

State Board of Embalmers and Funeral Directors

January 25, 2012
Division of Professional Registration
3605 Missouri Blvd
Jefferson City, MO 65109

OPEN AGENDA

January 25, 2012 – 8:30 a.m.

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

CLOSED

4. Executive Director Report
5. Legal Counsel Report
5. (Tab 2) Approval of Open Minutes
December 7, 2011 Examination Committee
December 13, 2011 Examination Committee
December 22, 2011 Examination Committee
January 6, 2012 Examination Committee
January 13, 2012 Examination Committee
6. (Tab 3) Discussion of proposed draft rules -
Insurance Funded Preneed Contracts
Amendment to Annual Reporting Requirements
7. Financial Examination Committee
8. Open Discussion/Dialogue
9. (Tab 4) Probation Violation Hearing 10:00 a.m.
Shelby Funeral Homes Inc. - Case 12-004-PV
10. (Tab 5) Probation Violation Hearing 11:00 a.m.
George Treaster dba White Funeral Home - Case 12-005-PV

LUNCH

CLOSED

11. Adjournment

**State Board of Embalmers and Funeral Directors
Examination Committee**

December 7, 2011 3:30 p.m.

**State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
Jefferson City, MO. 65109**

Open Meeting Minutes

The meeting of the State Board of Embalmers and Funeral Directors Examination Committee was called to order by James Reinhard, Committee Chair, at 5:33 p.m.

Roll Call

Board Members Present

James Reinhard, Committee Chair
Archie Camden, Member

Staff Present

Sandy Sebastian, Executive Director
Lisa Wildhaber, Examiner Supervisor
Sharon Euler, Division Legal Counsel

Approval of Open Agenda

A motion was made by Archie Camden and seconded by James Reinhard to approve the open agenda. Motion carried.

Closed Meeting-Review of Financial Examinations

A motion was made by Archie Camden and seconded by James Reinhard to move into closed session pursuant to Section 610.021 subsection (1) and (14), Section 620.010.14 subsection (7) and Section 324.001.9 and 324.017 RSMo. Motion carried.

Adjournment

A motion was made and seconded to adjourn the examination committee meeting at 6:25 p.m.

Executive Director: _____

Approved by the Board on: _____

**State Board of Embalmers and Funeral Directors
Examination Committee**

December 13, 2011

9:00 a.m.

**State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
Jefferson City, MO 65109**

Open Meeting Minutes

The meeting of the State Board of Embalmers and Funeral Directors Examination Committee was called to order by James Reinhard, Committee Chair, at 9:04 a.m.

Roll Call

Board Members Present

James Reinhard, Committee Chair
Archie Camden, Member

Staff Present

Sandy Sebastian, Executive Director
Lisa Wildhaber, Examiner Supervisor
Sharon Euler, Division Legal Counsel

Approval of Amended Closed Agenda

A motion was made by Archie Camden and seconded by James Reinhard to approve the open agenda.

Closed Meeting-Review of Financial Examinations

A motion was made by Archie Camden and seconded by James Reinhard to move into closed session pursuant to Section 610.021 subsection (1) and (14), Section 620.010.14 subsection (7) and Section 324.001.9 and 324.017 RSMo.

Preneed Contract Discussion

Discussion was held regarding what constitutes a preneed contract. Conversation included that a document that included a signed document and money would constitute a preneed contract. Someone coming in and looking at things would not constitute a contract. An area that needs to be looked at further is if there is an acceptance of beneficiary or assignment.

Adjournment

A motion was made and seconded to adjourn the examination committee meeting at 10:46 a.m.

Executive Director: _____

Approved by the Board on: _____

**State Board of Embalmers and Funeral Directors
Examination Committee**

December 22, 2011

9:00 a.m.

**State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
Jefferson City, MO 65109**

Open Meeting Minutes

The meeting of the State Board of Embalmers and Funeral Directors Examination Committee was called to order by James Reinhard, Committee Chair, at 9:00 a.m.

Roll Call

Board Members Present

James Reinhard, Committee Chair

Archie Camden, Member

Staff Present

Sandy Sebastian, Executive Director

Lisa Wildhaber, Examiner Supervisor

Sharon Euler, Division Legal Counsel

Approval of Closed Agenda

A motion was made by Archie Camden and seconded by James Reinhard to approve the open agenda.

Closed Meeting-Review of Financial Examinations

A motion was made by Archie Camden and seconded by James Reinhard to move into closed session pursuant to Section 610.021 subsection (1) and (14), Section 620.010.14 subsection (7) and Section 324.001.9 and 324.017 RSMo..

Adjournment

A motion was made to adjourn the examination committee meeting at 11:04 a.m.

Executive Director: _____

Approved by the Board on: _____

**State Board of Embalmers and Funeral Directors
Examination Committee
Conference Call**

**January 6, 2012
9:00 a.m.**

**Main Conference Room
3605 Missouri Boulevard
Jefferson City, MO 65109**

Open Minutes

Call to Order

The meeting of the State Board of Embalmers and Funeral Directors was called to order by James Reinhard, Chairman at 9:04a.m.

Roll Call

Board members present

James Reinhard, Committee Chair
Archie Camden, Member

Staff Present

Sandy Sebastian, Executive Directors
Lisa Wildhaber, Examiner Supervisor
Tabatha Lenzini, Administrative Assistant
Sharon Euler Division Legal Counsel

Approval of Agenda

A motion was made by Archie Camden and seconded by James Reinhard to approve agenda.

Closed Meeting - Legal Advice

A motion was made by Archie Camden and seconded by James Reinhard that the meeting be closed pursuant to Section 610.021 subsection (1) RSMo..

Executive Director Report

Nothing to report

Legal Counsel Report

Nothing to report

Draft Rules –

Insurance Funded Preneed Contract and Amendment to Seller Annual Reporting Requirements

Draft rules were discussed and the public in attendance was allowed to make comment on the drafts. Concerns of the public that were present were requested to be submitted in writing. Archie Camden asked that comments received be addressed by making any necessary adjustments to the draft rule and to bring the draft back to the committee for finalizing prior to presenting to the full board.

Closed Meeting – Review of Financial Examinations

A motion was made by Archie Camden and seconded by James Reinhard that the meeting be closed pursuant to Section 610.021 subsection (1) and (14), Section 620.010.14 subsection (7) and Section 324.001.9 and 324.017 RSMo.

Next Meeting

The committee set an exam meeting for Friday January 13, 2012.

Adjournment

A motion was made by Archie Camden and seconded by James Reinhard to adjourn the meeting. 9:57 a.m.

Executive Director: _____

Approved by the Board on: _____

**State Board of Embalmers and Funeral Directors
Examination Committee
Conference Call**

January 13, 2012

9:00 a.m.

**Missouri Conference Room
3605 Missouri Boulevard
Jefferson City, MO 65109**

Open Minutes

The Examination Committee meeting of the State Board of Embalmers and Funeral Directors was called to order by James Reinhard at 9:02a.m.

Roll Call

Board members present

James Reinhard, Committee Chair
Archie Camden, Board member

Staff Present

Sandy Sebastian, Executive Directors
Lisa Wildhaber, Examiner Supervisor
Tabatha Lenzini, Administrative Assistant joined at 9:15a.m.
Lori Hayes, Inspector
Katie Orbals, Licensure Technician
Sharon Euler Division Legal Counsel

Approval of Open Agenda

A motion was made by Archie Camden and seconded by James Reinhard to approve the agenda.

Executive Director Report

Nothing to report

Legal Counsel Report

Several comments about proposed rules have been submitted. Those have been forwarded to the board.

Draft Rules –

Insurance Funded Preneed Contract and Amendment to Seller Annual Reporting Requirements

Discussion was held regarding the draft rule and those public in attendance shared their comments with the committee. A motion was made by Archie Camden and seconded by James Reinhard to refer the proposed rules to the full board for review as they are currently drafted.

Closed Meeting – Review of Financial Examinations

A motion was made by Archie Camden and seconded by James Reinhard to closed pursuant to Section 610.021 subsection (1) and (14), Section 620.010.14 subsection (7) and Section 324.001.9 and 324.017 RSMo.

Financial Examination Committee

It was shared with the committee that the chairman of the board has asked that the examination committee and its processes to be added to the full board agenda on January 25, 2012 for discussion and has directed that no additional examination committee meetings be scheduled until after the full board meeting. Archie Camden indicated that he disagrees that the chairman has the authority to stop the committee meetings until the full board meeting.

A motion was made by Archie Camden and seconded by James Reinhard to adjourn 10:55a.m.

Proposed Rule: Insurance Funded Preneed Contracts

1. An insurance funded preneed contract is a preneed contract to be funded by payments or proceeds from an insurance policy or from a deferred annuity contract that is not classified as a variable annuity and has death benefit proceeds that are never less than the sum of premiums paid. (*§436.405(3), RSMo.*)
2. Any preneed contract, as defined in Chapters 333 and 436, RSMo, that is funded by payments or proceeds from any life insurance policy or annuity must comply with the provisions of Chapters 333 and 436, RSMo, and accompanying regulations regardless of when or from whom the policy was purchased or whether the seller received any form of commission or compensation from any source when the preneed contract is formed. (*§436.405 and §436.450, RSMo.*)
3. An insurance funded preneed contract is sold when the seller agrees to act as a seller for an insurance funded preneed contract, as defined in the statutes. (*§436.405(3), RSMo.*)
4. Any person agreeing to act as a seller for an insurance funded preneed contract must be licensed as a seller. (*§333.320.1 and §436.415.2, RSMo.*)
5. A person or entity engages in the practice of being a seller and must hold a seller license if the person or entity is named as the owner (under prior law) or beneficiary of an insurance policy or annuity, if the ownership, assignment or being named as beneficiary of the insurance policy or annuity occurred after August 13, 1982, and there is an agreement between the seller and the consumer that the proceeds of any insurance policy or annuity are to be used to pay for final disposition. (*§333.320.1 and §436.415.2, RSMo.*)
6. For each preneed contract funded by any insurance policy or annuity, the seller shall maintain in the file, in addition to the other records required by law, a copy of the insurance policy or annuity contract and evidence of the assignment or being named beneficiary. (*§436.465, RSMo.*)
7. No preneed contract, as defined in the statutes, is formed if there is no agreement between the purchaser and the seller for any final disposition arrangements and no payment is made or promised to be made (other than pursuant to an at-need contract) for the goods and services to be provided at death. (*§436.405(7), RSMo*)
8. No preneed contract is formed by the act of a licensed insurance producer selling any life insurance product at the location of the seller unless there is also a preneed contract or other arrangement in which the seller agrees to act as a seller under the provisions of chapters 333 and 436, RSMo, and accompanying regulations. (*§436.450.5, RSMo.*)

Proposed Rule: Amend the annual reporting rule:

1. For the seller annual report, if the seller is unable to validate the status and face value of the insurance policy and unable to obtain the certification from the insurance company, the following information shall meet the requirements of Section 436.460.4 for the reporting requirements for insurance funded preneed contracts.
 - a. The name and address of the company issuing the policy or annuity funding the preneed;
 - b. The amount of the policy or balance on account at the time the preneed contract was sold; and
 - c. An attestation from the seller that since these accounts are funded by being insurance or annuity beneficiary or assignment, the seller has no ability to confirm the existence or amount of the policies or accounts.

Proposed Rule: Insurance funded pre-need contracts

1. A preneed contract is any contract or other arrangement that provides for the final disposition of a dead human body, funeral or burial services or facilities or funeral merchandise where such disposition, services, facilities or merchandise are not immediately required.

2. An insurance funded preneed contract is a preneed contract designated to be funded by payments or proceeds from an insurance policy or deferred annuity contract that is not classified as a variable annuity and has death benefit proceeds that are never less than the sum of premiums paid.

3. An insurance funded preneed contract is sold when a seller is named as beneficiary or assignee of an insurance policy or annuity and the seller agrees to act as a seller to pay the funds to a provider to pay for final disposition of the preneed contract beneficiary's body at the time of death.

4. A preneed contract is formed when an agreement is entered into that meets the criteria to be a preneed contract regardless of the title placed on the agreement between the seller and the purchaser.

5. A preneed contract is formed without regard to whether the insurance policy or annuity funding the preneed contract is purchased at the same time as the preneed contract or if the insurance policy or annuity has been purchased prior to formation of the preneed contract and without regard to whether the insurance policy or annuity is purchased from an insurance/annuity agent associated with a seller or from an insurance/annuity agent wholly independent from a seller.

6. Whether the seller receives any form of commission or other compensation at the time the parties enter into a preneed contract does not determine whether a preneed contract has been "sold" for the purposes of meeting the requirements found in Chapters 333 and 436 related to preneed contracts.

7. A preneed contract is formed with any other arrangement when there is sufficient evidence to show that the arrangement meets the statutory definition of a preneed contract.

8. No preneed contract, as defined in the statutes, is formed if there is no agreement between the purchaser and the seller and no payment is made or promised to be made (other than pursuant to an at-need contract) for the goods and services to be provided at death.

9. If a seller receives funds at the time of death of the preneed contract beneficiary from an insurance policy or an annuity, the seller must apply

all funds received to the payment for the at-need contract. If any funds remain after payment of the at-need expenses or pursuant to contract between the seller and provider, those funds may not be retained by the seller, but must be paid to the estate of the deceased or, if the deceased received public assistance, those excess funds must be paid to the State of Missouri. If the seller receives funds from an insurance policy or annuity and, upon reasonable inquiry, cannot determine to whom to pay the funds to pay for final disposition of the preneed contract beneficiary's body, the seller must turn those funds over the Missouri State Treasurer as unclaimed property.

10. Agreeing to provide goods and services for final disposition of a dead human body with payment to be made by insurance assignment or by being named beneficiary on an insurance policy or annuity constitutes the practice of being a seller and thus, requires a seller license.

11. A person or entity engages in the practice of being a seller and must hold a seller license if the person or entity is named as the owner (under prior law) or beneficiary of an insurance policy or annuity, if the ownership, assignment or being named as beneficiary of the insurance policy or annuity occurred after August 13, 1982.

12. For each preneed contract funded by any insurance policy or annuity, the seller shall maintain in the file, in addition to the other records required by law, a copy of the insurance policy or annuity contract and evidence of the assignment or being named beneficiary.

