hereby states:

I.

FINDINGS OF FACT

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

2. The Board hereby adopts and incorporates by reference the Findings of Fact as set forth in the Decision of the Administrative Hearing Commission in *State Board of Embalmers and Funeral Directors v. Duane E. Harvey*, Case No. 08-2031 EM, in its entirety.

3. The Board set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

II.

CONCLUSIONS OF LAW

4. This Board has jurisdiction over this proceeding pursuant to § 621.110 and § 333.121.3.

5. The Board expressly adopts and incorporates by reference the Conclusions of Law as set forth in the Decision issued by the Administrative Hearing Commission in *State*

Board of Embalmers and Funeral Directors v. Duane E. Harvey, Case No. 08-2031 EM, in its entirety. The Board hereby enters its Conclusions of Law consistent therewith.

6. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision on December 9, 2009, Harvey's funeral director license is subject to disciplinary action by the Board pursuant to § 333.121.2(5), (13), and (15).

7. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the Board, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Board that Duane E. Harvey's funeral director license shall be placed on **PROBATION** for a period of **TWO (2) YEARS**, beginning upon the effective date of this Order. During the period of probation, Respondent Duane E. Harvey shall be entitled to operate as a funeral director as defined in Chapter 333, RSMo, subject to the following terms and conditions:

- A. During the probationary period, Respondent shall comply with all applicable provisions of Chapter 333 and §§ 436.400 – 436.525, RSMo, as amended, all applicable Board regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. Respondent shall meet in person with the Board or its representative at any such time and place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the probationary period.
- C. Respondent shall submit written reports to the Board by no later than January 1 and July 1, during each year of the Disciplinary period, stating truthfully whether there has been compliance with all terms and conditions of this Order. A copy of the required report may be obtained from the Board.

- D. In addition to the required compliance reports, Respondent shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.
- E. Respondent shall keep the Board apprised at all times of his current address and telephone number and the address and telephone number of the funeral establishment at which he is employed. Respondent shall immediately inform the Board in writing within two (2) days of any change in this information.
- F. During the probationary period, Respondent shall timely renew his license(s), timely pay all fees required for licensure and comply with all other requirements necessary to maintain his license(s) current and active.
- G. During the probationary period, Respondent shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- H. If Respondent fails to comply with the terms of this order during the probationary period, in any respect, the Board may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose disciplinary action under § 324.042, RSMo. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.
- I. In the event the Board determines that Respondent has violated any term or condition of this Order, the Board may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the Board, including revocation of the license.
- J. This Order does not bind the Board or restrict the remedies available to the Board for any violation of Chapter 333 or Chapter 436, RSMo, as amended, not specifically mentioned in this document.
- K. Upon the expiration of the probationary period, Respondent's funeral director license shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Order, the Board may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the Board shall deem appropriate, including, revocation of said certification. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board in accordance with Chapter 536, RSMo, as amended.
- L. If the Board determines that Respondent has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

- M. Any failure by Respondent to comply with any condition of discipline set forth herein constitutes a violation of this Order.
- N. If, at any time during the probationary period, Respondent changes his business address from the state of Missouri, or ceases to be currently licensed under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of his current places of business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- O. Unless otherwise specified by the Board, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board shall be forwarded to: State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102.

The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

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

SO ORDERED EFFECTIVE THIS 4th day of May, 2010.


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

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 BM 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. Prownfelter 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 Comninellis	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.	Julle 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*Tendal v. Missouri Bd. of Regls'n for Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

⁹*Id.*

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

¹¹See *Tendal*, 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., B.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).

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

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

¹⁷Id. at 127, 24

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 Regls'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 MBRRIAM-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 Regs'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.

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*Trlesler 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).

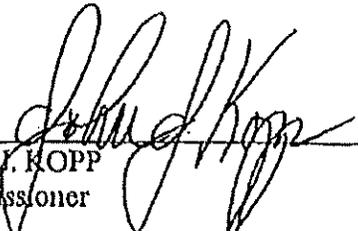
As already explained, Jackman had a right to rely on Harvey's integrity as a licensed funeral director regarding financial arrangements unique to the funeral business. Harvey violated this professional trust or confidence when he obtained the amount of the insurance proceeds from the beneficiary/assignee 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

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

FILED

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STATE BOARD OF EMBALMERS AND)
FUNERAL DIRECTORS,)
)
PETITIONER,)
)
v.)
)
KATHERINE LEWIS-BOLCH)
802 CITADEL DRIVE)
WESTON, MISSOURI 64098)
)
RESPONDENT.)

