

# State Board of Embalmers and Funeral Directors

March 19-20, 2013

Missouri Council of School Administrators  
3550 Amazonas Drive  
Jefferson City, MO 65109

## OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors was called to order by James Reinhard, Chairman, at 1:00 p.m.

### Roll Call

#### **Board Members Present**

James Reinhard, Chairman  
John McCulloch, Secretary  
Archie Camden, Public Member  
Eric Pitman, Board Member  
Collin Follis, Board Member

#### **Board Members Not Present**

Gary Fraker, Board Member

#### **Staff Present**

Sandy Sebastian, Executive Director  
Tabatha Lenzini, Administrative Assistant – was absent March 20, 2013  
Lori Hayes, Inspector  
Sharon Euler, Division Legal Counsel

#### **Introduction of Collin Follis**

James Reinhard formally introduced Collin Follis to the members of the board and welcomed him.

#### **Approval of Agenda**

A motion was made by Archie Camden and seconded by Eric Pitman Motion carried with John McCulloch, Collin Follis, Archie Camden and Eric Pitman voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

#### **Election of Officers**

Eric Pitman nominated Archie Camden for secretary. Archie declined.  
Archie Camden nominated Collin Follis for secretary and Collin accepted. There were no other nominations and Collin won by acclamation.  
Collin Follis nominated Archie Camden for vice chairman and Archie accepted. There were no other nominations and Archie won by acclamation.  
Archie Camden nominated James Reinhard for chairman. James accepted. There were no other nominations and James won by acclamation.

#### **Move to Close**

A motion was made by Archie Camden and seconded by Collin Follis close for #1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with John McCulloch and Eric Pitman voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

### **Approval of Open Minutes**

A motion was made by John McCulloch and seconded by Archie Camden to approve the conference call minutes for January 11, 2013 and table the minutes of December 11-12, 2012 to review the tape to verify the language regarding the motion relating to the \$36 fee for insurance funded preneed contracts. Motion carried with Collin Follis and Eric Pitman voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

### **Executive Director Report**

Sandy Sebastian provided an update to the board on pending legislation relating to HB 659 (modifies the licensure requirements for embalmers, making licensure optional); SB405 (contains language allowing an irrevocable personal funeral trust up to \$9,999 excluded as a personal asset when attempting to qualify for state assistance); HB482 and SB186 (both address disposition of veterans unclaimed cremains).

Sandy gave an overview of the budget and discussed with the board that if fee adjustments were made to lower the per contract fee from \$36 to \$25 using 14,000 contracts as an average (using a 3 year average reported contracts on annual reports) it would create an estimated negative income of \$154,000 revenue and that the board would need to consider because the revenue collected needed to cover the appropriation and operating costs of the board. Sandy asked the board if when working on scenarios did the board want to look at scenarios that included a fee adjustment to just preneed or all fees. The board asked that several different options be explored.

Some members of the public in attendance at the open session asked what the financial examinations are costing, stating the board is spending too much money and has too many staff. Sandy responded that the full time employees that were appropriated to the board following the revisions to Chapter 436 in Senate Bill 1 (2009) have not all been filled and that a cost per audit was not available at this time because there are numerous variances on what could be included in such, including a portion of her salary, legal counsel, costs associated with the Attorney General's office and Administrative Hearing Commission to name a few. Sandy explained that the full time employees are paid an annual salary and that their salary is not driven off of how much it costs to conduct a financial examination. Sandy also shared with the public that a rough estimate/average was provided several meetings prior that contained disclosures relating to such. Public commented that the board should not be looking at every contract but should rather be doing a sampling of contracts and Sandy responded that when the process began the board voted to do a review of all contracts and that it would not be appropriate to modify that process in mid-stream, as not all sellers have had financial examinations completed yet.