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January 9, 2012

James Reinhard
Archie Camden
Missouri State Board of Embalmers and Funeral Directors
3605 Missouri Boulevard
PO Box 423
Jefferson City, MO 65102-0423

Re: Insurance funded pre-need contracts

Dear Gentlemen:

The State Board staff has submitted to you as members of the Examination Committee two proposed rules regarding insurance funded pre-need contracts. The proposed rules would provide that a preneed contract would be formed without regard to when the insurance (or annuity) was purchased, and without regard to whether the funeral home seller has received any commission or compensation at the time the preneed contract has been "sold". These crucial facts contradict the State Board recommendations made to the Missouri Legislature in 2008 (which coincidentally, were signed by Mr. Reinhard as State Board Chairman).

Enclosed with this letter are excerpts from the State Board's "Chapter 436 Working Group Recommendations". I direct you first to following language on Page 16 regarding the "Regulation of Insurance Contracts":

Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

Please note the second sentence, and how the current staff proposal attempts to re-define "sold in conjunction with insurance". With regard to insurance-funded preneed plans, the State Board set out its unanimous recommendations on Page 30 of the Chapter 436 Working Group Recommendations: Fees/Expenses, Payment Handling and Reporting. The Recommendations were focused on the transaction where payments are being made by the consumer. Also note that the Reporting recommendation focuses on "insurance companies used by the seller for insurance funding". The proposed regulation would expand the examination process to cover transactions that do not involve consumer payments to the funeral home or insurance companies "used by the seller". Not only does the proposal conflict with the Recommendations, it diverts the Board's examination mandate from its "Highest Priorities".

January 9, 2012

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In recommending preneed reform to the Missouri Legislature, the State Board set out the following as the highest priorities:

1. Addressing preneed provider obligations on default by the seller
2. Depositing of preneed funds
3. Changing/clarifying amount of preneed funds required to be trusted (100%, 80%, etc.)
4. Clarifying whether trust accounts are required for all preneed sellers
5. Changing/clarifying trustee duties/responsibilities
6. Changing/clarifying allowed use of independent investment advisors
7. Proper investment of trust funds (term life, whole life, "reasonable person" standard)
8. Changing/clarifying trust requirements for preneed sellers issuing insurance funded preneed contracts
9. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (should this go to the Bd. Or the Department of Insurance?)

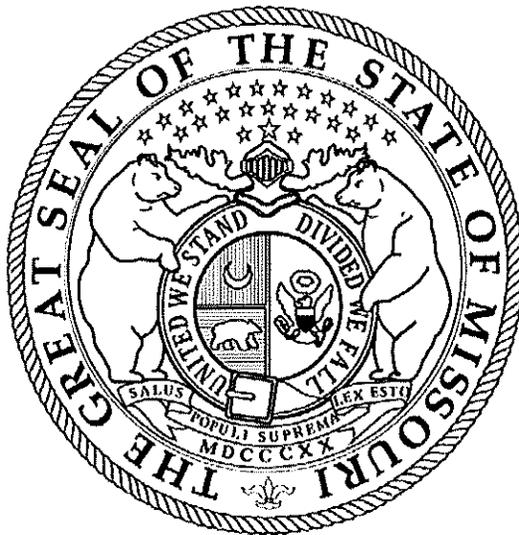
The transaction that concerns the staff is not the sale of insurance funded preneed. Rather, individuals are bringing existing insurance policies to the funeral home for a future service. While there is a need to ensure these individuals have the insurance proceeds applied to the funeral expense, the State Board has ample authority under Chapter 333 to promulgate regulations to require funeral homes to properly document insurance assignments and designations made with regard to existing insurance and annuities. The proposed regulations exceed the statutory authorities granted by Senate Bill No. 1, and would likely be overturned if challenged. Such a result would be an unconscionable waste of consumer fees. To restore consumer confidence in the preneed transaction, the Chapter 436 examination process must focus on the Highest Priorities.

Sincerely,

William Stalter

Cc: Sharon Euler

CHAPTER 436 WORKING GROUP RECOMMENDATIONS



Submitted by:
**THE MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS**

September 9, 2008

September 9, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. Although recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

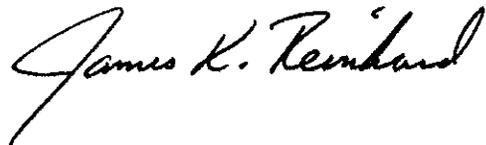
Pursuant to Missouri law, regulatory jurisdiction over preneed sales is vested in the Missouri State Board of Embalmers and Funeral Directors (the "Board"). As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee's review. The Working Group consisted of participants from all aspects of the preneed industry, including, consumer advocacy groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While a myriad of opinions were identified, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

A handwritten signature in black ink that reads "James K. Reinhard". The signature is written in a cursive style with a large, sweeping initial "J".

James Reinhard
Chairman, State Board of Embalmers and Funeral Directors
On behalf of the 436 Working Group

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OVERVIEW

I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, several legislative proposals were introduced to significantly revise and amend Chapter 436 governing preneed sales in the state of Missouri. Although the majority of proposals were not enacted, Senate Bill 788 was passed by the General Assembly which created the Joint Committee on Preneed Funeral Contracts.

After the close of the legislative session, Senator Delbert Scott and Representative Jay Wasson met with several of the legislative participants to discuss the unresolved Chapter 436 concerns. The discussion revealed several common areas of agreement among regulators, industry representatives and consumer groups. The Board was subsequently asked to formulate a working group to help identify those collective areas of agreement and to collate suggested legislative recommendations for the Joint Committee's review.

The Working Group subsequently participated in a series of six (6) meetings in Jefferson City, Missouri.¹ Meetings of the Working Group were organized and hosted by the Board and conducted as open meetings in accordance with Chapter 610, RSMo. As required by Missouri law, notices of meetings were made publicly available and posted on the Board's website.

II. PARTICIPANTS:

The Working Group consisted of representatives from all aspects of the preneed industry, including, preneed providers/sellers, consumer groups, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Public participation was invited at each meeting. Members of the public were also afforded an opportunity to provide both oral and written comments.

The Working Group included:

	<u>REGULATORS:</u>
Linda Bohrer	Acting Director- Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
David Broeker	Director, Division of Professional Registration*
Sharon Euler	Office of the Attorney General*

¹ Open meetings were hosted on July 8th, July 15th, July 24th, July 29th, August 12th and September 3rd.

* Did not participate as a voting member of the Working Group. Due to pending litigation, the Missouri Attorney General's Office also refrained from voting, however, the Attorney General's Office assisted in Working Group discussions.

Mary Erickson	Senior Enforcement Counsel- DIFP
Larry McCord	General Counsel- DIFP
Mark Stahlhuth	Senior Counsel- Financial Section, DIFP
Rich Weaver	Deputy Commissioner, Division of Finance

ADDITIONAL PARTICIPANTS:

James Reinhard,	Chair, State Board of Embalmers and Funeral Directors
Gary Fraker	Board Member, Secretary
Joy Gerstein	Board Public Member
Todd Mahn	Board Member
Martin Vernon	Board Member, Vice Chairman
John McCulloch	Board Member/American Prearranged Services
Bob Baker	Wright Baker Hill Funeral Home
Barbara Brown	Layne Renaissance Chapel, LLC
Norma Collins	AARP
Tom Kutis/ George Cline	Kutis Funeral Home, Inc.
Jim Moody	Lobbyist, SCI
Rep. Timothy Meadows	
Michael Meierhoffer	Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman	Rep. Meadows' Office
Darlene Russell	CFL Preneed
Josh Slocum	Executive Director, Funeral Consumer Alliance
Bill Stalter	Stalter Legal Services
Bill Trimm/ Jo Walker	Silver Haired Legislature
Don Otto	Executive Director, Missouri Funeral Directors and Embalmers Association/Missouri Funeral Trust
Mark Warren	Inglish & Monaco- Representing the Missouri Preneed Insurers Coalition of six (6) life insurers with interests in the Missouri preneed market, including Forethought Life Insurance Company, Funeral Directors Life, Great Western, Homesteaders Life, National Guardian Life Insurance Company, and Pekin Life.
Mike Winters	Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston	Director of Budget & Legislation, Division of Professional Registration
Becky Dunn	Executive Director, State Board*
Jeana Groose	Budget Analyst II, Division of Professional Registration*
Kimberly Grinston	Legal Counsel, Division of Professional Registration*
Lori Hayes	Inspector, State Board*

III. **REVIEW PROCESS:**

To guide the review, the Board formulated a survey containing a listing by topic area of Chapter 436 proposals previously submitted to the Board. Participants were asked to rank the priority of topic areas for purposes of discussion. Rankings were subsequently compiled by the Division and used to structure Working Group discussions.

The surveyed topics were ranked as follows:

HIGHEST PRIORITY

1. Addressing preneed provider obligations on default by the seller
2. Depositing of preneed funds
3. Changing/clarifying amount of preneed funds required to be trusted (100%, 80%, etc.)
4. Clarifying whether trust accounts are required for all preneed sellers
5. Changing/clarifying trustee duties/responsibilities
6. Changing/clarifying allowed use of independent investment advisors
7. Proper investment of trust funds (term life, whole life, "reasonable person" standard)
8. Changing/clarifying trust requirements for preneed sellers issuing insurance funded preneed contracts
9. Changing/clarifying regulation of preneed sellers selling insurance funded preneed plans only (should this go to the Bd. Or the Department of Insurance?)

SIGNIFICANT PRIORITY

1. Changing/clarifying the Board's audit authority (i.e.- allowing random/regularly scheduled audits)
2. Changing a preneed "registration" to a preneed "license"
3. Registering/licensing of individuals selling on behalf of preneed sellers
4. Clarifying/changing preneed requirements for cemeteries
5. Changing/clarifying preneed provider/seller annual report requirements
6. Changing/clarifying information reported by preneed providers/sellers to the Bd.
7. Changing/clarifying provider/seller reporting requirements to third parties (i.e.- reporting to consumers/sellers)
8. Allowing/prohibiting third party sellers [
9. Changing/clarifying portability requirements (changing providers or transferring to another seller)
10. Adopting/requiring standard forms for preneed contracts
11. Changing/clarifying provisions for cancelling preneed contracts
12. Prohibiting or adopting standards for the collections of funds by preneed providers

13. Changing/clarifying record keeping for preneed payments
14. Changing/clarifying preneed refund provisions
15. Changing/clarifying trustee reporting/notification requirements (i.e.- trustee reports to the Bd., consumers sellers, providers, the AG, etc.)
16. Record keeping requirements for trustees
17. Changing/clarifying permitted trust disbursements
18. "Rollover"/transfer of trust funds
19. Notification of trust changes/transfers (i.e.- notification to the Bd., sellers, consumers, etc.)
20. Allocation of preneed interest
21. Prohibiting/restricting insurance funded preneed plans
22. Addressing/clarifying cancellation of insurance funded preneed plans
23. Portability of insurance funded preneed plans (transferring providers/insurers/sellers)
24. Expanding/modifying criminal/civil authority of the Attorney General's Office
25. Changing/clarifying requirements for cancellation of joint account contracts
26. Amending/modifying refund requirements for preneed funds held in joint accounts
27. Portability of joint accounts
28. Allowing/modifying auditing or examination of joint accounts

MODERATE PRIORITY

1. Transferring Chapter 436 regulatory authority to another agency (i.e.- insurance, finance, the Attorney General's Office)
2. Transferring auditing functions only to another agency (i.e.- insurance, the Attorney General's Office)
3. Rulemaking authority for the Board
4. Addressing preneed provider/seller fees
5. Late fees for late annual report filings
6. Requiring all preneed providers to be funeral establishments
7. Allowing insurance funded preneed plans only
8. Restricting preneed sales by to insurance agents only
9. Changing/clarifying basic requirements for preneed contracts
10. Requiring the filing or approval of preneed forms & contracts with/by the Bd. or other agency
11. Changing/clarifying record keeping requirements for preneed providers/sellers (i.e.- what and how long records have to be maintained)
12. Adopting/requiring notification to consumers of preneed fund payments, deposits, interest or about account statements
13. Location of trustees/trust accounts (Does the trust/trustee have to be in Missouri?)
14. Location of trust records
15. Commingling of trust funds

16. Changing/clarifying the Board's current investigative/examination/audit process
17. Modifying the Board's current disciplinary authority (Should it be limited/expanded?)
18. Allowing/modifying release of complaint information to the public
19. Allowing/modifying release of complaint information to providers/sellers with contractual relationships
20. Allowing civil penalties/fines for 436 violations
21. Assessment of audit/examination/investigation fees
22. Allowing the Board to hire legal counsel
23. Expanding/modifying investigative, audit or examination powers of the Attorney General's Office
24. Allowing or prohibiting the use of joint accounts
25. Changing/clarifying reporting requirements for joint account holders
26. Amending consumer notification requirements for joint account contracts
27. Trust requirements for entities with joint accounts

LOW PRIORITY

1. Granting Board authority to set fees
2. Requiring bonding/insurance for preneed providers/sellers
3. Changing/clarifying requirements for payments to providers for at-need services (time periods, recordkeeping, amount, etc.)

GENERAL LICENSING / REGISTRATION REQUIREMENTS

The Working Group agreed to the following UNANIMOUS RECOMMENDATIONS:

1. All preneed providers/sellers should be formally "licensed" by the Board as opposed to the currently required "registration." A "license" denotes legal obligations and more accurately reflects the authorization being issued by the Board.
2. Regulation of Insurance Contracts: Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.
3. Bonding/Insurance: Due to potential costs and questioned availability, preneed licensees should not be required to obtain bonding or insurance as a condition of licensure. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address regulatory concerns.

The Working Group agreed to the following CONSENSUS RECOMMENDATIONS:

1. Licensure of "preneed agents": Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a "preneed agent" (see *Preneed Agent section for recommended licensing requirements*).

! Comments:

- *APS expressed financial concerns regarding imposing full licensing and disciplinary requirements on agents and supported a "registration" requirement versus licensure.*

2. Regulation of Cemetery Operators: Chapter 436 should be clarified to exempt cemetery operators from the provisions of Chapter 436 if the contract includes the sale of any service or funeral merchandise for which payments must be deposited in an endowed care fund pursuant to Chapter 214 or in a segregated account pursuant to 214.387, RSMo. However, cemetery operators should be subject to Chapter 436 if the contract includes any additional service or merchandise or includes any funeral/disposition service that may only be provided by a licensed Missouri funeral director or embalmer.

