

State Board of Embalmers and Funeral Directors

August 10, 2015

Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri 65109

OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors was called to order via conference call by Collin Follis, chairman, at 10:10 a.m.

Roll Call

Board Members Present

Collin Follis, Chairman – left 10:19a.m. to 10:29a.m.
James Reinhard, Vice Chairman
Jerald Dickey, Secretary
Eric Pitman, Board Member
Gary Fraker, Board Member

Board Members Absent

Archie Camden, Public Board Member

Staff Present

Sandy Sebastian, Executive Director
Tabatha Lenzini, Administrative Assistant
Lori Hayes, Inspector
Sharon Euler, Division Legal Counsel

Approval of Agenda

A motion was made by Gary Fraker and seconded by James Reinhard to approve the agenda. Motion carried with Eric Pitman and Jerald Dickey voting in favor with no votes in opposition. Archie Camden was not present.

Executive Director Report

No report

Legal Counsel Report

No report

Review and Discussion of Draft Legislative Proposals (Attachment A)

Section 436.525

A motion was made by Gary Fraker and seconded by Eric Pitman to not pursue to draft proposal. Motion carried with James Reinhard voting in favor and Jerald Dickey voting no in opposition. Archie Camden was not present.

Section 436.470

A motion was made by Jerald Dickey and seconded by James Reinhard to approve the draft and pursue. Motion carried with Gary Fraker and Eric Pitman voting in favor with no votes in opposition. Archie Camden was not present.

Section 436.490

A motion was made by James Reinhard and seconded by Gary Fraker to approve the draft and pursue. Motion carried with Eric Pitman and Jerald Dickey voting in favor with no votes in opposition. Archie Camden was not present.

Open Discussion

A member of the public asked about the per contract fee rule changing the per contract fee from \$36 to \$25. Sandy stated the fee was to become effective with the beginning of the reporting period September 1, 2015. Another comment was that HB618 could be brought up in veto session.

Move to Closed

A motion was made by Gary Fraker and seconded by James Reinhard to move to into closed session pursuant to numbers 1, 2, 7, 8 and 9 of the attached motions to close. Motion carried with Eric Pitman and Jerald Dickey voting in favor with no votes in opposition. Archie Camden was not present.

Adjourn

A motion was made by Jerald Dickey and seconded by Eric Pitman to adjourn at 11:25 a.m. Motion carried with Gary Fraker and James Reinhard voting in favor with no votes in opposition. Archie Camden was not present.

Executive Director Sandy Sebastian

Approved by the board on 3/29-30/2016

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

Revised 09-11

Board to maintain certain personal information about purchaser--confidentiality of information.

436.525. **1.** The board shall maintain as a closed and confidential record, not subject to discovery unless the person provides written consent for disclosure, all personal information about any individual preneed purchaser or beneficiary, including but not limited to name, address, Social Security number, financial institution account numbers, and any health information disclosed in the preneed contract or any document prepared in conjunction with the preneed contract; provided, however, that the board may disclose such confidential information without the consent of the person involved in the course of voluntary interstate exchange of information; or in the course of any litigation concerning that person or the provider, seller, or sales agent involved with the preneed contract; or pursuant to a lawful request or to other administrative or law enforcement agencies acting within the scope of their statutory authority. In any such litigation, the board and its attorneys shall take reasonable precautions to ensure the protection of such information from disclosure to the public.

2. The board may disclose, as an open record, whether the board has conducted a financial examination of a seller and if so, the date the board closed the last financial examination and whether any financial examination is currently open.

3. The board shall consider an examination "closed" as of the date the board approves the exam be closed or, if there is a pending discipline or litigation involving the findings from a financial examination, the exam shall be considered closed when the disciplinary order is entered or upon the conclusion of any discipline related litigation. A financial examination shall be considered "open" from the time the seller receives written notice from the board that an examination has begun and shall remain open until such time as the financial examination is closed.