Board of Embalmers
& Funeral Directors

CASE NO. EMB 11-004.PV

PROBATION VIOLATION COMPLAINT

COMES NOW, the State Board of Embalmers and Funeral Directors (the "Board") and for its Probation Violation Complaint against Respondent Katherine Lewis-Bolch ("Lewis-Bolch" or "Licensee"), states:

The Parties and Licenses

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo¹, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Katherine Lewis-Bolch is an individual who has registered her address with the Board as 802 Citadel Drive, Weston, Missouri 64098.

3. Lewis-Bolch holds funeral director license number 007131. This license lapsed on May 31, 2010 when it was not renewed.

¹ All statutory references are to the Revised Statutes of Missouri (2000), as amended, unless otherwise indicated.

4. Lewis-Bolch holds embalmer license number 007509. This license lapsed on May 31, 2010 when it was not renewed.

Jurisdiction and Venue

5. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to paragraphs 79 and 82 on pages 19 and 20 of the Settlement Agreement.

6. Venue is proper.

Relevant Statutes

7. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

Relevant Terms and Conditions of Probation

8. The Board and Lewis-Bolch entered into the "First Amended Settlement Agreement Between Missouri State Board of Embalmers and Funeral Directors and Katherine Lewis-Bolch signed by Lewis-Bolch on September 21, 2010 and by the Board on October 12, 2010 (the "Settlement Agreement") and effective 15 days after the Board signed it. Attached as Exhibit A to this Complaint is a true and accurate copy of the Settlement Agreement.

9. In the Settlement Agreement, the Board and Lewis-Bolch agreed that Lewis-Bolch's funeral director and embalmer licenses were subject to discipline due to

Lewis-Bolch's agreed upon conduct that included forging doctor's names to death certificates, misrepresenting to crematories authority to cremate, and failing to file death certificates timely. Settlement Agreement, pages 6 -16.

10. In the Settlement Agreement, the parties agreed to a disciplinary order. Settlement Agreement, page 17.

11. The disciplinary order in the Settlement Agreement suspended Lewis-Bolch's embalmer and funeral director licenses for a period of one year and thereafter, both licenses were placed on probation for a period of five years. The Settlement Agreement set forth the terms and conditions of this discipline in paragraph 77, beginning on page 17 of the Settlement Agreement.

12. The terms and conditions of discipline in paragraph 77 of the Settlement Agreement include:

B. Lewis-Bolch shall timely renew her licenses, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her licenses in a current and active state. Paragraph 77, B. on page 18 of the Settlement Agreement.

H. Lewis-Bolch shall submit written reports to the Board by no later than January 1 and July 1 during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Settlement. Paragraph 77.H. on page 19 of the Settlement Agreement.

Conduct Supporting Probation Violations

Failure to maintain licenses current and active

13. Licensee's funeral director and embalmer licenses lapsed on May 31, 2010.

14. Licensee has not renewed either her funeral director or embalmer licenses.

15. Licensee has not timely paid all fees required for licensure renewal.

16. Licensee has taken no steps to maintain her funeral director license in current and active status.

17. Licensee has taken no steps to maintain her embalmer license in current and active status.

Failure to file bi-annual compliance reports

18. Licensee submitted no written compliance report due to the Board on or before January 1, 2011.

Violations of terms and conditions of probation

19. Licensee violated the terms and conditions of her probation contained in paragraph 77.B. of the Settlement Agreement in the following ways:

- a. Licensee failed to renew timely her funeral director license;
- b. Licensee failed to renew timely her embalmers license;
- c. Licensee failed to pay all fees required for her license renewal for both her embalmer and funeral director licenses;
- d. Licensee failed to comply with all other requirements necessary to maintain her licenses in a current and active status.

20. Licensee violated the terms and conditions of her probation contained in paragraph 77.H. of the Settlement Agreement by failing to submit her written report to the Board no later than January 1, 2011, stating truthfully whether there has been compliance with all terms and conditions of the Settlement Agreement.