! Comments:

- *Currently, both Chapter 214 and Chapter 436 contain provisions governing the sale of funeral merchandise. Under Chapter 214, proceeds from the sale of certain funeral merchandise are required to be placed in an endowed care fund or a segregated account regulated by the Office of Endowed Care Cemeteries. If the recommendation is adopted, Chapter 436 should retain language that would prevent a seller from artificially pricing funeral services and merchandise to avoid the provisions of Chapter 436.*
- *However, the Working Group strongly recommended that the proposed changes to Chapter 436 **must coincide with any proposed changes to Chapter 214.** To protect consumers, the Working Group urges the Joint Committee to ensure that the provisions of Chapter 214 are likewise amended to ensure that cemetery operators exempted from 436 by the recommendation are adequately regulated by Chapter 214 and are subject to adequate regulatory requirements. Specifically, the Working group cautioned against creating an unintended loophole that would allow a licensee/entity to avoid regulation or proper trusting requirements.*

INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following UNANIMOUS RECOMMENDATIONS:

1. Although commonly used, Chapter 436 does not clearly provide for insurance-funded preneed contracts. As such, insurance-funded preneed plans should be recognized as a preneed funding mechanism.
2. Applicability of Insurance Law: Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.
3. Fees/Expenses: Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.
4. Payment Handling: Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

! Comments:

- *Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.*

5. Reporting: Sellers should report the name and address of all insurance companies used by the seller for insurance funding to the Board and to the provider. Notification should be made to the Board in writing within 30 days of any amendments/changes.

The Working Group adopted the following CONSENSUS RECOMMENDATIONS:

1. Contract Requirements: Insurance-funded preneed contracts should include:
 - Terms for cancellation by the purchaser or seller;
 - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.
 - Notice that insurance cancellation must be made in writing to the insurer.
 - Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
 - Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

! Comments:

- *Concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract because it would require the seller to summarize the insurance contract.*
- *Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures.*
- *MFDEA suggested that sellers should also disclose the amount to be refunded if the insurance contract is cancelled and the total amount the purchaser would be required to pay for their funeral if funded through insurance. MFDEA suggested these disclosures should be required separate from the insurance contract itself.*
- *Funeral Consumers Alliance suggested the contract should also include the amount of any insurance commissions.*

**ADDITIONAL ANNUAL REPORT REQUIREMENTS
FOR INSURER FUNDED PRENEED CONTRACT SELLERS**

The Working Group approved the following UNANIMOUS RECOMMENDATIONS: The annual report for sellers offering insurance-funded preneed plans should also include:

1. The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.

The Working Group approved the following CONSENSUS RECOMMENDATIONS:

1. The status and total death benefit and cash surrender value of each policy in force at the time of the report, if applicable. ***(This should be certified as true and accurate by the insurer.)***

! Comments:

- *APS commented that insurance contracts are regulated by the Department of Insurance and that this information should not be required. As previously indicated, APS commented this information would be available for review or audit by the Board, if necessary.*
- *Homesteaders and Meierhoffer suggested that only pertinent status should be reported for in force policies. They suggested the cash surrender value under the policy is immaterial to the preneed transaction and is of no interest to the Board. Homesteaders also recommended a general certification statement as opposed to a certification per report.*

Sebastian, Sandy

From: donald otto [donottojr@gmail.com]
Sent: Wednesday, January 11, 2012 8:20 AM
To: Sebastian, Sandy; Euler, Sharon
Cc: Sam Licklider
Subject: proposed rules

Comments from Don Otto, MFDEA, regarding proposed rules:

-Overall the issue is SHOULD there be a requirement of a preneed contract under 436 when nothing of value has changed hands? When a funeral home is made the beneficiary of an insurance policy, or is made the assignee, nothing of value has changed hands since the consumer can always cash-in the policy, stop making payments, cancel the policy, or change the beneficiary or assignment designation. Under the old law this was not a major issue as the funeral home could be made the owner of the policy (which DID transfer something of value), but the Division wanted that changed in SB1, so this option was removed. Thus, the current issue was created by the Division when it eliminated the possibility of funeral home ownership of a policy leaving only beneficiary changes or assignments.

-Specifically the proposed rules themselves, in a number of instances, go far beyond the statutes. For example, paragraphs 10 and 11 creates a new class of "seller" beyond what the statutes require. The seller is defined in Chapter 436 -the statutes that define when a seller is needed - as the entity that is obligated to properly collect and deposit all payments from a purchaser and to pay those monies to the provider. Chapter 333 -the licensing statutes - has a slightly different definition of seller that states that a seller is the entity that enters into a contract with the purchaser and who is obligated under such contract to remit payments to the provider. Neither of these applies to a situation where a consumer has done nothing more than make a funeral home the beneficiary on a pre-existing insurance policy that the consumer can cash-in or cancel at any time. This proposed rule goes beyond both of those definitions and creates a NEW definition/class of seller. What is more, under paragraph 11, this extra-statutory seller requirement applies even if the funeral home did not know it was made the beneficiary of a policy, a clearly unreasonable requirement. Lastly, IF these proposed rules were legal (and we submit they would not be as they go beyond the statutes) it would require funeral homes that are not and have never been preneed sellers to obtain a seller's license, pay the sellers fees and file an annual seller's report.

-Likewise paragraph 9 goes beyond the statutes as the statutes, when dealing with excess funds, specifically limit the refund to non-guaranteed contracts and this proposed rule is extending that to guaranteed contracts.

-IF contracts are required where no money and nothing of value is changing hands, then the reporting requirements of 436 would kick-in. As recognized by the proposed rule on reporting, the current reporting requirements on insurance funded preneed contracts are impossible to meet in the insurance-assignment or beneficiary-change situations. The proposed rules on assignment reporting are very well thought out, however, it would seem that this again contradicts the stated requirements of 436. Thus, it might require a statutory change to effect these proposed reporting rules if 436 contracts are required and, absent that, the proposed rules requiring a 436 preneed contract immediately create reporting requirements that are impossible to meet and forces people to, arguably, be in violation of Chapter 436 m - which is a felony.

-Overall, it is submitted that the simpler path is to take is the *opposite* direction. The board could pass a rule that clarifies that when nothing of value has changed hands, such as when a funeral home has been made a beneficiary of a policy not sold in conjunction with a preneed contract, then no 436 contract is required. HOWEVER, since this would now clearly not be a chapter 436 contract situation (and therefore not trigger the 436 reporting requirements), the Board could then pass a rule (under chapter 333) which would require all funeral homes to keep the records set out in the proposed reporting rule available for inspection. Further, if the funeral home is already a provider or seller, 436 gives the authority for the Board to require additional reporting requirements, so -- even though no 436 contract is required -- a seller or provider could be required to report any insurance policies where it KNOWS it has been made the beneficiary or the assignee even if there was no 436 contract.

-Note that nothing here affects the chapter 208 requirements. If Family Services, under their statutes, wants to say that a person cannot exclude the value of an insurance policy from assets unless a 436 contract is entered into, then the consumer will have to go to a funeral home that is willing to enter into a 436 contract.

-Also, it must be asked, what is the "harm" that is trying to be prevented? Most insurance companies do not allow a funeral home to be made the beneficiary on a beneficiary change in any case (as opposed to the funeral home/insurance agent selling the policy itself which nobody is suggesting does not fall under chapter 436). Instead they require that an insurance assignment be done. With an insurance assignment, before receiving any funds, the funeral home must submit a bill to the insurance company that shows what goods and services were actually provided and what the charge for those goods and services were. Only then are the funds sent to the funeral home and any excess is sent to the original beneficiary. So assignments are not really a problem, leaving just beneficiary changes. How many times has a funeral director tried to "pocket" funds without providing services when they were the beneficiary? What happened to those funeral directors? I would hate to be the funeral home that was faced with the publicity, lawsuit and criminal investigation that would ensue. In all, why is this rule so necessary that all of these other problems and issues are being created?

-Lastly, an argument that "we need to do something where funeral directors are made beneficiaries and don't promise anything specifically in return" is an example of what somebody may WANT to regulate, but which the statutes do not give the power to regulate. People have preplanned for many years long before the preneed laws were ever in effect and that planning often includes dealing with pre-existing insurance policies. What is really being done in these instances is not "preneed" as envisioned by the statutes, but simply thinking ahead to how a family is going to handle an at-need situation. It is submitted that the laws already existing that the laws against fraud, that make it unlawful to use undue influence in selling a funeral, that make it unlawful to improperly or induce someone to make beneficiary changes and the laws of unjust enrichment (not to mention the "law" of the marketplace that would destroy a funeral home that tried to do something like this) already cover the exceedingly rare instance where a funeral director could think he might be able to get away with accepting the proceeds of an insurance policy without providing services.

Sebastian, Sandy

From: Mark Warren [mwarren@inglishmonaco.com]

Sent: Wednesday, January 11, 2012 11:24 AM

To: Sebastian, Sandy

Subject: Proposed Preneed Insurance Rule

Attachments: Sebastian ltr re preneed rule.pdf

Ms. Sebastian:

Please see attached my cover letter along with a letter addressed to the Missouri Embalmers and Funeral Directors from the Missouri Preneed Insurers Coalition which was hand delivered to your office this morning.

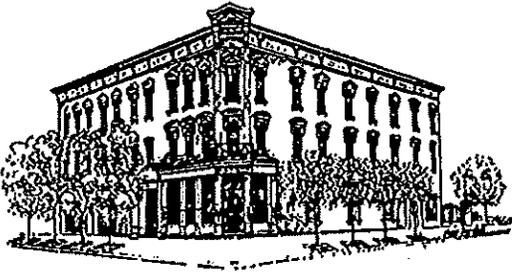
Mark

Mark G. R. Warren
Inglish & Monaco, P.C.
237 E. High Street
Jefferson City, MO 65101
phone: 573-634-2522
fax: 573-634-4526

The message is ready to be sent with the following file or link attachments:
Sebastian ltr re preneed rule

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

MONROE HOUSE LAW CENTER



Law Offices

English & Monaco

A Professional Corporation
237 E. High Street P.O. Box 67 Jefferson City, Missouri 65102
573/634-2522 FAX 573/634-4526
E-Mail: englishmonaco@englishmonaco.com

Via Hand Delivery & E-mail
January 11, 2012

Sandy Sebastian, Executive Director
State Board of Embalmers & Funeral Directors

Re: Proposed Preneed Insurance Rule

Dear Ms. Sebastian:

Enclosed please find a copy of a letter from the Missouri Preneed Insurers Coalition with regard to the proposed preneed insurance rule. I would appreciate it if this letter could be distributed the board members and the members of the examination committee as soon as possible.

Should you have any questions, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in black ink that reads "Mark G. R. Warren". The signature is fluid and cursive.

Mark G. R. Warren

MGRW:mw

cc: Missouri Preneed Insurers Coalition (via e-mail)
Sharon Euler (via e-mail)

Nicholas M. Monaco
*Ann Monaco Warren
Mark G.R. Warren
Todd E. Irelan

(1921-2008) John W. English
(1921-2011) Honorable Andrew Jackson Higgins
(1929-1991) Charles P. Dribben
(1906-2004) William Barton

RECEIVED

JAN 11 2012

STATE BOARD OFFICE

Missouri Preneed Insurers Coalition

Forethought Life Insurance Company
Funeral Directors Life Insurance Company
Great Western Insurance Company
Homesteaders Life Company
National Guardian Life Insurance Company
Pekin Insurance

January 11, 2012

Missouri Board of Embalmers & Funeral Directors
3605 Missouri Boulevard
P.O. Box 423
Jefferson City, MO 65102-0423

RECEIVED
JAN 11 2012
STATE BOARD OFFICE

RE: Proposed Preneed Insurance Rule

Dear Board Members:

This letter is submitted on behalf of the companies listed above. These companies represent the Missouri Preneed Insurers Coalition. The members of the Missouri Preneed Insurers Coalition would like to take this opportunity to provide written comment on the proposed rule regarding Insurance Funded Preneed Contracts. The Coalition is concerned with the rule as proposed.

We feel that Missouri statutes already clearly detail and adequately define preneed contracts in Chapter 436. Additionally, it is unclear what the currently proposed rule is intended to accomplish. The proposed rule seems intended to change the language set forth in Chapter 436. It is the Coalition's understanding that rules are to be used to clarify current statutes, not rewrite and expand upon the law contained in statutes. A rule, by law, cannot change what is in a statute. The proposed rule is clearly trying to expand the definition contained in Chapter 436.

It is the Coalition's belief that the proposed rule should not be implemented. However, if the Board deems it necessary to promulgate the proposed rule, the Coalition respectfully submits the following specific comments:

Comment #1 – The proposed rule should not be titled "insurance funded pre-need contracts". Any person reading this title would assume it would only apply to insurance funded preneed contracts, when it really should be applied to both trust funded and insurance funded preneed contracts.

There is also inconsistency throughout the rule. Some portions of the rule reference insurance and other portions do not. Those portions that do not reference insurance can be construed to also be applied to trust funded.

It is the Coalition's recommendation that the word insurance should be removed from the title of the proposed rule.

Comment #2 – Current state law, specifically §436.405(7), §436.425 and §436.450, clearly defines what is a preneed contract, "...any contract...that provides for the final disposition...of a dead human body, funeral or

burial services or facilities, or funeral merchandise...". The proposed rule tries to expand upon this definition to include items that are not defined as a preneed contract. The term "or other arrangement" is overly broad. Either there is a preneed contract associated with the transaction or there is not.

The proposed rule adds to the current definition of §436.405(7), §436.425 and §436.450 by trying to define an insurance policy as a preneed contract. An insurance policy is not a preneed contract and cannot be construed as such under any definition. The insurance policy is a contract between the policy owner and the insurance company. Even if a funeral home was named beneficiary or assignee, they still are not a party to the insurance policy until the death of the insured, and then only if the funeral home actually performs funeral services.

It is the Coalition's recommendation that all references to insurance policies being preneed contracts (paragraph numbers 2, 3 and 5) need to be removed from the proposed rule.

Comment #3 – In paragraph #2 of the proposed rule, reference is made to an insurance policy or deferred annuity that has a death benefit that is never less than the sum of premiums paid. It is the Coalition's understanding that this paragraph is only supposed to reference annuities and that any reference to insurance or insurance policy shall be removed.

Comment #4 – The proposed rule states, in paragraph #4, that a preneed contract "is formed when an agreement is entered into that meets the criteria to be a preneed contract...". The paragraph references "criteria" but does not explain what "criteria" is used to determine if the document is a preneed contract. It is unclear why this paragraph has been included in the proposed rule. A preneed contract is that which is defined in §436.405(7), §436.425 and §436.450.