John McCulloch stated that he wished the board would think about treating things like any other business would do and have the attitude that they only have so much money to work with and learn how to minimize overhead instead of thinking it doesn't really matter how things are done and if it's not efficient that fees will just be increased. He stated most businesses are always having to adjust based on revenues coming in and expenses going out and constantly trying to do better. He stated he thought that was what he believed he was hearing people in the audience say and in addition are we really looking at how we are looking at all these contracts. He stated that insurance contracts obviously fall under the department of insurance and that they have a whole lot more scrutiny than trust. Sharon Euler stated that the preneed aspect of an insurance funded preneed contract is what the board looks at. John stated that he did not feel the board was doing that. He asked if the board was looking at things like whether or not the funeral home is doing their part after their contract is made. He stated that maybe the inspectors do that somewhat but he did not think the examiners were doing that. He stated he thought all they were doing was looking at every single contract, to which he stated he totally disagreed with and felt it was a waste of time; however he stated that he knew the board was in that process and shouldn't change that in mid-stream. He stated moving forward that he did not feel that should be done and that next time around the board should be reviewing a true sampling and if no problems were identified then proceed on and know that examiners may end up looking at every

contract. Sharon Euler commented that next time around she thought there would be some evaluation done of what needs to be done, what works and what doesn't work and that the examination process is constantly evolving. John McCulloch stated that if you have the right leadership and the right attitude towards this then, then you would strive for that and he did not believe the board had that. He stated that he did not feel that the board was a very friendly board when people call and that is one of his big complaints. Sandy asked in what respect or did he have any examples. He asked the members of the public for their feedback and one member of the public spoke and first stated they never called the office and then corrected themselves that they did call in and talk to Lori, who was always helpful. Another member of the public stated when they called in that staff was always willing to help and responded to them even though sometimes not with the response they were seeking. Other members of the public expressed their concerns about the board staff not being able to help the public or funeral homes more when they call in. Sandy Sebastian explained that a board cannot interpret the statutes or regulations or give legal advice and that there is a court case that deals with another board in the division in which the board lost and the determination involved an interpretation that the board's actions resulted in un-promulgated rulemaking and that court case reinforces that board's must be careful in their responses to the public. John McCulloch stated that he felt it's more about trying to catch you doing something than trying to help you.

Another member of the public asked again if the board would consider a uniform preneed contract, embalming log and the insurance contract for the whole state. Sharon stated that she did not advise the board to draft such because the contract was between two parties, not involving the board.

Chairman Reinhard thanked the staff for their hard work and asked the public and board members if anyone else had any complaints or concerns about the staff that they would like to address. There were no other comments made.

Sandy noted that the board had in their materials information relating to license statistics, including new licenses, closed/ceased licensed and disciplined license actions that took place since the last board meeting report they were provided.

Sandy shared that the board office had received notification that Steve Koosman with St. Louis Community College at Forest Park is retiring at the end of May.

Sandy discussed with the board that the office was working with the Conference regarding the exam eligibility process for applicants and it would include eliminating the certificates of eligibility.

Sandy reported that the board office has received notification that The Conference will be increasing examination fees effective January 1, 2014. The Missouri Arts will increase from \$150 to \$200; The Missouri Law will increase from \$120 to \$140; the National Arts/Sciences will increase from \$200/each to \$250/each. Sandy also mentioned to the board that the license fees for the board had not been increased since prior to 2002.

Sandy notified that board that she and James Reinhard were scheduled to attend The Conference's conference in Nevada at the end of February but due to weather conditions they were not able to fly out of Missouri and therefore did not attend.

### **Legal Counsel Report**

Sharon Euler reported that the criminal case of National Prearranged Services is set for August, 2013; that the civil case was proceeding; and that Brent Cassity requested his passport back to go to the Dominican Republic for spring break with his daughter and that request was denied.

## **Move to Close**

A motion was made by John McCulloch and seconded by Collin Follis to close for #2 of the attached motions to close. Motion carried with Eric Pitman and Archie Camden voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

## **Discussion of Proposed Rules**

### ***"Formation of an insurance funded preneed contract"***

*Statutory Authority:* Sections 436.405.1(3), (4), (7), (8), 436.425, 436.450, 436.465, 436.520, RSMo.