21. Cause exists to impose further discipline on the funeral director and embalmer licenses of Katherine Lewis-Bolch.

WHEREFORE, Petitioner asks that the Board provide notice and opportunity to be heard to Respondent pursuant to the provisions of Chapters 333 and 536, RSMo, and thereafter issue its findings of fact, conclusions of law and order imposing further discipline on the licenses of Respondent and for such other relief as the Board deems just and proper.

Respectfully submitted,



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ATTORNEY FOR THE BOARD

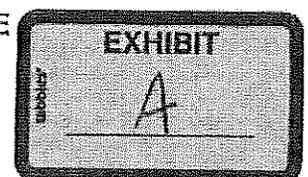
FIRST AMENDED SETTLEMENT AGREEMENT
BETWEEN
MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
AND
KATHERINE LEWIS-BOLCH

Katherine Lewis-Bolch ("Lewis-Bolch") and the Missouri State Board of Embalmers and Funeral Directors ("Board") enter into this Settlement Agreement for the purpose of resolving the question of whether Lewis-Bolch's licenses as an embalmer and funeral director, no. 007509 and no. 007131, respectively, will be subject to discipline. Pursuant to § 536.060, RSMo., 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo., Cum. Supp. 2009. The Board and Lewis-Bolch jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo., Cum. Supp. 2008.

Lewis-Bolch acknowledges that she understands the various rights and privileges afforded by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

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hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Lewis-Bolch may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to her by law, Lewis-Bolch knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Lewis-Bolch acknowledges that she has received a copy of documents that were the basis upon which the Board determined there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Lewis-Bolch stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Lewis-Bolch's licenses as an embalmer and funeral director, license No. 007509 and No. 007131, respectively, are subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo., Cum. Supp. 2009, and Chapter 333, RSMo., as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Lewis-Bolch in Part II herein is based only on the agreement set out in Part I herein. Lewis-Bolch understands that the Board may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Board and Lewis-Bolch herein jointly stipulate to the following:

GROUND FOR DISCIPLINE

1. Section 333.330, RSMo., Cum. Supp. 2009, states in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

....

(14) Violation of any professional trust or confidence;

....

(19) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo;

(20) Presigning a death certificate or signing a death certificate on a body not embalmed by, or under the personal supervision of, the licensee;

....

2. Section 193.145, RSMo., states in relevant part:

1. A certificate of death for each death which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within five days after death and shall be registered if such certificate has been completed and filed pursuant to this section.

....

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

(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.

3. Section 193.175, RSMo., states in relevant part:

1. The funeral director or person acting as such in charge of final disposition of a dead body shall file a completed notification of death with the local registrar where the death occurred. Such notification of death shall be . . . filed or postmarked prior to the date of the final disposition of the body. Such notification of death shall authorize final disposition except as otherwise stated in this section or in section 193.145. If the body is to be cremated, a completed death certificate shall be filed with the local registrar and shall authorize cremation

except as stated in section 193.145.

4. Section 193.315, RSMo., states in relevant part:

1. Any person who knowingly makes any false statement in a certificate, record, or report required by sections 193.005 to 193.325 or in an application for an amendment thereof, or in an application for a certified copy of vital record, or who knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof shall be guilty of a class D felony.

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.

5. 20 CSR 2120-2.070 states in relevant part:

(29) A licensee shall be prohibited from knowingly using, placing or including any false, misleading, deceptive or materially incorrect information, or assisting or enabling any person to provide such information, on a death certificate filed in the state of Missouri.

6. 20 CSR 2120-2.071 states in relevant part:

(15) No body shall be cremated until after a completed death certificate has been filed with the local registrar as required by section 193.175, RSMo.

PARTIES

7. The Missouri State Board of Embalmers & Funeral Directors is an agency of the state of Missouri created and existing pursuant to § 333.151, RSMo., for the purpose of executing and enforcing the provisions of Chapter 333, RSMo.; portions of Chapter 436, RSMo.; and the regulations adopted thereunder.

8. Katherine Lewis-Bolch is a natural person licensed by the Board as an embalmer and funeral director, license nos. 007509 and 007131, respectively. Lewis-Bolch's licenses are current and active, and were current and active at all material times herein.

9. Lewis-Bolch was employed by L.R. Vaughn at Rollins Funeral Home in Platte City, Missouri at all times relevant herein. Vaughn Enterprises, Inc. is the parent company of Rollins Funeral Home and Vaughn Funeral Home in Weston, Missouri.