The Coalition recommends that this portion of the proposed rule reference §436.405(7), §436.425 and §436.450 for the criteria.

Comment #5 – Paragraph #6 of the proposed rule references a preneed contract being "sold". A preneed contract is not "sold" at any time. Additionally, the receipt of payment of a commission or other form of compensation does not create a preneed contract or constitute a sale. A preneed contract is only created when it meets the criteria set forth in §436.405(7), §436.425 and §436.450.

The Coalition recommends that this paragraph be removed from the proposed rule.

Comment #6 – Paragraph #7 of the proposed rule has the same meaning as paragraph #4 which was commented upon in Comment #3. It is the recommendation of the Coalition that this paragraph also be removed and the changes suggested in Comment #3 be implemented.

Comment #7 – It is unclear what paragraph #8 is attempting to clarify. A preneed contract is not formed unless it has met the criteria detailed in §436.405(7), §436.425 and §436.450. A preneed contract is not created by the action of a payment or promise of payment as stated in Comment #5. A preneed contract is "...any contract...that provides for the final disposition...of a dead human body, funeral or burial services or facilities, or funeral merchandise..."

It is the recommendation of the Coalition that this paragraph be removed from the rule.

Comment #8 – An insurance company is required to pay death benefits to a named beneficiary unless an assignment of that death benefit in accordance with the terms of the life insurance policy directs otherwise. With insurance funded preneed contracts, the insurance company pays as directed by the assignment and then must pay any remaining funds to the named beneficiary of the life insurance policy. Paragraph #9 of the

proposed rule details how excess funds are to be paid. This proposed language makes the assumption that the funeral home receives all of the death benefit proceeds. The funeral home may indeed receive all available funding or, at its option as determined by the terms of the preneed contract, it may only receive death benefits up to the amount of the at-need funeral. It cannot direct payment of insurance funds to anyone. This would be a violation of the insurance laws.

Paragraph #9 also details that excess funds are to be paid to the State of Missouri if the deceased was receiving public assistance. Proceeds of an insurance policy can only be paid as directed in the contract of insurance and as directed by state law. Currently, in Missouri, policy proceeds are to be paid to a named beneficiary unless an assignment is received directing payment elsewhere. Missouri does not have a law that would direct an insurance company to pay death benefits to the State of Missouri. To do so would place the insurance company in jeopardy of being in violation of state law and being subject to potential lawsuits from life insurance beneficiaries.

It is the Coalition's recommendation that paragraph #9 be removed from the proposed rule. The Coalition would be happy to work with state regulators to establish another legal way for insurance companies to pay death benefits to the State of Missouri in those situations where the deceased was receiving public aid. We have experience in this regard from other jurisdictions.

Comment #9 – A person must obtain a seller's license before they sell, perform or agree to perform a preneed contract. Receipt of payment does not create a preneed contract. A preneed contract is created under §436.405(7), §436.425 and §436.450 only. Therefore, a seller's license is only required if the funeral home is selling, performing or agreeing to perform on a preneed contract. Paragraphs #10 and #11 of the proposed rule expand upon when a person needs to have a seller's license by requiring one when there is an assignment of an insurance policy or the funeral home is named the beneficiary. The assignment of a life insurance policy does not create a preneed contract, therefore the action of assignment alone would not necessitate a seller's license. Only if the funeral home was also entering into a preneed contract that is funded by the life insurance policy would a seller's license be required.

The Coalition recommends that these paragraphs be removed from the proposed rule since they violate §333.320.

Comment #10 – The proposed rule has incorporated the new requirement of the seller maintaining a copy of the actual insurance policy and assignment in paragraph #12. By requiring sellers to keep a duplicate of the life insurance policy, the Board is adding an additional and substantial administrative burden not only to funeral homes, but to the insurance companies when there is no justification for this requirement. The increased costs affect the insurance companies due to an increase in printing expenses of the requirement to print 2 copies of the insurance policy, along with an increase in mailing costs for additional postage to mail the second policy to the seller. Besides an increased cost burden, a requirement such as this can only be added by legislative change.

Sellers that now wish to keep documentation on the insurance transaction can make and retain a simple copy of the insurance application, which will suffice for their records. In most situations, insurers already provide a copy for the funeral home's records. Sellers do not need the multiple pages of the full contract of insurance to which the funeral home is at best only a potential party contingent on its future performance. Privacy and confidentiality concerns also arise under such a proposal.

It is the recommendation of the Coalition that this paragraph be removed from the proposed rule.

In summation, the Missouri Preneed Insurers Coalition believes the proposed rule should not be promulgated. The items the rule proposes to cover are already sufficiently detailed in Chapter 333 and

Chapter 436 of the Missouri statutes. If there are considerations or concerns that further justify the rule, which have not yet been brought to the attention of the Coalition, we would ask that they be provided so they can be adequately addressed. If it is deemed that the proposed rules should be promulgated, the Coalition respectfully requests that consideration be given to the comments presented above.

Respectfully submitted.

Sebastian, Sandy

From: Todd Mahn [mahndt@aol.com]
Sent: Thursday, January 12, 2012 1:57 PM
To: Sebastian, Sandy
Subject: Re:
Yes

Sent from my iPhone

On Jan 12, 2012, at 1:47 PM, "Sebastian, Sandy" <sandy.sebastian@pr.mo.gov> wrote:

Todd below is what I received from you. Is this what you are intending to have as your public comment?

From: Todd Mahn <mahndt@aol.com>
Date: January 12, 2012 1:28:27 PM CST
To: Todd Mahn <mahndt@aol.com>
Subject: Re: Rule review

I believe that insurance policies that are turned over to the funeral home to be applied toward there funeral at time of need should not be charged the \$36 audit fee. Reason being we didn't sell the product nor are we the owner. I also think that there should not be a \$36 audit fee on Annuities that r sold to people. Reason being these are normally only used for poor indigent public administrator cases. Many times there is only a few hundred dollars to help these families and \$36 would be a large amount of the money they have to work with. I believe we are a board protecting the public and although I'm fine with reporting both of these I feel that neither should be charged the audit fee. Todd Mahn

Sandy Sebastian
Executive Director
State Board of Embalmers & Funeral Directors
State Board of Podiatric Medicine
Phone: 573/751-0813 Fax: 573/751-1155
Email: sandy.sebastian@pr.mo.gov

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

FILED

NOV 15 2011

Board of Embalmers
& Funeral Directors SS

STATE BOARD OF EMBALMERS AND)
FUNERAL DIRECTORS,)

PETITIONER,)

v.)

CASE NO. EMD 12-004-PV

SHELBY FUNERAL HOMES, INC.)
104 West Olive Street)
East Prairie, MO 63845)

RESPONDENT.)

SERVE: Charles R. Penrod, Registered Agent
104 West Olive Street
East Prairie, Missouri 63845

PROBATION VIOLATION COMPLAINT

COMES NOW, the State Board of Embalmers and Funeral Directors (the "Board") and for its Probation Violation Complaint against Respondent Shelby Funeral Homes, Inc. ("Shelby Funeral" 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

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

Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Shelby Funeral Homes, Inc. is a Missouri corporation, not in good standing, with its primary place of business at 104 West Olive, East Prairie, Missouri 63845.

3. Shelby Funeral held funeral establishment license number 001576 that is active, but not current, as it expired on December 31, 2009 and was not renewed.

Orders of Probation and Relevant Terms and Conditions of Probation

4. By "Settlement Agreement Between State Board of Embamlers (sic) and Funeral Directors and Shelby Funeral Homes, Inc.", signed by the Board on December 15, 2009, the Board and Shelby Funeral agreed that Shelby Funeral's funeral establishment license would be placed on probation for a period of two years, subject to certain terms and conditions (the "Settlement Agreement"). A true and accurate copy is attached as Exhibit A and incorporated herein by reference.

5. Shelby Funeral's funeral establishment license was placed on probation due to Shelby Funeral's failure to maintain its corporate status and to continue to be eligible to conduct business in the State of Missouri as required by 20 CSR 2120-2.070(6).

6. The Settlement Agreement sets forth the terms and conditions of probation in paragraph 2 on pages 8, 9 and 10 and states, in relevant part, paragraphs A., C., D., F. and I.:

2. During the disciplinary period, Shelby shall be entitled to operate as a funeral establishment, provided that it adheres to all of the following terms and conditions:

A. Shelby, on or before December 31, 2009, shall have restored its corporate status to be in good standing with the Secretary of State's Office. Shelby shall at the same time send the Board copies of any and all documents from the Secretary of State's Office that confirm that Shelby's corporate status is in good standing with the Secretary of State's Office.

C. Shelby and Penrod shall timely renew all board-issued licenses and registrations and timely pay all fees for these renewals and comply with all other requirements to maintain their licenses and registrations in a current and active state.

D. Shelby and Penrod shall annually renew its corporate status with the Secretary of State's Office on or before the deadline set forth by the Secretary of State.

F. Shelby and Penrod shall comply with all provisions of Chapter 333, RSMo; Sections 436.005 and 436.071, RSMo; all rules and regulations of the Board; and all state and federal laws related to the performance of duties in the funeral industry;

I. Shelby and Penrod 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 Agreement.

Jurisdiction and Venue

7. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo.
8. Venue is proper.

Relevant Statutes and Regulations

9. 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.

10. Section 333.061.1, RSMo, requires a license to operate as a funeral establishment in Missouri and states:

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

11. Section 333.091, RSMo, requires that each establishment license display a current license and states:

Each establishment, funeral director or embalmer receiving a license under this chapter shall have recorded in the office of the local registrar of vital statistics of the registration district in which the licensee practices. All licenses or registrations, or duplicates thereof, issued pursuant to this chapter shall be displayed at each place of business.

12. Section 333.315.1, RSMo, requires a provider license to provide the goods and services in a preneed contract and states:

No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

13. Section 333.320.1, RSMo, requires a seller's license to act as a preneed seller in Missouri and states:

No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri

14. A provider that intends to cease business must notify the Board as required by Section 436.490.1, RSMo, that states:

A provider that intends to sell or otherwise dispose of all or a majority of its business assets, or its stock if a corporation, shall notify the board at least sixty days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do business as a provider, and shall file a notification report on a form established by the board.

15. If a preneed seller desires to cease doing business as a seller, the seller must notify the Board pursuant to Section 436.500.1, RSMo, that states:

A seller that intends to sell or otherwise dispose of all or a majority of its business assets or its stock shall notify the board at least sixty days prior to selling or otherwise disposing of its assets or stock, or ceasing to do business as a seller, and shall file a notification report on a form established by the board.

16. Under the law in effect prior to Sections 436.490 and 436.500, RSMo, a similar notice requirement was found in Sections 436.015.2(4) and 436.021.3, RSMo (2000) that stated:

(4) At least thirty days prior to selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business, give written notification to the state board and to all sellers with whom it has one or more preneed contracts of its intent to engage in such sale or to cease doing business....

and

3. Prior to selling or otherwise disposing of a majority of its business assets, or a majority of its stock if a corporation, or ceasing to do business as a seller, the seller shall provide written notification to the state board of its intent to engage in such sale at least sixty days prior to the date set for the closing of the sale, or if its intent to cease doing business at least sixty days prior to the date set for the termination of its business. ...

17. Regulation 20 CSR 2120-2.070 addresses funeral establishment licenses and states, in relevant portion:

(6) Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct

business in Missouri. No license shall be issued to an establishment that has no legal recognition. A Missouri licensed funeral establishment shall maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) "doing business as" name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location....

18. Regulation 20 CSR 2120-2.090(4) addresses embalming and preparation rooms and states:

(4) Each Missouri licensed establishment shall comply with Missouri Department of Health and Senior Services rules and regulations, Missouri Department of Natural Resources rules and regulations, and all other applicable county, city, municipal and state rules and regulations relating to plumbing, sewage and liquid waste, solid waste disposal and disposal of body parts.

19. Department of Natural Resources regulation 10 CSR 60-11.010(6) and (7) requires annual testing of backflow devices and states, in relevant part:

(6) Backflow Prevention Assembly Testing and Inspection.

(A) All backflow prevention assemblies shall be inspected and tested by testers certified in accordance with the requirements and procedures in 10 CSR 60-11.030.

(B) Air-gaps shall be inspected each year by a date which is no later than thirty (30) days past the anniversary date established by the supplier of water to ensure that they continue to meet the requirements of subsection (4)(A).

(C) Reduced pressure principle backflow prevention assemblies shall be tested by a certified backflow prevention assembly tester each year by a date which is no later than thirty (30) days past the anniversary date established by the supplier of

water to ensure that-

* * *

(D) Double check valve assemblies shall be tested each year by a certified backflow prevention assembly tester by a date which is no later than thirty (30) days past the anniversary date established by the supplier of water to ensure that both the #1 and #2 check valves maintain at least one pound per square inch (1.0 psi) differential in the direction of flow and are leak tight against reverse flow under all pressure differentials.

(E) All certified backflow prevention assembly testers shall report to the appropriate governmental authority (if one exists), the supplier of water, the customer, and, if requested, the department the results of inspections or tests conducted in compliance with this section (6). Reports of tests shall contain the signature of the certified backflow prevention assembly tester attesting to the compliance (or noncompliance) of the assembly with established operational requirements. Routine reports shall be submitted within thirty (30) days after making the inspection or test. Falsification of testing or inspection information shall be grounds for removing the tester from the list of testers authorized to operate in Missouri.

(7) Customer Responsibilities.

(A) The customer shall furnish, install and maintain in working order at all times any backflow prevention assembly required by this rule.

(B) To ensure that each backflow prevention assembly required by this rule is in working order, the customer shall have each assembly inspected and tested by a certified backflow prevention assembly tester at the time of construction or installation and at the frequency specified in section (6).

(C) The customer shall permit access to the premises by the certified backflow prevention assembly tester, supplier of water and department representatives, at reasonable times and upon presentation of identification, for inspection of the customer water system or testing of backflow prevention assemblies installed in accordance with this rule.

Conduct Violating Terms and Conditions of Probation

20. The Missouri Secretary of State administratively dissolved Shelby Funeral Homes, Inc. on February 13, 2004.

21. As of the date of the filing of this Complaint, Shelby Funeral has not restored its corporate status.

22. Shelby submitted to the Board its renewal form for 2009, but the Board could not renew the funeral establishment license due to Shelby's lack of authority to conduct business in Missouri, and thus Shelby failed to complete all steps necessary for renewal.