1. A preneed contract is required when a funeral home agrees to accept proceeds from a life insurance policy and use those proceeds to pay for funeral goods and services when those goods and services are not immediately required.
2. Whenever an insurance funded preneed contract is formed, that agreement must be documented by a written agreement between a purchaser and a seller in compliance with the provision of Chapters 333 and 436.
3. An insurance funded preneed contract may be guaranteed or non-guaranteed and shall clearly state on the contract whether the prices quoted are guaranteed.
4. Any life insurance policy or annuity may be used as a funding source for a preneed contract regardless of when or from whom it was purchased including insurance policies marketed as a "final expense policy" or "burial policy."
5. A preneed contract funded by insurance may provide, as a term of the contract, that the contract is deemed cancelled if the insurance policy is cancelled or if the beneficiary or assignment is changed to another seller as such act shall be considered as a cancellation of the preneed contract by the purchaser.

Following review by the board and discussion a motion was made by Archie Camden to approve and seconded by Collin Follis. Motion carried with Eric Pitman yes. John McCulloch voted no. Gary Fraker not present for the meeting.

### ***"When no insurance funded preneed contract formed"***

*Statutory Authority:* Sections 436.405(4), (8) and 436.520, RSMo.

1. If a licensee is named as an owner, beneficiary or assignee of a life insurance policy and the insured is not a spouse or a relative by blood or adoption, within the second level of consanguinity ( parents, children, grandchildren, brothers, sisters, nieces, nephews, grandparents, aunts, uncles, and first cousins) and the policy is not a "key man" policy, it shall be presumed that the laws relating to preneed contracts must be followed UNLESS the licensee has on file a written document that is signed and dated by the insured or the purchaser that states that, at a minimum, 1. the insured has been advised of the need to enter into a preneed contract with the licensee; 2. that only by entering into such contract can the licensee be contractually obligated to use the proceeds of the life insurance to pay for the final expenses of the insured, and 3. If the insured or the purchaser opt not to enter into a preneed contract, then the insured or the purchaser understand that the licensee they have named as owner, beneficiary or assignee will receive the insurance proceeds and be under no contractual obligation to provide any funeral goods or services at the death of the insured. This presumption may be overcome upon a showing, to the satisfaction of the board, that the licensee is named as an owner, beneficiary or assignee of a life insurance policy for reasons other than to provide funds for the licensee to provide the professional services for the final disposition of the insured's body.
2. If a consumer refuses to sign the insurance waiver and refuses to sign a preneed contract, the licensee shall document that the insurance waiver and/or preneed contract has been given to the consumer for

consideration by having the consumer acknowledge by written document that is signed and dated by the consumer that the consumer received both the insurance waiver and preneed contract. If the consumer refuses to sign the acknowledgement, then the licensee shall mail, either by first class mail or by electronic message, a copy of the insurance waiver and preneed contract to the consumer and maintain in licensee's file a copy of the letter or e-mail with the enclosed insurance waiver and preneed contract and shall sign and date a statement stating that the waiver and preneed contract were provided to the consumer and the date it was sent. Unless the letter or electronic message is returned to the licensee, the consumer shall be deemed to have received notice of his or her option to enter into a preneed contract.

3. The seller shall maintain all documents and copies of documents regarding this rule as part of its books and records.

Following review by the board and discussion a motion was made by Collin Follis and seconded by Archie Camden to accept the rule. Motion carried with John McCulloch and Eric Pitman voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

#### **"Per Contract Fee Exemption"**

*Statutory Authority:* Sections 436.460.5 and 436.520, RSMo.