ROXIE MAE JANTZEN

10. On April 26, 2008, Roxie Mae Jantzen ("Jantzen") passed away in Platte County, Missouri.

11. Lewis-Bolch was the funeral director or person in charge of final disposition of Jantzen's dead body.

12. Jantzen's dead body was buried on April 28, 2008.

13. Lewis-Bolch failed to file Jantzen's notification of death, or to have such notification of death postmarked by, April 28, 2008.

14. Lewis-Bolch failed to file Jantzen's death certificate with the local registrar on or before May 1, 2008.

15. Dr. Dwight A. Cashier was the physician responsible for providing the information for the medical certification for Jantzen's death certificate.

16. Lewis-Bolch failed to obtain and/or verify Dr. Cashier's medical certification for Jantzen's death certificate.

17. Lewis-Bolch filled out the Cause of Death and Certifier sections of Jantzen's death certificate and forged Dr. Cashier's signature on Jantzen's death certificate.

18. Scott D. Vaughn embalmed Jantzen's dead body. However, Lewis-Bolch signed the Statement of Licensed Embalmer section of Jantzen's death certificate on behalf of Scott D. Vaughn and then affixed her own signature in the same section.

19. Lewis-Bolch filed or caused to be filed Jantzen's death certificate at the local registrar's office on February 5, 2009.

20. Lewis-Bolch's failure to file Jantzen's notification of death, or failure to have such notification of death postmarked by, April 28, 2008, constitutes a violation of § 193.175, RSMo.

21. Lewis-Bolch's failure to file Jantzen's death certificate on or before May 1, 2008, and/or failure to obtain or verify medical certification from Dr. Cashier constitutes violations of § 193.145, RSMo.

22. As set forth above, Lewis-Bolch's conduct constitutes violations of § 193.315.1, 2 and/or 3, in that she: (1) knowingly made false statement(s) in a certificate, record or report required by §§ 193.005 to 193.325; (2) made, counterfeited, altered, amended or mutilated a certificate, record or report required by §§ 193.005 to 193.325 with the intent to deceive; and (3) knowingly neglected, violated or refused to perform duties imposed upon her by §§ 193.005 to 193.325.

23. As set forth above, Lewis-Bolch's conduct constitutes a violation of 20 CSR 2120-2.070(29) in that she knowingly used, placed or included false, misleading, deceptive or materially incorrect information, on a death certificate filed in the State of Missouri.

24. Lewis-Bolch's conduct as set forth above constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of her functions or duties as a licensed funeral director and embalmer. Therefore, cause for discipline exists pursuant to § 333.330.2(5), RSMo., Cum. Supp. 2009.

25. Lewis-Bolch's conduct as set forth above constitutes violations of, or assisting or enabling another person to violate § 333.330 et seq. and/or 20 CSR 2120-2.070(29). Therefore, cause for discipline exists pursuant to § 333.330.2(6), RSMo., Cum. Supp. 2009.

26. Lewis-Bolch's conduct as set forth above constitutes a violation of professional trust or confidence between Lewis-Bolch and (1) her clients; (2) her employer and (3) Dr. Cashier in that each relied on Lewis-Bolch to lawfully complete routine paperwork to secure

final disposition of Jantzen's dead body. Therefore, cause for discipline exists pursuant to § 333.330.2(14) RSMo., Cum. Supp. 2009.

27. Lewis-Bolch's conduct as set forth above constitutes violations of § 193, RSMo. Therefore, cause for discipline exists pursuant to § 333.330.2(19), RSMo., Cum. Supp. 2009.

28. Lewis-Bolch's conduct as set forth above constitutes a violation of § 333.330.2 (20) RSMo, Cum. Supp. 2009. Therefore, cause for discipline exists pursuant to § 333.330.2 (20) RSMo, Cum. Supp. 2009.

DAISY BEAVERS

29. Ms. Daisy Beavers ("Beavers") died on June 2, 2009, in Clinton, Missouri.

30. Lewis-Bolch was the funeral director or person in charge of final disposition Beavers' dead body.

31. Dr. James Clouse was the physician responsible for providing the medical certification on Beavers' death certificate.

32. On or about June 2, 2009, Lewis-Bolch prepared a Letter of Intent to Complete and Sign Beavers' death certificate ("Letter of Intent"). Lewis-Bolch wrote-in the name "Dr. Almott" as the name of the physician providing the Letter of Intent. "Dr. Almott" is not a physician licensed by the State of Missouri and in so much as a "Dr. Almott" exists; he/she was not in any way involved in providing the Letter of Intent.