23. Shelby Funeral continues to be in business and operate as a funeral establishment even though it holds no such license. Between January 1, 2010 and August 16, 2011, Shelby reported to the Board that it had conducted 110 services in 2010 and 53 services in 2011.

24. Shelby Funeral holds no license as a preneed provider, but in 2010 and in 2011, Shelby Funeral provided goods and services to fulfill its contractual obligations as a preneed provider.

25. Shelby Funeral holds no license as a preneed seller, but previously held a seller registration and sold preneed contracts and continues to hold preneed funds on behalf of consumers and thus, continues to fulfill the duties of a preneed seller.

26. Shelby filed no required notice to the Board that it would cease to provide services as a preneed seller nor did Shelby provide the Board with notice as to which licensed seller would assume the seller duties and responsibilities of Shelby's existing active preneed contracts.

27. The Board conducted an inspection of the Shelby Funeral's establishment in May, 2010.

28. The inspection found the following violations:

- a. Shelby Funeral displays no current funeral establishment license at its place of business.
- b. Shelby Funeral displayed its expired preneed seller and preneed provider registrations that became void as of August 28, 2009.
- c. Shelby Funeral could provide no confirmation of proper backflow protection by not providing a recent backflow inspection in violation of 20 CSR 2120-2.00(4)
- d. Shelby Funeral was open for business and conducting the business of a funeral establishment even though it held no such license.

29. Shelby Funeral filed no written reports of compliance with the Board due on January 1, 2010, July 1, 2010, January 1, 2011 and July 1, 2011.

Probation Violations

30. Shelby Funeral violated probation condition "A." in that it failed to restore its corporate status with the Missouri Secretary of State on or before December 31, 2009 and, as of the date of this filing, has not restored its corporate status so as to be authorized to conduct business in Missouri.

31. Shelby Funeral violated probation condition "C." in that its funeral establishment license could not be renewed as of January 1, 2010 because it failed to meet the necessary conditions to maintain its license in a current and active state.

32. Shelby Funeral violated probation condition "D." in that it not only failed to renew its corporate status as of December 31, 2009, but it also failed to renew its corporate status for year 2010 and remains out of compliance.

33. Shelby Funeral violated probation condition "F." in the following ways:

- a. It has continued to operate as a funeral establishment and as a preneed seller and provider when it held no such licenses in violation of Sections 333.061, .315 and .320, RSMo.
- b. If Shelby Funeral intended to cease operations as a preneed seller and provider, Shelby Funeral provided the Board with no required notice or filing of cease doing business paperwork in violation of Sections 436.490 and 436.500, RSMo, and if Shelby Funeral intended this cease prior to August 28, 2009, Shelby Funeral failed to file cease doing business with the Board in violation of Sections 436.015 and 436.021, RSMo (2000).
- c. It failed to display a current funeral establishment license in violation of Section 333.091, RSMo and 20 CSR 2120-2.070(9) and displayed void preneed seller and provider registrations in violation of Section 333.091, RSMo.
- d. It failed to be authorized to conduct business in Missouri in violation of 20 CSR 2120-2.070(6).
- e. It failed to be in compliance with state and local laws by failing to have to provide to the Board a recent backflow inspection in violation of 20 CSR 2120-2.090(4).

34. Shelby violated probation condition "I" in that it failed to submit written reports to the Board due on or before January 1, 2010, July 1, 2010, January 1, 2011, and July 1, 2011.

35. Cause exists to impose further discipline on the funeral establishment license held by Shelby Funeral.

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

SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS AND SHELBY FUNERAL HOMES, INC.

Shelby Funeral Homes, Inc. (Shelby) and the State Board of Embalmers and Funeral Directors (Board) enter into this Settlement Agreement for the purpose of resolving the question of whether Shelby's funeral establishment license, No. 001576, 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. 2008. The Board and Shelby 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.

Shelby acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; 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 it at the hearing; the right to present evidence on its behalf at the 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 it; the right to a ruling on questions of

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

EXHIBIT # A
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law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Shelby 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 it by law, Shelby 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 it.

Shelby acknowledges that it 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. Shelby stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Shelby's license as a funeral establishment, License No. 001576, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 333, RSMo, as amended.

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

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I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Board and Shelby herein jointly stipulate to the following:

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri, created pursuant to § 333.111, RSMo 2000, for the purpose of maintaining standards of service and practice to be followed in the professions of embalming and funeral directing.
2. The Board is charged with enforcing the provisions of Chapter 333 pursuant to § 333.121, RSMo 2000.
3. Shelby holds a Missouri funeral establishment license, No. 001576. Shelby's license is and was at all times material herein current and active.
4. Charles R. Penrod (Penrod) is President of the funeral establishment, Shelby, and Shelby is under Penrod's general direction and supervision.
5. On or about January 2, 2007, the Board sent Penrod a letter that Shelby needed to promptly bring its corporate status current within 30 days of the date of its letter or the Board might refer this matter to the Attorney General's Office for official discipline.
6. On or about March 2, 2007, the Board sent a certified letter to Penrod informing him that Shelby had not been registered with the Secretary of State and Penrod had 30 days to inform the Board, in writing, that this matter had been resolved.

7. On or about April 9, 2007, and April 12, 2007, respectively, the Board sent a letter informing Penrod that Shelby as a “dissolved corporation cannot practice the licensed profession, other than to wind up its affairs.” Penrod was asked to notify the Board within the next 30 days of the action that Penrod planned to take to resolve this matter. The Board further stated that “failure to resolve this matter may result in disciplinary action to terminate your license.”

8. On or about May 14, 2007, the Board received a letter from Penrod stating that he had contacted his accountant regarding Shelby’s corporate status and that he was in the process of completing the necessary documents to resolve this matter.

9. On or about June 14, 2007, the Board sent a memorandum to Penrod regarding Shelby’s registration status with the Secretary of State’s Office. The Board requested that Penrod inform them of the steps that were being taken to ensure Shelby’s proper registration with the Secretary of State’s Office.

10. On or about October 1, 2007, the Board sent a certified letter to Penrod requesting his personal appearance at its December 3, 2007 board meeting to discuss Shelby’s corporate status.

11. On or about November 16, 2007, the Board received a letter from Penrod stating that due to his daughter’s graduation from mortuary science school he would not be able to attend the Board’s December 3, 2007 meeting. In this same letter, Penrod asked for a 60- to 90-day extension to address Shelby’s delinquent corporate status.

12. On or about February 8, 2008, the Board received a letter from Penrod regarding the corporate status of Shelby. In this letter, Penrod stated that he had to hire his "old accountant back since the other one was doing nothing." He again requested a 60- to 90-day extension. Penrod also attached a letter from the Department of Revenue outlining reasons that a tax clearance letter could not be issued to Shelby.

13. On or about June 16, 2008, the Board sent Penrod a certified letter requesting that Penrod appear at its August 19, 2008 board meeting to discuss the matter of Shelby's corporate status.

14. On or about August 25, 2008, the Board sent a letter to Penrod acknowledging his appearance at the August 19, 2008 board meeting. The Board requested the following from Penrod:

[A] detailed letter reporting the status of your dissolved corporation and within the next thirty (30) days. If the dissolved corporation status has not been resolved in that time period, update letters will be required every thirty days. The board may request a future appearance before the Board if necessary.

15. On or about October 14, 2008, the Board received a faxed update letter from Penrod. In his letter, Penrod stated that he was trying to come up with the money to pay an accountant to resolve the issue of Shelby's lack of corporate status.

16. On or about December 1, 2008, Penrod e-mailed the Board regarding Shelby's corporate status. Penrod's letter stated the following: "Lori; please advise the board and

mrs. [sic] dunn that I am working on the status of the corporation but do need to have some of the \$38,000.00 owed from N.P.S. to pay the accounts to finish the process.”

17. On or about December 11, 2008, the Board sent Penrod a letter requesting the following:

[A]n affidavit of the owner of the business entity and a detailed letter reporting the status of your dissolved corporation and within the next thirty (30) days. If the dissolved corporation status has not been resolved in that time period, update letters will be required every thirty days. The board may request a future appearance before the Board if necessary.

18. On or about January 14, 2009, Penrod e-mailed the Board regarding the progress he was making to correct his corporate status with the Secretary of State’s Office. Penrod stated that he finally had enough money to finish the tax filing and that it would take about six weeks to complete everything.

19. On or about February 18, 2009, the Board e-mailed Penrod requesting an update on Shelby’s corporate status.

20. In a letter dated March 22, 2009, Penrod wrote to the Board and stated the following: “As of this week we have one year for the re-filing to reinstate the corporation. He says we have two more years to complete and this should not take long after the April 15 deadline that he has for the other clients that he takes care of.”

21. To date, Shelby has failed to update its corporate status with the Secretary of State’s Office.

22. Cause exists to discipline Shelby's Missouri funeral establishment license pursuant to § 333.121.2(6), RSMo, which provides:

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

23. Penrod's failure to timely update Shelby's corporate status violates 20 CSR 2120-2.070(6) which states in pertinent part:

Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct business in Missouri. No license shall be issued to an establishment that has no legal recognition. A Missouri licensed funeral establishment shall maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

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. 2008.

1. Shelby's license is on probation. Shelby's funeral establishment license, No. 001576, shall be placed on PROBATION for a period of two years (the disciplinary period).

2. During the disciplinary period, Shelby shall be entitled to operate as a funeral establishment, provided that it adheres to all of the following terms and conditions:

A. Shelby, on or before December 31, 2009, shall have restored its corporate status to be in good standing with the Secretary of State's Office. Shelby shall at the same time send the Board copies of any and all documents from the Secretary of State's Office that confirm that Shelby's corporate status is in good standing with the Secretary of State's Office.

B. Shelby shall keep the Board apprised at all times in writing of its current business address and telephone number, and Penrod shall keep the Board apprised at all times in writing of his current home and work addresses and telephone number at each place of business. Shelby and Penrod, respectively, shall provide the Board with written notification within ten days of any change in this information.

C. Shelby and Penrod shall timely renew all board-issued licenses and registrations and timely pay all fees for these renewals and comply with all other requirements to maintain their licenses and registrations in a current and active state.

D. Shelby and Penrod shall annually renew its corporate status with the Secretary of State's Office on or before the deadline set forth by the Secretary of State.

E. If, at any time within the disciplinary period, Shelby and/or Penrod change residence and/or place of business from the State of Missouri; cease to be currently licensed under the provisions of Chapter 333 and Chapter 436; or fail to keep the Board advised of all current places of business and/or residence, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the disciplinary period.

F. Shelby and Penrod shall comply with all provisions of Chapter 333, RSMo; Sections 436.005 through 436.071, RSMo; all rules and regulations of the Board; and all state and federal laws related to the performance of duties in the funeral industry.

G. Penrod and/or an agent of Shelby's shall appear before the Board or its representatives upon the Board's request.

H. Shelby and Penrod shall accept and cooperate with unannounced visits from the Board's duly authorized representative to monitor their compliance with these terms and conditions.

I. Shelby and Penrod 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 Agreement.

3. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Shelby of Chapter 333, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

4. 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.

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

6. 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.

7. 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 620, RSMo, as amended.

8. Shelby together with its partners, shareholders, officers, directors, 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.

9. Shelby understands that it may, either at the time the Settlement Agreement is signed by all parties, or within 15 days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Shelby's license. If Shelby desires the Administrative Hearing Commission to review this Settlement Agreement, Shelby may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

10. If Shelby 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 Shelby's license. If Shelby does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

*Shelby Funeral Home
Charles R. Penrod*

Shelby Funeral Homes, Inc.
By Charles R. Penrod

Date 12/3/09

STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

Becky Dunn

Becky Dunn, Executive Director

Date 12/15/09

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Attorneys for the State Board of Embalmers
and Funeral Directors

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

FILED

NOV 15 2011

Board of Embalmers
& Funeral Directors 85

STATE BOARD OF EMBALMERS AND)
FUNERAL DIRECTORS,)
)
PETITIONER,)
)
v.)
)
GEORGE TREASTER)
D/B/A WHITE FUNERAL HOME,)
156 Main St.)
Ironton, MO 63650)
)
RESPONDENT.)

CASE NO. EMB 12-005-PV

PROBATION VIOLATION COMPLAINT

COMES NOW, the State Board of Embalmers and Funeral Directors (the "Board") and for its Probation Violation Complaint against Respondent George Treaster d/b/a White Funeral Home ("White Funeral Home", "Treaster" 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. Treaster is an individual who resides at 105 Robin Drive, Ironton, Missouri 63650 and has registered his business address with the Board as 156 S. Main, Ironton, Missouri 63650.

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

3. Treaster operates a Missouri licensed funeral establishment known as White Funeral Home.

4. Treaster operates as a preneed seller and as a preneed provider and holds seller license number 2010003431 and provider license number 2010003432. Both the seller and provider licenses are current and active and on probation.

Orders of Probation and Terms and Conditions of Probation

5. By "Order of the Missouri State Board of Embalmers and Funeral Directors Issuing a Probated Preneed Seller License to George H. Treaster dba White Funeral Home" issued February 1, 2010, the Board issued Treaster a probated seller license subject to certain terms and conditions (the "Seller Probation Order"). A true and accurate copy is attached as Exhibit A and incorporated by reference as if fully set forth herein.

6. By "Order of the Missouri State Board of Embalmers and Funeral Directors Issuing a Probated Preneed Provider License to George H. Treaster dba White Funeral Home" issued February 1, 2010, the Board issued Treaster a probated provider license, subject to certain terms and conditions (the "Provider Probation Order"). A true and accurate copy of the Provider Probation Order is attached as Exhibit B and incorporated by reference as if fully set forth herein.

7. Both the Seller Probation Order and the Provider Probation Order placed the respective licenses on probation as states on page 6 of both Orders that state:

...that license is placed on PROBATION for a period of FIVE (5) YEARS (the "Disciplinary Period") commencing on the date of this Order. However, should Treaster provide to the Board documentation demonstrating to the Board's satisfaction that Treaster has deposited into trust the payments made on all of the

preneed contracts referenced herein as required by law, then this Disciplinary Period shall end at that time

8. The conduct for which Treaster's seller and provider licenses were placed on probation included Treaster's failure to place into trust the funds he received from consumers who purchased preneed funeral plans from him as required by statute. To date, Treaster has not yet placed into trust funds for these preneed contracts. These consumers were :

- a. R. P.;
- b. H. H.; and
- c. B. T.