4. No other information about the seller's financial examination shall be deemed to be an open record, unless otherwise designated as open by any other statute. The board may disclose any other information about a seller's financial examination only upon the written consent of the seller or as otherwise provided by law.

(L. 2009 S.B. 1 § 1)

Complaint procedure--violation, attorney general may file court action.

436.470. 1. Any person may file a complaint with the board to notify the board of an alleged violation of this chapter. The board shall investigate each such complaint.

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers, and preneed agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

[3. Upon determining that an inspection, investigation, examination, or audit shall be conducted, the board shall issue a notice authorizing an employee or other person appointed by the board to perform such inspection, investigation, examination, or audit. The notice shall instruct the person appointed by the board as to the scope of the inspection, investigation, examination or audit.]

4. The board shall not appoint or authorize any person to conduct an inspection, investigation, examination, or audit under this section if the individual has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to inspection, investigation, examination, or audit under chapter 333 or sections 436.400 to 436.520.

5. The board may request that the director of the division of professional registration, the director of the department of insurance, financial institutions and professional registration, or the office of the attorney general designate one or more investigators or financial examiners to assist in any investigation, examination, or audit, and such assistance shall not be unreasonably withheld.

6. The person conducting the inspection, investigation, or audit may enter the office, premises, establishment, or place of business of any seller or licensed provider of preneed contracts, or any office, premises, establishment, or place where the practice of selling or providing preneed funerals is conducted, or where such practice is advertised as being conducted for the purpose of conducting the inspection, investigation, examination, or audit.

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.

8. The board shall have the power to issue subpoenas to compel the production of records and papers by any licensee, trustee or registrant of the board. Subpoenas issued under this section shall be served in the same manner as subpoenas in a criminal case.

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.

10. This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee or registrant with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in a preliminary public complaint filed with the board and whether any public complaint has been filed with the board.

11. The board, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general may share information relating to any preneed inspection, investigation, examination, or audit.

12. If an inspection, investigation, examination, or audit reveals a violation of sections 436.400 to 436.520, the office of the attorney general may initiate a judicial proceeding to:

- (1) Declare rights;
 - (2) Approve a nonjudicial settlement;
 - (3) Interpret or construe the terms of the trust;
 - (4) Determine the validity of a trust or of any of its terms;
 - (5) Compel a trustee to report or account;
 - (6) Enjoin a seller, provider, or preneed agent from performing a particular act;
 - (7) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or desirable power;
 - (8) Review the actions of a trustee, including the exercise of a discretionary power;
 - (9) Appoint or remove a trustee;
 - (10) Determine trustee liability and grant any available remedy for a breach of trust;
 - (11) Approve employment and compensation of preneed agents;
 - (12) Determine the propriety of investments;
 - (13) Determine the timing and quantity of distributions and dispositions of assets; or
 - (14) Utilize any other power or authority vested in the attorney general by law.
- (L. 2009 S.B. 1)

Sale of business assets of provider--report to board required, contents.

436.490. 1. 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.

2. The report required by this section shall include:

(1) The name, phone number, and address of the purchasers of any outstanding preneed contract for which the licensee is the designated provider;

(2) The name and license numbers of all sellers authorized to designate the licensee as a provider in a preneed contract;

(3) The name, address, and license number of the provider assuming or agreeing to assume the licensee's obligations as a provider under a preneed contract, if any;

(4) The name, address, and phone number of a custodian who will maintain the books and records of the provider containing information about preneed contracts in which the licensee is or was formerly designated as provider;

(5) [A final annual report containing the information required by section [436.460](#);

(6)] The date the provider intends to sell or otherwise dispose of its business assets or stock, or cease doing business; and (7) Any other information required by any other applicable statute or regulation enacted pursuant to state or federal law.

3. Within three days after the provider sells or disposes of its assets or stock or ceases doing business, the former provider shall notify each seller in writing that the former provider has sold or disposed of its assets or stock or has ceased doing business.

(L. 2009 S.B. 1)