33. Lewis-Bolch forged the signature of "Dr. Almott" or Dr. Clouse on the Letter of Intent. Thereafter, Lewis-Bolch provided Central States Mortuary, Riverside, Missouri ("Central States) with the Letter of Intent containing the forged signature. Central States cremated Beavers' dead body based, in part, on the Letter of Intent containing the forged signature.

34. As set forth above, Lewis-Bolch's conduct constitutes violations of §193.315.1, 2 and/or 3, RSMo, in that she: (1) knowingly made false statement(s) in a certificate, record or report required by §§ 193.005 to 193.325; (2) made, counterfeited, altered, amended or mutilated a certificate, record or report required by §§ 193.005 to 193.325 with the intent to deceive; and/or (3) knowingly neglected, violated or refused to perform duties imposed upon her by §§ 193.005 to 193.325.

35. Lewis-Bolch's conduct as set forth above constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of her functions or duties as a licensed funeral director and embalmer. Therefore, cause for discipline exists pursuant to § 333.330.2(5), RSMo., Cum. Supp. 2009.

36. Lewis-Bolch's conduct as set forth above constitutes violations of, or assisting or enabling any person to violate § 333.330 et seq. Therefore, cause for discipline exists pursuant to § 333.330.2(6), RSMo., Cum. Supp. 2009.

37. Lewis-Bolch's conduct as set forth above constitutes a violation of professional trust or confidence between Lewis-Bolch and (1) her clients; (2) her employer; (3) Central

States and (4) Dr. Clouse in that each relied on Lewis-Bolch to lawfully complete routine paperwork to secure final disposition of Beavers' dead body. Therefore, cause for discipline exists pursuant to § 333.330.2(14) RSMo., Cum. Supp. 2009.

38. Lewis-Bolch's conduct as set forth above constitutes violations of § 193, RSMo. Therefore, cause for discipline exists pursuant to § 333.330.2(19), RSMo., Cum. Supp. 2009.

39. Lewis-Bolch's conduct as set forth above constitutes a violation of § 333.330.2(20) RSMo., Cum. Supp. 2009. Therefore, cause for discipline exists pursuant to § 333.330.2(20) RSMo., Cum. Supp. 2009.

MARY LAMAR

40. Ms. Mary Lamar ("Lamar") died on March 5, 2009, in Buchanan County, Missouri.

41. Lewis-Bolch was the funeral director or person in charge of final disposition Lamar's dead body.

42. Central States cremated Lamar's dead body on March 10, 2009.

43. Lewis-Bolch failed to file Lamar's completed death certificate with the local registrar prior to Lamar's cremation on March 10, 2009.

44. Lewis-Bolch filed or caused to be filed Lamar's death certificate at the local registrar's office on March 27, 2009.

45. Lewis-Bolch's failure to file Lamar's completed death certificate with the local registrar prior to Lamar's cremation on March 10, 2009, constitutes a violation of § 193.175, RSMo.

46. Lewis-Bolch's conduct as set forth above constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of her functions or duties as a licensed funeral director and embalmer. Therefore, cause for discipline exists pursuant to § 333.330.2(5), RSMo., Cum. Supp. 2009.

47. Lewis-Bolch's conduct as set forth above constitutes violations of, or assisting or enabling any person to violate § 333.330 et seq. and/or 20 CSR 2120-2.071. Therefore, cause for discipline exists pursuant to § 333.330.2(6), RSMo., Cum. Supp. 2009.

48. Lewis-Bolch's conduct as set forth above constitutes a violation of professional trust or confidence between Lewis-Bolch and (1) her clients; (2) her employer and (3) Central States in that each relied on Lewis-Bolch to lawfully complete routine paperwork to secure final disposition of Lamar's dead body. Therefore, cause for discipline exists pursuant to § 333.330.2(14) RSMo., Cum. Supp. 2009.

49. Lewis-Bolch's conduct as set forth above constitutes a violation of § 333.330.2(20), RSMo., Cum. Supp. 2009. Therefore, cause exists to discipline Lewis-Bolch pursuant to § 333.330.2(20), RSMo., Cum. Supp. 2009.