9. Some of the terms and conditions of probation set forth in paragraph D. on page 7 and paragraph G. on page 8 of both the Seller Probation Order and the Provider Probation Order state:

D. Treaster shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws, rules and regulations related to the preneed funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

G. Treaster 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.

Jurisdiction and Venue

10. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to pages 8 and 9 of both the Probated Seller Order and the Probated Provider Order.

11. Venue is proper.

Relevant Statutes

12. 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.

13. Section 436.430.2, RSMo, applicable to contracts sold after August 28,

2009 requires:

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.

14. Section 436.027, RSMo (2000)², applicable to contracts sold before August 28, 2009, allowed the seller to keep the first 20% of consumer payments with the remaining funds required to be deposited into trust and stated:

The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until he has received for his use and benefit an amount not to exceed twenty percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

15. Section 436.465, RSMo, states:

A seller shall maintain:

- (1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and

² Section 436.027, RSMo (2000) was repealed by S.B. 1, effective August 28, 2009, but continues to apply to contracts sold under prior to the enactment of S.B. 1 per Section 436.412, RSMo.

financial institutions holding a joint account established under sections 436.400 to 436.520;

- (2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

16. Sections 436.470.7 and .9, RSMo, state:

7. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account, or financial institution records deemed necessary by the board to determine compliance with sections 436.400 to 436.520;

9. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general in any inspection, investigation, examination, or audit brought under this section.

Financial Examination of Preneed Seller Books and Records

17. In June 2011, the Board conducted a financial examination of the active preneed contracts of White Funeral Home with the Board's examiner making an on-site visit on June 30, 2011.

18. As part of the financial examination, the Board requested full and complete access to all books and records relating to all active preneed contracts sold by Treaster.

19. On June 30, 2011, Treaster signed the Board's Financial Examination Attestation in which he attested that he had provided to the Board "full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller."

20. The Board's financial examination revealed contracts, in addition to those contracts found to be unfunded in the Seller Probation Order and in the Provider Probation Order, that were either underfunded or for which Treaster provided no documentation of funding so that funding could be confirmed. All contract funds are held at Forethought Federal Savings Bank. The following summarizes the shortages found by the Board:

Consumer Name	Contract Number	Date of Contract	Face Value of Contract	Recorded Consumer Payments	Deposited into Trust	Shortage*
H. B.	833284221	11/6/00	\$4,728.57	\$ 511.98	\$ 647.02	\$3,135.83
J. P.	833086632	8/21/96	3,520.00	1,869.53	1,869.53	2,273.88
R. R.	833086644	4/22/97	5,201.54	1,916.12	3,314.70	846.53
F. M.	833086625	5/03/98	5,638.33	5,638.33	2,089.09	4,510.66
S.S.	833086649	6/15/99	4,432.13	1,475.00	743.34	886.43
J.R.	833137356	11/10/99	3,737.48	1,000.00	969.40	2,020.61**
L.C.	833086596	none	6,858.24	2,052.91	1,371.65	3,433.68
S.C.	833086597	none	6,858.24	6,858.24	2,667.31	2,819.28
S.C.	833086598	none	5,782.66	4,000.00	3,580.38	Unknown
G.C.	833602070	1/23/08	6,785.00	4,093.00	47.12	2,688.88
E.D.	833603147	2/23/09	3,413.00	1,500.00	105.96	1,124.00**
D.S.	833603150	5/13/09	7,933.18	7,933.18	427.53	5,919.01
D.B.	833603354	7/14/09	2,663.00	1,000.00	206.85	400.00**
M.T.	834001580	3/18/11	1,319.00	1,319.00	1,072.26	48.89

*Shortage calculated by 80% of face value minus what trust holds.

**Shortage reported by Treaster

21. By letter dated August 17, 2011, the Board provided Treaster with a copy of the financial exam report and provided him the opportunity to respond. A true and accurate copy is attached as Exhibit C and incorporated by reference as if fully set forth herein.

22. Treaster responded to the Board with a letter dated September 14, 2011 in which he acknowledged shortages in 7 preneed accounts. A true and accurate copy is attached as Exhibit D and incorporated by reference as if fully set forth herein.

23. Treaster failed to provide the Board with the documentation to confirm the truthfulness of his assertions in his response to the Board.

24. For three of the contracts, Treaster admits the amount that should be trusted in excess of what the records given the Board's examiner found, as follows:

- a. For consumer J.R., Treaster admits that the trust is short \$2,020.61 when the records he supplied to the Board's examiner showed a shortage in the trust of \$747.50.
- b. For consumer E.D., Treaster admits that the trust is short \$1,124 when the records he supplied the Board's examiner show the shortage to be \$711.44.
- c. For consumer D.B., Treaster admits that the trust is short \$400 when the records he supplied to the Board's examiner showed a shortage of \$260.55. Treaster also asserted that, after reviewing the financial examination report, he deposited the \$400 into trust, but provided no documentation to support that assertion.

Failure to Disclose Prior Discipline on 2011 Preneed Seller Renewal

25. Treaster filed his 2011 Renewal License and Annual Report for his Preneed Seller license that he signed on October 19, 2011 (the "2011 Seller Renewal"). A true and accurate copy of the 2011 Seller Renewal is attached as Exhibit E and incorporated by reference as if fully set forth herein.

26. In Section B of the 2011 Seller Renewal, Treaster checked "No" to the following question:

2. Have you ever had any professional license, certification, registration or permit revoked, suspended, placed on probation, censured, reprimanded, fined or otherwise subjected to any type of disciplinary action?

27. Treaster has had both his seller and provider licenses placed on probation and both are still on probation per the Seller Probation Order and the Provider Probation Order.

28. Treaster did not truthfully answer question 2 on the 2011 Seller Renewal.

Probation Violations

29. Treaster failed to maintain adequate records of all preneed contracts and related agreements as required by Section 436.465, RSMo.

30. Treaster failed to make available to the Board's financial examiner full and complete access to all books and records related to the preneed contracts as required by Section 436.480.7 and .9, RSMo.

31. Treaster failed to provide the Board's financial examiner with records related to the preneed contracts sold to R. P., H. H., and B. T.

32. Treaster kept for his own use funds in excess of the statutorily allowed 20% for contracts entered into prior to August 28, 2009 in violation of Section 436.026, RSMo (2000).

33. Treaster failed to deposit into trust 100% of all payments received on preneed contracts entered into after August 28, 2009 as required by Section 436.430.2, RSMo.

34. Treaster timely filed his compliance reports with the Board due by January 1 and July 1 of 2010 and 2011 in which he affirmed for the Board that he fully complied with the provisions of Chapter 333 and relevant provisions of Chapter 436, RSMo. A true and accurate copy of these compliance reports is attached to this Complaint as Exhibit F and incorporated by reference as if fully set forth herein.

35. Treaster failed to be in compliance with the provisions of Chapters 333 and relevant provisions of Chapter 436, RSMo, because during the time for which he certified full compliance Treaster held consumer funds paid to him for preneed contracts but he failed to comply with the law by placing those funds into trust.

36. Treaster failed to be in compliance with the provisions of Chapters 333 and relevant provisions of Chapter 436, RSMo, when, on June 30, 2011, he attested to the Board that he provided full and complete access to the Board's financial examiners of all books and records related to the preneed contracts.

37. Cause exists to impose further discipline on the preneed provider and seller licenses held by Treaster.

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,


Sharon K. Euler
Missouri Bar No. 42950

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Division of Professional Registration
Fletcher Daniels State Office Building
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Telefax: 816-889-2345
E-mail: Sharon.euler@pr.mo.gov

ATTORNEY FOR THE BOARD

BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

In the matter of the application of:

GEORGE H. TREASTER
DBA WHITE FUNERAL HOME

**ORDER OF THE MISSOURI STATE BOARD
OF EMBALMERS AND FUNERAL DIRECTORS
ISSUING A PROBATED PRENEED SELLER LICENSE
TO GEORGE H. TREASTER DBA WHITE FUNERAL HOME**

Comes now the Missouri State Board of Embalmers and Funeral Directors (the "Board") and hereby issues its ORDER granting a PROBATED preneed seller license to George H. Treaster doing business as White Funeral Home ("Treaster") 156 S. Main Street, Ironton, Missouri, 63650 pursuant to the provisions of Section 324.038, RSMo (2000).¹ As set forth in Section 324.038, RSMo, Treaster may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated preneed seller license. Such written request must be filed with the Administrative Hearing Commission within 30 days of issuance of this order of the Board. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Such request shall set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession.

¹Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri 2000, as amended.

If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Treaster shall have the right to present testimony, call witnesses on his behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board. Following the hearing, the Administrative Hearing Commission shall issue findings of fact, conclusions of law and a decision based on all evidence admitted at the hearing. A copy of the findings of fact, conclusions of law and decision shall be delivered to the parties. Review of the decision of the Administrative Hearing Commission shall be pursuant to Chapter 536, RSMo.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should Treaster file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

I.

Accordingly, the Board hereby states:

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, for the purpose of executing and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.
2. George Treaster is a licensed funeral director and a licensed embalmer in the State of Missouri. Prior to August 28, 2009, Treaster was registered with the Board as a preneed seller.

3. On or about October 30, 2009, Treaster filed a Seller Application with the Board for a preneed seller license for George Treaster doing business as White Funeral Home.

4. Prior to this application and prior to August 28, 2009, Treaster entered into preneed contracts with consumers but failed to deposit the payments of these contracts into a preneed trust. Instead, Treaster deposited such payments into his own business account.

5. Specifically, Treaster entered into separate preneed contracts with Ruth Propst (in the amount of \$3,595.72), Henry Harbison (in the amount of \$5,424.77) and Brenda Tiefenauer (in the amount of \$5,645.95). Treaster received payments greater than twenty percent of the face value of each contract. Treaster deposited the payments made toward these contracts into his own business account and not into a preneed trust account. Forethought Federal Savings Bank, the trustee listed on each of the preneed contracts listed above, was unaware of these three contracts until receiving an inquiry from Board staff. As of the date of this Order, Treaster has still not deposited any of the payments made toward these contracts into a preneed trust account.

6. Section 333.320.1 provides:

No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

7. Section 333.330.1 provides:

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

8. Cause exists for the Board to refuse to issue a preneed seller license to Treaster pursuant to § 333.330.2 (4), (5), (6), (10), (14) and (19),² which provide:

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

...

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

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

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

...

(10) Misappropriation or theft of preneed funds;

...

(14) Violation of any professional trust or confidence;

...

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

9. Section 333.121, RSMo (Cum. Supp. 2008) provided, in pertinent part:

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in

² Effective August 28, 2009, § 333.330 replaced § 333.121. See House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1, 95th General Assembly, First Regular Session, 2009. At the time the violations set forth herein initially occurred (pre-August 28, 2009), § 333.121, RSMo (Cum. Supp. 2008) was in effect.

writing of the reasons for the refusal and shall advise applicant of his 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 certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

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

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

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

...

(13) Violation of any professional trust or confidence;

...

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

10. Section 436.027, RSMo (Cum. Supp. 2008) provided:

The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until his has received for his use and benefit an amount not to exceed twenty percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

11. Sections 436.031 and 436.045, RSMo (Cum. Supp. 2008) set out the duties and requirements for a preneed contract trustee. Forethought Federal Savings Bank, the trustee listed

on the three contracts referenced above, has been unable to fulfill its duties as trustee due to Treaster's failure to deposit the contract payments into trust.

12. Treaster's failure to deposit payments on the preneed contracts referenced herein into trust and instead placing the payments into his own business account violates the statutory requirements set out herein.

13. Section 324.038.1 provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

14. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues a probated seller license to George Treaster doing business as White Funeral Home. Such license is issued subject to the terms and conditions set forth below.

15. The Board issues this Order in lieu of denial of Treaster's application for a preneed seller license.

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

II.

Based on the foregoing, it is the Board's ORDER that George Treaster doing business as White Funeral Home is issued a preneed seller license and that license is placed on **PROBATION** for a period of **FIVE (5) YEARS** (the "Disciplinary Period"), commencing on the date of this Order. However, should Treaster provide to the Board documentation demonstrating to the Board's satisfaction that Treaster has deposited into trust the payments

made on all of the preneed contracts referenced herein as required by law, then this Disciplinary Period shall end at that time. During the Disciplinary Period, Treaster shall be authorized to function as a licensed preneed seller provided that he complies with all terms and conditions of the Disciplinary Period listed below.

Terms and Conditions of the Disciplinary Period

Terms and conditions of the Disciplinary Period are as follows:

- A. Treaster shall keep the Board apprised at all times in writing of his current address and telephone number at each place of residence and business.
- B. Treaster shall timely renew all preneed seller licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain this license in a current and active state.
- C. If, at any time within the Disciplinary Period, Treaster changes his place of business or residence from the State of Missouri, ceases to be currently licensed as a preneed seller under the provisions of Chapter 333 and 436, RSMo, or fails to keep the Board advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.
- D. Treaster shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws, rules and regulations related to the preneed funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.
- E. Treaster shall appear before the Board or its representatives for a personal interview upon the Board's request.

F. Treaster shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor its compliance with these terms and conditions.

G. Treaster 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.

Upon the expiration and successful completion of the Disciplinary Period, Treaster's preneed seller license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Treaster has violated any term or condition of this Order, 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 Treaster's preneed seller license.

No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

If the Board determines that Treaster 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 such violation.

If any alleged violation of this Order occurs during the Disciplinary Period, 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. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 436, 610 and 324, RSMo.

IT IS SO ORDERED.

Becky Dunn

Dated: 2/1/10

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

BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

In the matter of the application of:

GEORGE H. TREASTER
DBA WHITE FUNERAL HOME

**ORDER OF THE MISSOURI STATE BOARD
OF EMBALMERS AND FUNERAL DIRECTORS
ISSUING A PROBATED PRENEED PROVIDER LICENSE
TO GEORGE H. TREASTER DBA WHITE FUNERAL HOME**

Comes now the Missouri State Board of Embalmers and Funeral Directors (the "Board") and hereby issues its ORDER granting a PROBATED preneed provider license to George H. Treaster doing business as White Funeral Home ("Treaster") 156 S. Main Street, Ironton, Missouri, 63650 pursuant to the provisions of Section 324.038, RSMo (2000).¹ As set forth in Section 324.038, RSMo, Treaster may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated preneed provider license. Such written request must be filed with the Administrative Hearing Commission within 30 days of issuance of this order of the Board. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Such request shall set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession.

¹Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri 2000, as amended.