1. No per contract fee shall be due for any preneed contract that meets each of the following:
  - a. The total amount of the preneed contract, including any subsequent amendments is under \$500; and
  - b. The beneficiary of the preneed contract attests in writing that he or she is the beneficiary of no other preneed contracts.
2. Documentation of each of the factors required for fee exemption shall be maintained as part of the books and records of the seller.
3. If a consumer purchases a preneed contract that initially meets the requirements for this rule, but at a later date adds funds to the contract or enters into an amended or new preneed contract so that the new amount of funding for the preneed contract exceeds the amount to qualify for exemption under this rule, then the per contract fee in effect at the time of the amended or new contract is made shall be due and owing for the reporting year in which the dollar amount exemption is exceeded.

*Note to Board: The costs for the Board to administer preneed contracts is the same per contract, regardless of value of the preneed contract.*

A motion was made by Eric Pitman and seconded by John McCulloch to not approve the rule. Motion carried with Collin Follis and Archie Camden voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

#### **Discussion of 20 CSR 2120-2.071 Funeral Establishment Containing a Crematory Area**

The board reviewed the existing language in (15) of the rule, which reads, "'No body shall be cremated until after a completed death certificate has been filed with the local registrar as required by section 193.175, RSMo.'" A motion was made by Eric Pitman and seconded by Archie Camden to rescind the language from the existing rule. Motion carried with Collin Follis and John McCulloch voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

#### **Recognition of Past Board Members**

James Reinhard presented plaques to Martin Vernon and Todd Mahn and thanked them for their service to the board.

A member of the public announced that the MFDEA tri-state convention would be held May 5-7, 2013 in Overland, Kansas.

**Move to Closed**

A motion was made by Collin Follis and seconded by John McCulloch to close for #1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with Eric Pitman and Archie Camden voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

**Officer Mortuary, LLC - Probation Violation Hearing (10:00a.m.)**

**Case EMB-13-002-PV**

Sharon discussed with the board a request for continuance that she received from licensee's attorney. A motion was made by Archie Camden and seconded by John McCulloch to grant their request for a continuance. Motion carried with Eric Pitman and Collin Follis voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

**Move to Closed**

A motion was made by Archie Camden and seconded by John McCulloch to close for #2 of the attached motions to close. Motion carried with Eric Pitman and Collin Follis voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

**Ryan Lair - Probation Violation Hearing (11:15a.m.)**

**Case EMB-13-003-PV**

Motion was made by Eric Pitman and seconded by Archie Camden to continue the hearing.

**Kathleen Allen - Probation Violation Hearing (2:00p.m.)**

**Case EMB-13-005-PV**

A motion was made by John McCulloch and seconded by Eric Pitman voted to continue to the June meeting due to lack of proof of service to licensee of the scheduled hearing. Motion carried with Archie Camden and Collin Follis voting in favor with no votes in opposition. Gary Fraker was not present for the meeting.

**Future Meeting**

Sandy requested members send her black-out dates for the month of June so that meeting date options could be reviewed.

**Adjournment**

A motion was made by John McCulloch and seconded by Collin Follis voted to adjourn at 2:15 p.m.

Executive Director: Sandy Sebastian

Approved by the board on: June 25-26, 2013

## MOTIONS TO GO INTO CLOSED SESSION

### 1. DISCIPLINE

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline

### 2. LEGAL ACTIONS/LITIGATIONS/PRIVILEGED COMMUNICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney

### 3. PROMOTING/HIRING/DISCIPLINING/FIRING EMPLOYEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency

### 4. DIAGNOSIS/TREATMENT OF DISCIPLINED LICENSEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (5) and Section 324.001.8 RSMo. for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees

### 5. EXAMINATION MATERIALS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (7) RSMo for reviewing testing and examination materials

### 6. EMPLOYEE PERFORMANCE RATINGS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (13) RSMo for making performance ratings pertaining to individual employees

### 7. APPLICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure

### 8. CLOSED MINUTES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and 324.017 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings

### 9. COMPLAINTS/ INVESTIGATIVE REPORTS/AUDITS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021 subsection (14) and section 620.010.14 subsection (7) RSMo for the purpose of discussing investigative reports and/or complaints and/or audits and/or other information pertaining to a licensee or applicant

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