ROGER RAWLINGS

50. On June 25, 2009, Mr. Roger Rawlings ("Rawlings") died in Clay County, Missouri.

51. Lewis-Bolch was the funeral director or person in charge of final disposition of Rawlings' dead body.

52. Rawlings dead body was cremated on June 27, 2009.

53. Lewis-Bolch failed to file Rawlings' completed death certificate with the local registrar on or before June 27, 2009.

54. On or about June 26, 2009, Lewis-Bolch prepared a Letter of Intent to Complete and Sign Rawlings' death certificate ("Letter of Intent").

55. Lewis-Bolch forged the signature of Dr. James Stoddard on the Letter of Intent. Thereafter, Lewis-Bolch provided Central States with the Letter of Intent containing the forged signature. Central States cremated Rawlings' dead body based, in part, on the Letter of Intent containing the forged signature.

56. Lewis-Bolch filed or caused to be filed Rawlings' death certificate at the local registrar's office on July 28, 2009.

57. Lewis-Bolch's failure to file Rawlings' completed death certificate prior to Rawlings' cremation, constitutes a violation of § 193.175, RSMo.

58. As set forth above, Lewis-Bolch's conduct constitutes violations of § 193.315.1, 2 and 3, RSMo., in that she: (1) knowingly made false statement(s) in a

certificate, record or report required by §§ 193.005 to 193.325; (2) made, counterfeited, altered, amended or mutilated a certificate, record or report required by §§ 193.005 to 193.325 with the intent to deceive; and (3) knowingly neglected, violated or refused to perform duties imposed upon her by §§ 193.005 to 193.325.

59. Lewis-Bolch's conduct as set forth above constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of her functions or duties as a licensed funeral director and embalmer. Therefore, cause for discipline exists pursuant to § 333.330.2(5), RSMo., Cum. Supp. 2009.

60. Lewis-Bolch's conduct as set forth above constitutes violations of, or assisting or enabling any person to violate § 333.330 et seq. and 20 CSR 2120-2.071. Therefore, cause for discipline exists pursuant to § 333.330.2(6), RSMo., Cum. Supp. 2009.

61. Lewis-Bolch's conduct as set forth above constitutes a violation of professional trust or confidence between Lewis-Bolch and (1) her clients; (2) her employer; (3) Dr. Stoddard and (4) Central States in that each relied on Lewis-Bolch to lawfully complete routine paperwork to secure final disposition of Rawlings' dead body. Therefore, cause for discipline exists pursuant to § 333.330.2(14) RSMo., Cum. Supp. 2009.

62. Lewis-Bolch's conduct as set forth above constitutes violations of § 193. Therefore, cause for discipline exists pursuant to § 333.330.2(19), RSMo., Cum. Supp. 2009.

63. Lewis-Bolch's conduct as set forth above constitutes a violation of § 333.330.2(20) RSMo., Supp. 2009. Therefore, cause for discipline exists pursuant to

§ 333.330.2(20) RSMo., Cum. Supp. 2009.

JOHN SHIPMAN

64. Mr. John Shipman ("Shipman") died on April 8, 2009, in Johnson County, Kansas.

65. Lewis-Bolch was the funeral director or person in charge of final disposition Shipman's dead body.

66. Mr. Shipman was cremated at Central States on April 17, 2009. Central States Mortuary is located in Riverside, Missouri.

67. Kansas law requires that a death certificate be filed with the Kansas state registrar within three (3) days after such death by the funeral director or person acting as the funeral director who first assumes custody of the dead body. K.S.A. 65-2412(a), (b) (2008).

68. Lewis-Bolch failed to file Shipman's death certificate (1) with the Kansas state registrar on or before April 11, 2009 and/or (2) prior to Shipman's dead body being removed from the state of Kansas.

69. Kansas law requires a completed and executed coroner's permit in order to cremate a dead human body. K.S.A. § 65-1762(b)(2) (2008).

70. Lewis-Bolch did not obtain a completed and executed coroner's permit for the cremation of Shipman's dead body.

71. Lewis-Bolch represented to Central States that she had a completed and executed coroner's permit to cremate Shipman's dead body. Central States cremated Shipman's dead body based, in part, on Lewis-Bolch's aforementioned misrepresentation.

72. Lewis-Bolch filed or caused to be filed Shipman's death certificate with the Kansas state registrar on or about April 27, 2009.

73. Lewis-Bolch's conduct as set forth above constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of her functions or duties as a licensed funeral director and embalmer. Therefore, cause for discipline exists pursuant to § 333.330.2(5), RSMo., Cum. Supp. 2009.