If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Treaster shall have the right to present testimony, call witnesses on his behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board. Following the hearing, the Administrative Hearing Commission shall issue findings of fact, conclusions of law and a decision based on all evidence admitted at the hearing. A copy of the findings of fact, conclusions of law and decision shall be delivered to the parties. Review of the decision of the Administrative Hearing Commission shall be pursuant to Chapter 536, RSMo.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should Treaster file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

I.

Accordingly, the Board hereby states:

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, for the purpose of executing and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.
2. George Treaster is a licensed funeral director and a licensed embalmer in the State of Missouri. Prior to August 28, 2009, Treaster was registered with the Board as a preneed provider.

3. On or about October 30, 2009, Treaster filed a Provider Application with the Board for a preneed provider license for George Treaster doing business as White Funeral Home.

4. Prior to this application and prior to August 28, 2009, Treaster entered into preneed contracts with consumers but failed to deposit the payments of these contracts into a preneed trust. Instead, Treaster deposited such payments into his own business account.

5. Specifically, Treaster entered into separate preneed contracts with Ruth Propst (in the amount of \$3,595.72), Henry Harbison (in the amount of \$5,424.77) and Brenda Tiefenauer (in the amount of \$5,645.95). Treaster received payments greater than twenty percent of the face value of each contract. Treaster deposited the payments made toward these contracts into his own business account and not into a preneed trust account. Forethought Federal Savings Bank, the trustee listed on each of the preneed contracts listed above, was unaware of these three contracts until receiving an inquiry from Board staff. As of the date of this Order, Treaster has still not deposited any of the payments made toward these contracts into a preneed trust account.

6. Section 333.315.1 provides:

No person shall be designated as a provider, or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

7. Section 333.330.1 provides:

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

8. Cause exists for the Board to refuse to issue a preneed provider license to Treaster pursuant to § 333.330.2 (4), (5), (6), (10), (14) and (19),² which provide:

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

...

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

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

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

...

(10) Misappropriation or theft of preneed funds;

...

(14) Violation of any professional trust or confidence;

...

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

9. Section 333.121, RSMo (Cum. Supp. 2008) provided, in pertinent part:

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in

² Effective August 28, 2009, § 333.330 replaced § 333.121. See House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1, 95th General Assembly, First Regular Session, 2009. At the time the violations set forth herein initially occurred (pre-August 28, 2009), § 333.121, RSMo (Cum. Supp. 2008) was in effect.

writing of the reasons for the refusal and shall advise applicant of his 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 certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

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

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

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

...

(13) Violation of any professional trust or confidence;

...

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

10. Section 436.027, RSMo (Cum. Supp. 2008) provided:

The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until his has received for his use and benefit an amount not to exceed twenty percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

11. Sections 436.031 and 436.045, RSMo (Cum. Supp. 2008) set out the duties and requirements for a preneed contract trustee. Forethought Federal Savings Bank, the trustee listed

on the three contracts referenced above, has been unable to fulfill its duties as trustee due to Treaster's failure to deposit the contract payments into trust.

12. Treaster's failure to deposit payments on the preneed contracts referenced herein into trust and instead placing the payments into his own business account violates the statutory requirements set out herein.

13. Section 324.038.1 provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

14. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues a probated provider license to George Treaster doing business as White Funeral Home. Such license is issued subject to the terms and conditions set forth below.

15. The Board issues this Order in lieu of denial of Treaster's application for a preneed provider license.

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

II.

Based on the foregoing, it is the Board's ORDER that George Treaster doing business as White Funeral Home is issued a preneed provider license and that license is placed on **PROBATION** for a period of **FIVE (5) YEARS** (the "Disciplinary Period"), commencing on the date of this Order. However, should Treaster provide to the Board documentation demonstrating to the Board's satisfaction that Treaster has deposited into trust the payments

made on all of the preneed contracts referenced herein as required by law, then this Disciplinary Period shall end at that time. During the Disciplinary Period, Treaster shall be authorized to function as a licensed preneed provider if he complies with all terms and conditions of the Disciplinary Period listed below.

Terms and Conditions of the Disciplinary Period

Terms and conditions of the Disciplinary Period are as follows:

- A. Treaster shall keep the Board apprised at all times in writing of his current address and telephone number at each place of residence and business.
- B. Treaster shall timely renew all preneed provider licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain this license in a current and active state.
- C. If, at any time within the Disciplinary Period, Treaster changes his place of business or residence from the State of Missouri, ceases to be currently licensed as a preneed provider under the provisions of Chapter 333 and 436, RSMo, or fails to keep the Board advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.
- D. Treaster shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws, rules and regulations related to the preneed funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.
- E. Treaster shall appear before the Board or its representatives for a personal interview upon the Board's request.

F. Treaster shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor its compliance with these terms and conditions.

G. Treaster 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.

Upon the expiration and successful completion of the Disciplinary Period, Treaster's preneed provider license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Treaster has violated any term or condition of this Order, 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 Treaster's preneed provider license.

No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

If the Board determines that Treaster 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 such violation.

If any alleged violation of this Order occurs during the Disciplinary Period, 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. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 436, 610 and 324, RSMo.

IT IS SO ORDERED.

Becky Dunn

Dated: 2/1/10

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

**State Board of Embalmers and Funeral Directors
Financial Examination Report**

Audit #: 11-2010003431R
Examiner(s): Michelle Hankinson
License #: 2010003431
Preneed Seller Name: George H. Treaster d/b/a White Funeral Home
Date(s) of Examination: 06/30/11

Summary of Examination Results

George H. Treaster d/b/a White Funeral Home (WFH) holds seller license number 2010003431. The license is current and active.

On 06/30/11, I made an on-site visit to WFH located at 156 S Main St., Ironton, MO 63650-1306 to review all preneed files. Mr. George Treaster met with me and provided me with preneed files.

WFH primarily utilizes trust accounts for preneed contracts with monies held in trust. After review of active preneed contracts provided and funding sources, there does not appear to be sufficient assets in place that are equal to or greater than amounts paid by consumers. Examples are summarized below and on Exhibit 1. The preneed contracts and records reviewed appear to meet the statutory requirements, except as summarized below and on Exhibit 1.

Areas of Concern

- 1) Of the contracts provided, there are insufficient funds in nine consumers' trusts.
- 2) There are at least three files (RP, HH, BT) that were not provided for my review. These contracts are known to be underfunded. A response provided by Mr. Treaster confirms that these contracts are currently remain underfunded.

Fund Management

There appears to be several instances where a consumer paid White Funeral Home directly and those funds were not sent to the trust company designated within the preneed contract to receive those funds.

Record Keeping

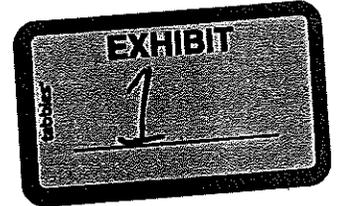
Overall record keeping pertaining to active preneed contracts were not reviewed as the files were provided to me, I did not pull the records for review. I asked Mr. Treaster if I could review a ledger book or whatever method he used to keep track of payments made to him by consumers. I was told by Mr. Treaster that he did not have a ledger book; he advised that he forwarded payments to the trust company when they were received by the consumer. We were not provided all records requested and required to complete our examination.

AUDIT #: 11-2010-003431R

PRENEED SELLER NAME: George Treaster d/b/a White Funeral Home

DATE OF EXAMINATION: 06/30/11

Contract / Policy Number	Date on Contract	Comments
833284221	11/06/00	amount paid by consumer is unknown, unable to complete audit
833086632	08/21/96	final amount paid unknown, based on amount paid for down payment, trust short
833086644	04/22/97	amount paid by consumer is unknown, unable to complete audit
833086625	05/03/98	paid in full verified by consumer, trust is short
833086649	06/15/99	amount paid by consumer is unknown, unable to complete audit
833137356	11/10/99	amount paid by consumer is unknown, unable to complete audit
833086596		paid in full verified by consumer, trust is short
833086597		paid in full verified by consumer, trust is short
833086598		amount paid by consumer is unknown, unable to complete audit
833602070	01/23/08	consumer verified amount paid, trust is short
833603147	02/23/09	consumer verified amount paid, trust is short
833603150	05/13/09	paid in full verified by consumer, trust is short
833603354	07/14/09	consumer verified amount paid, trust is short
834001580	03/18/11	contract was paid in full, trust is short
1999-10	06/15/99	contract for infant that did not pass, no trust was opened





STATE OF MISSOURI
DIVISION OF PROFESSIONAL REGISTRATION
FINANCIAL EXAMINATION ATTESTATION

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
3605 MISSOURI BOULEVARD
P.O. BOX 423
JEFFERSON CITY, MO 65102
TELEPHONE (573) 751-0813
TTY (800) 735-2986 • FAX (573) 751-1155

I. INSTRUCTIONS

Please read the below statements and page 2 of this attestation prior to signing the form.

II. GENERAL INFORMATION

SELLER NAME (PRINT FULL NAME)

WHITE FUNERAL HOME

SELLER ADDRESS (CITY, STATE, ZIP)

1516 S. MAIN ST., IRONTON, MO 63620

SELLER LICENSE NUMBER (REQUIRED)

2010003431

III. LOAN COLLATERAL AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)

As a preneed seller, I attest to the following:

As of August 29, 2009, this seller has not used any preneed contracts as collateral or security pledged for a loan, nor have we taken any preneed funds of any existing preneed contract as a loan for any purposes. Further, we have not procured or accepted a loan against any investment, joint account, or insurance contract used to fund a preneed contract.

SIGNATURE OF SELLER REPRESENTATIVE

George H. Treaster

DATE

06-30-11

PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER

GEORGE H. TREASTER / OWNER-MGR.

IV. RECORD ACCESS AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)

As a preneed seller, I attest to the following:

To the best of my knowledge, I have provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller.

SIGNATURE OF SELLER REPRESENTATIVE

George H. Treaster

DATE

06-30-11

PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER

GEORGE H. TREASTER / OWNER-MGR.



000027 SEP 19 =

WHITE Funeral Home

156 S. Main St., Ironton, MO 63650
Phone: (573)546-7411

▶ **State Board Of
Embalmers & Funeral Directors**

RE: Financial Examination report deficiencies

September 14, 2011

I am enclosing a copy of the Audit Exhibit (I) that I used as a work sheet to go back and check each of these contracts in question. I added the contract holder's name to each contract number and a brief explanation to each. Of the 14 contracts in question, 7 are underfunded and 7 are accurate. I have put a "red X" on the file tab and a sheet of paper in each of the 7 underfunded contracts with the amount I owe to their trusts.

I know each of these contract holders personally, and even if I didn't, I would never allow them to lose any of their investment or value at time of need. I will work diligently, as my cash flow allows, to get each of these contracts fully funded.

In closing, I want the State Board of Embalmers and Funeral Directors to know that when the new preneed law went into effect in late August of 2009, I made a decision to trust 100% of every new contract with no 5% or 15% requested back. That way, I can never find myself in this situation again.

Sincerely,



WHITE Funeral Home
George Treaster
Owner/Manager

RECEIVED

SEP 19 2011

STATE BOARD OFFICE

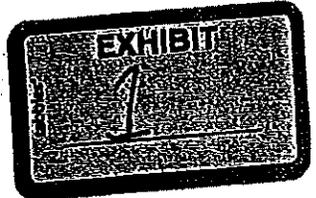
EXHIBIT # D

AUDIT #: 11-2010-003431R

PRENEED SELLER NAME: George Treaster d/b/a White Funeral Home

DATE OF EXAMINATION: 06/30/11

Contract / Policy Number	Date on Contract	Comments
833284221	11/06/00	amount paid by consumer is unknown, unable to complete audit <i>BAL. ASSUMED ASSIGN. WAS IN FILE.</i>
833086632	08/21/96	final amount paid unknown, based on amount paid for down payment, trustee <i>BAL. ASSUMED ASSIGN. WAS IN FILE.</i>
833086644	04/22/97	amount paid by consumer is unknown, unable to complete audit <i>FULLY FUNDED, IS ON MONTHLY REPORT.</i>
833086625	05/03/98	paid in full verified by consumer, trust is short 917.02
833086649	06/15/99	amount paid by consumer is unknown, unable to complete audit <i>IS ON MONTHLY REPORT. INITIAL PAYMENT ONLY.</i>
833137356	11/10/99	amount paid by consumer is unknown, unable to complete audit <i>PAID IN FULL, SHORT 2020.61</i>
333086596		paid in full verified by consumer, trust is short 3433.28
833086597		paid in full verified by consumer, trust is short 2818.37
833086598		amount paid by consumer is unknown, unable to complete audit <i>INITIAL PAYMENT ONLY. BAL DUE, ON MONTHLY REPORT</i>
833602070	01/23/08	consumer verified amount paid, trust is short 2688.69
833603147	02/23/09	consumer verified amount paid, trust is short 1124.00
833603150	05/13/09	paid in full verified by consumer, trust is short 5918.60
333603354	07/14/09	consumer verified amount paid, trust is short 400.00 (<i>CORRECTED 09-14-11. MAILED TO TRUST</i>)
834001580	03/18/11	contract was paid in full, trust is short <i>NOT SHORT. BAL DUE 247.00. FULL DOWNPAYMENT WAS PLACED IN TRUST.</i>
1999-40	06/15/99	contract for infant that did not pass, no trust was opened 833086649 - 51 <i>IS ON MONTHLY REPORT.</i>



The names were redacted on this exhibit to protect consumer identity per Board Order of Protection dated 09/21/2012.