74. Lewis-Bolch's conduct as set forth above constitutes violations of, or assisting or enabling any person to violate § 333.330 et seq. and 20 CSR 2120-2.071. Therefore, cause for discipline exists pursuant to § 333.330.2(6), RSMo., Cum. Supp. 2009.

75. Lewis-Bolch's conduct as set forth above constitutes a violation of professional trust or confidence between Lewis-Bolch and (1) her clients; (2) her employer and (3) Central States in that each relied on Lewis-Bolch to lawfully complete routine paperwork to secure final disposition of Shipman's dead body. Therefore, cause for discipline exists pursuant to § 333.330.2(14) RSMo., Cum. Supp. 2009.

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 536.060, RSMo., and §§ 621.045.3 and 621.110, RSMo., Cum. Supp. 2009.

76. **Lewis-Bolch's licenses are suspended, followed by a period of probation.** Lewis-Bolch's licenses as an embalmer and funeral director are hereby SUSPENDED for a period of ONE YEAR, and shall immediately thereafter be placed on PROBATION for a period of FIVE YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Lewis-Bolch shall not be entitled to practice as an embalmer or funeral director pursuant to Chapter 333, RSMo. During the period of probation, Lewis-Bolch shall be entitled to practice as an embalmer and funeral director under Chapter 333, RSMo., provided Lewis-Bolch adheres to all the terms of this Settlement Agreement.

77. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Lewis-Bolch shall keep the Board apprised at all times of her current address and telephone number at each place of residence and business. Lewis-Bolch shall notify the Board in writing within ten (10) days of any change in this information.

B. Lewis-Bolch shall timely renew her licenses, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her licenses in a current and active status.

C. Lewis-Bolch shall meet in person with the Board or its representative at any such time or place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the probation period.

D. Lewis-Bolch shall immediately submit documents showing compliance with the requirements of this settlement agreement to the Board when requested by the Board or its designee.

E. During the probationary period, Lewis-Bolch shall accept and comply with unannounced visits from the Board's representative to monitor compliance with the terms and conditions of this settlement agreement.

F. If at any time during the disciplinary period, Lewis-Bolch changes her residence from the State of Missouri, ceases to be currently licensed in Missouri under Chapter 333 or Chapter 436, RSMo., as amended, fails to timely pay all fees required for license renewal, or fails to keep the Board advised of all current places of residence and business, the time of absence, unlicensed status, delinquency in paying fees for license renewal or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

G. Lewis-Bolch shall comply with all relevant provisions of Chapter 333, RSMo., as amended; Sections 436.400 through 436.525, RSMo.; all rules and regulations of the Board, and all state and federal laws related to the performance of duties in the funeral industry. "State" as used herein includes the State of Missouri and all other states and territories of the United States.

H. Lewis-Bolch shall submit written reports to the Board by no later than January 1 and July 1 during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Settlement.

78. Upon the expiration of the disciplinary period, the licenses of Lewis-Bolch shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Lewis-Bolch has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Lewis-Bolch's licenses.

79. No additional discipline shall be imposed by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Board as a contested case in accordance with the provisions of Chapter 536, RSMo.

80. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Lewis-Bolch of Chapter 333, RSMo.,

as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

81. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Board or may be discovered.

82. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Lewis-Bolch agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

83. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

84. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

85. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 333, 610, and 324, RSMo., as amended.

86. Lewis-Bolch, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo. (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

87. Lewis-Bolch understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Lewis-Bolch's licenses. If Lewis-Bolch

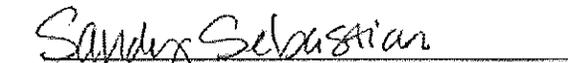
desires the Administrative Hearing Commission to review this Settlement Agreement, Lewis-Bolch may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

88. If Lewis-Bolch requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Lewis-Bolch's licenses. If Lewis-Bolch does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

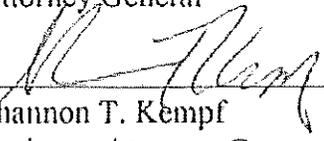
LICENSEE


Katherine Lewis-Bolch Date: 9/21/10

Missouri State Board of Embalmers and
Funeral Directors


~~Becky Dunn~~, Executive Director
Date: 10.12.10
Sandy Sebastian

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