Missouri State Board of Embalmers and Funeral Directors
 3605 Missouri Blvd.(Physical)
 P.O. Box 7001
 Jefferson City, MO 65102
 (573) 751-0813
 Website: <http://pr.mo.gov/embalmers.asp>
 Email: embalm@pr.mo.gov

2011 RENEWAL LICENSE AND ANNUAL REPORT
 PRENEED SELLER

RENEWAL FEE: \$200.00
 PER CONTRACT FEE \$36.00
 PNS License Number: 2010003431

VJE \$488
 ✓ JH

OPR HOLD
 REINSTATE ME NT



Mailing Address:

GEORGE H. TREASTER
 WHITE FUNERAL HOME
 156 S. MAIN ST
 IRONTON, MO 636501306

Physical Address:
 156 S. Main St
 Ironton, MO 636501306

OK TO
 PROCESS
 10/25/11
 BLS

County: Iron
 Telephone: (573) 546-7411
 Change in Telephone: _____
 Fax: (573) 546-1491
 Change in Fax: _____
 Email: georgetreaster@hotmail.com

Businesses engaged in the retail sale of goods in Missouri must possess a no tax due compliance letter from the Department of Revenue at the time of license renewal. § 144.083 RSMo. (Cum Supp 2008). You can verify your tax compliance letter at <http://dor.mo.gov/tax/business/sales/notaxdue/index.htm>. If you have any questions regarding taxes contact the Department of Revenue at 573/751/9268 or email: taxclearance@dor.mo.gov

	YES	NO
1. This business engages in the sale of goods at retail in Missouri. If yes, the following 2 questions must be completed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. If yes to question #1, my retail business has filed and paid all of its Missouri sales and withholding tax obligations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. If yes to question #1, what is your Missouri state tax ID number? <u>1 5 1 3 9 1 9 1</u> (8 numeric characters) Your renewal may be rejected if tax ID number isn't provided.		

INSTRUCTIONS

THIS REPORT IS FOR THE REPORTING PERIOD OF
 SEPTEMBER 1, 2010 TO AUGUST 31, 2011.

If the renewal/annual report is submitted prior to the ending of the reporting period, it will be returned.

1. YOU MAY FILE THE RENEWAL/ANNUAL REPORT OF YOUR PRENEED LICENSE AFTER AUGUST 31, 2011. THIS RENEWAL/ANNUAL REPORT IS DUE ON OR BY OCTOBER 31, 2011 PURSUANT TO 333.320.3 AND 436.460 RSMo, IF A SELLER FAILS TO FILE THE RENEWAL ON OR BEFORE OCTOBER 31, 2011 THE PRENEED LICENSE SHALL EXPIRE UNTIL SUCH TIME AS THE RENEWAL IS FILED AND ALL APPLICABLE FEES HAVE BEEN PAID. IF A SELLER FAILS TO FILE THE ANNUAL REPORT ON OR BEFORE OCTOBER 31, 2011 THE PRENEED SELLER LICENSE SHALL AUTOMATICALLY BE SUSPENDED UNTIL SUCH TIME AS THE ANNUAL REPORT IS FILED AND ALL APPLICABLE FEES HAVE BEEN PAID.
2. In order to provide sufficient time for processing, please return the entire renewal/annual report with the proper fees and all supporting documents as soon as possible.
3. Return this renewal/annual report with the fee of \$200.00 plus \$36.00 PER PRENEED CONTRACT sold during the reporting reporting period as required in Section 436.460 RSMo. All checks or money orders shall be made payable to STATE BOARD OF EMBALMERS & FUNERAL DIRECTORS. Please be sure that all pages of this renewal/annual report are returned with supporting documents. You must return the original renewal/annual report to the board office. No self generated forms will be processed, however you can make copies to report additional information. All fees are non-refundable.
4. In order for the preneed seller license to be issued the renewal/annual report must be completed and submitted to the board office with the appropriate fees on or by October 31, 2011.

NOTICE: No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust or joint account; or to procure or accept a loan against any insurance contract used to fund a preneed contract. As of August 29, 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 chapter 436.

Please carefully read the instructions on each page of this renewal/annual report and when completed, sign & notarize the forms where indicated. The information appearing on this renewal/annual report is the information currently contained in the records of the State Board of Embalmers and Funeral Directors on the above named seller. You are responsible for the accuracy of this information. Please examine this renewal/annual report carefully and make any correction, deletions or additions.

SECTION A: Please verify the following information. If blank, please complete in detail.

- The owner(s) according to the Board's record is: George H. Treaster Yes No
- The manager in charge of the above named seller pursuant to 20 CSR 2120-3.200 is GEORGE H. TREASTER is Yes No
 this correct? Print Name EXHIBIT # E

PRENEED SELLER ANNUAL REPORTING NOTICE

George H. Treaster
 Preneed Seller Number: 2010003431

SECTION B: Background Questions

	YES	NO
1. Since September 1, 2010 have you ever been denied a professional license, certification, registration or permit? If yes, explain fully in a statement.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Have you ever had any professional license, certification, registration or permit revoked, suspended, placed on probation, censured, reprimanded, fined or otherwise subjected to any type of disciplinary action? If yes, attach a full explanation and provide any relevant discipline documents.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Are you presently being investigated or is any disciplinary action pending against any professional license, certification, registration or permit you hold or have applied for? If yes, attach a full explanation and provide any relevant discipline documents.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Have you ever voluntarily surrendered or resigned any professional license, certification, registration or permit? If yes, attach a full explanation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Since September 1, 2010 have you ever been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal law, ordinance or rule, whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully in a statement and provide certified court documents (ie: Docket Sheet, Information or Indictment and Final Disposition).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Since September 1, 2010 have you ever been arrested, charged with of any violation of any federal, state or municipal law, ordinance or rule whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully in a statement and provide certified court documents (ie: Docket Sheet, Information or Indictment and Final Disposition).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Since September 1, 2010 have you ever been addicted to or used in excess any controlled substance (including illegal drugs and prescription drugs) or alcoholic beverage? If yes, explain fully in a statement.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Are you now being treated, or have you been treated within the past five years, through a drug and/or alcohol rehabilitation program? If yes, attach a full explanation and provide discharge summary or other official documentation that shows your diagnosis, prognosis and treatment plan.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Since September 1, 2010 have you ever been adjudged mentally incompetent by a state or federal court? If yes, attach a full explanation and provide certified court documents (i.e. Docket sheet, Complaint, and Final Disposition.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SECTION C:

According to the Board's records this seller has entered into a written agreement with the following firms who are authorized to provide preneed contracts. In order for the Board to update our records, please indicate by checking Yes or No if these licenses are associated with this license. If none are listed, please use the space provided to update your record.

License #	Name	Yes	No
002376	White Funeral Home	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Yes No

PRENEED SELLER ANNUAL REPORTING NOTICE

George H. Treaster
 Preneed Seller Number: 2010003431

SECTION D:

According to the Boards records the books or records which contain information about seller's preneed contract sales and services in Missouri are in the custody of and are available for inspection at said address:

NAME OF LOCATION OR PERSON:	ADDRESS:	Yes	No
White Funeral Home	156 S. Main / Ironton MO 636501306	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SECTION E:

According to the Boards' records the following preneed agents are authorized to sell, negotiate, or solicit the sale of a preneed contract on behalf of this preneed seller (if necessary additional sheets may be attached).

Name of Agent	Address	Registration #	Yes	No
Treaster, George H	156 S Main St / Ironton MO 63650	2010004064	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SECTION F: Report all preneed contracts that were written from September 1, 2011 - August 31, 2011 (Do not report any contracts sold by a third party seller)

Number of Preneed Contracts Sold: (Give totals for each)		Face Value of These Contracts:
[REDACTED]	Contracts in which payments are deposited into a <u>trust</u> , (do not report any money you have trusted with a third party seller)	\$ [REDACTED]
	Contracts in which payments are deposited into <u>joint</u> accounts	\$
	All <u>insurance</u> funded preneed contracts.	\$
* Total Number of Contracts Sold	[REDACTED]	Total Face Value of All Contracts: \$ [REDACTED]
* Multiply total number of contracts sold by \$36.00 and this will be the fee you will remit to the State Board of Embalmers and Funeral Directors. [REDACTED]		

SECTION G:

According to the Boards records the following are financial institutions currently hold preneed trust accounts for the above named seller. Please make any necessary changes to update the boards' records.

Name of Financial Institution	Address	Last reported balance	<input checked="" type="radio"/> Yes	<input type="radio"/> No
FORETHOUGHT FEDERAL SAVINGS BANK	ONE FORETHOUGHT CENTER BATESVILLE, IN 47006 *			

PRENEED SELLER RENEWAL/ANNUAL REPORT
Reporting Period: September 1, 2010 - August 31, 2011

Preneed Seller: George H. Treaster
License Number: 2010003431

SECTION H: Trust account information:

Complete one report for each financial institution. If this section doesn't apply please mark NA in the spreadsheet below and continue to Section K.

Chapter 436.460 RSMo identifies the reporting requirements of trust funded preneed contracts sold pursuant to Chapters 436.400-436.525 RSMo. For the time period of September 1, 2010 to August 31, 2011 please list each contract sold.

A. Name of Financial Institution _____ Date of this report: 10/19/11

Address of Financial Institution _____

- Trust Account Number: _____
- Trust Fund Balance Reported on previous years report _____
- Current face value (market value) of trust fund since the previous report _____
- Total trust earnings to the seller since the previous report (interest income) _____
- Principal contributions received by the trustee since the previous report (total of all payments made to trust, no interest) _____
- Total distributions to the seller since the previous report _____
- Total expenses, excluding distributions to the seller since the previous report _____

Additional sheets are available on our website <http://pr.mo.gov/embalmers.asp>. In lieu of completing the spreadsheet below, a computer print out generated by your firm or the financial institution that contains the information required may be attached to this form.

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6	COLUMN 7	COLUMN 8	COLUMN 9
Preneed contract sequential number	Name of preneed contract beneficiary	Address of contract beneficiary	Name of purchaser on preneed contract (if different than name in column 2)	Address of purchaser on preneed contract (if different than column 3)	Face (original) amount of preneed contract	Total distribution to the seller from the trustee	Face value (market value) of trust assets assigned to this contract	Fulfilled, cancelled or transferred (if applicable)

SECTION I: Authorization

I hereby authorize the Board to request from the trustee listed in Section H a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller.

Authorized Representative Signature <i>George H. Treaster</i>	Title <i>OWNER</i>
Print Name <i>GEORGE H. TREASTER</i>	

SECTION J: Certification (section to be completed by a corporate officer of the trustee)

I certify under oath that the information listed in Section H that is required by section 436.460 is complete and correct and attested to by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration. In lieu of completing this certification, a computer print out generated certified, signed & notarized by the trustee that contains the information required by this section may be attached to this annual report.

NOTARY SECTION	Corporate Officer of Trustee Signature	NOTARY PUBLIC SEAL/STAMP 
	Corporate Officer of Trustee Print Name and Title	
State of MISSOURI	COUNTY OF <i>IRON</i>	
Subscribed and sworn to (or affirmed) before me this <u>19th</u> day of <u>October</u> , 20 <u>11</u>		
Notary Public Signature: <i>Karen Rapp</i>		
Notary Public Name Printed: <i>KAREN RAPP</i>		

TRONG
PS.

Missouri State Board of Embalmers and Funeral Directors
P.O. Box 423
3605 Missouri Blvd.
Jefferson City, MO 65101

000512 AUG-30

Dear Board:

On this 29 date of JULY, 2010, I, GEORGE H. TREASTER
Name of Licensee on Probation
dba WHITE FUNERAL HOME

hereby truthfully state that I have been in full compliance with all terms and conditions
of my probation including the following which I have initialed to indicate my
compliance:

RECEIVED
AUG 03 2010

- GT 1. Notified the board within 10 days of any address or telephone number changes. STATE BOARD OFFICE
- GT 2. Timely renewal all licenses.
- GT 3. Abided by all provisions of Chapter 333, RSMo and corresponding regulations (if applicable).
- GT 4. Abided by all provisions of Chapter 436, RSMo and corresponding regulations (if applicable).
- GT 5. Appeared-testified when requested by the Board.
- GT 6. Submitted compliance reports no later than January 1 and July 1 of each year.
- GT 7. Complied with unannounced visits from the Board's duly authorized agent.

Signed: [Signature]
Print Name: GEORGE H. TREASTER

RECEIVED
AUG 04 2010
STATE BOARD OFFICE

Missouri Funeral Director license number 4734
Missouri Embalmer license number 6119
Missouri Establishment number 2376

Additional comments:
I APOLOGIZE, I THOUGHT THIS DOCUMENT WAS DONE AT THE END OF JULY. RESPECTFULLY,
[Signature]

EXHIBIT # F

Missouri State Board of Embalmers and Funeral Directors
P.O. Box 423
3605 Missouri Blvd.
Jefferson City, MO 65101

000213 JAN-6

Dear Board:

On this 31st date of DECEMBER, 2010, I, GEORGE H. TREASTER dba
Name of Licensee on Probation

WHITE FUNERAL HOME

hereby truthfully state that I have been in full compliance with all terms and conditions of my probation including the following which I have initialed to indicate my compliance:

- G.T. 1. Notified the board within 10 days of any address or telephone number changes.
- G.T. 2. Timely renewal all licenses.
- G.T. 3. Abided by all provisions of Chapter 333, RSMo and corresponding regulations (if applicable).
- G.T. 4. Abided by all provisions of Chapter 436, RSMo and corresponding regulations (if applicable).
- G.T. 5. Appeared-testified when requested by the Board.
- G.T. 6. Submitted compliance reports no later than January 1 and July 1 of each year.
- G.T. 7. Complied with unannounced visits from the Board's duly authorized agent.

Signed:

George H. Treaster

Print Name:

GEORGE H. TREASTER

Missouri Funeral Director license number 4734

Missouri Embalmer license number 6119

Missouri Establishment number 2376

Additional comments:

RECEIVED
JAN 06 2011
STATE BOARD OFFICE

Missouri State Board of Embalmers and Funeral Directors
P.O. Box 423
3605 Missouri Blvd.
Jefferson City, MO 65101

000543 JUL-5=

Dear Board:

On this 30th date of JUNE, 2011, I, GEORGE H. TREASTER dba
Name of Licensee on Probation
WHITE FUNERAL HOME

hereby truthfully state that I have been in full compliance with all terms and conditions of my probation including the following which I have initialed to indicate my compliance:

- G.T. 1. Notified the board within 10 days of any address or telephone number changes.
- G.T. 2. Timely renewal all licenses.
- G.T. 3. Abided by all provisions of Chapter 333, RSMo and corresponding regulations (if applicable).
- G.T. 4. Abided by all provisions of Chapter 436, RSMo and corresponding regulations (if applicable).
- G.T. 5. Appeared-testified when requested by the Board.
- G.T. 6. Submitted compliance reports no later than January 1 and July 1 of each year.
- G.T. 7. Complied with unannounced visits from the Board's duly authorized agent.

Signed: George H. Treaster

Print Name: GEORGE H. TREASTER

Missouri Funeral Director license number 4734

Missouri Embalmer license number 6119

Missouri Establishment number 2376

Additional comments:

Entered
into PROMD
7-5-11
JE

RECEIVED

JUL 05 2011

STATE BOARD OFFICE