Monday, December 2, 2002

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Donn James, Chairman, at 1:00 p.m. on Monday, December 2, 2002, at the Fairmont Hotel, 401 Ward Parkway, Kansas City, Missouri.

Roll Call

Board Members Present
Donn James, Chairman
William H. (Bill) Stuart, Vice Chairman
Jerry Griffin, Member
Kenneth McGhee, Member

Board Member Not Present
Marcia Shadel, Secretary
Joy Gerstein, Public Member

Staff Present
Patricia Handly, Executive Director
Becky Dunn, Incoming Executive Director
Pamela Schnieders, Clerk IV
Lori Wansing, Inspector
Sharon Euler, Assistant Attorney General

Public Present
Marilyn Williams, Division of Professional Registration
Greg Russell, CRL
Darlene Russell, CRL
Ed Swarnes
Henry L. Epstein, MFDA
Sherry Anderson, MFDA
Jim Crawford, NPS
John McCulloch, APS
Richard Carroll Jr, Sheil Funeral Home
Bill Stalter, Wassberg & Stalter
Approval of Agenda
Motion was made by Jerry Griffin and seconded by William Stuart to approve the open agenda as submitted. Motion carried unanimously with Marcia Shadel and Joy Gerstein being absent.

Approval of Minutes
• September 24, 2002 Open Mail Ballot Meeting Minutes
  Motion was made by Jerry Griffin and seconded by William Stuart to approve the September 24, 2002 Open Mail Ballot Meeting Minutes as submitted. Motion carried unanimously with Marcia Shadel and Joy Gerstein being absent.

• October 7-8, 2002 Open Meeting Minutes
  Motion was made by Jerry Griffin and seconded by William Stuart to approve the October 7-8, 2002 Open Meeting Minutes as submitted. Motion carried unanimously with Marcia Shadel and Joy Gerstein being absent.

• October 16, 2002 Open Meeting Minutes
  Motion was made by Jerry Griffin and seconded by William Stuart to approve the October 16, 2002 Open Meeting Minutes as submitted. Motion carried unanimously with Marcia Shadel and Joy Gerstein being absent.

• October 22, 2002 Open Meeting Minutes
  Motion was made by Jerry Griffin and seconded by William Stuart to approve the October 22, 2002 Open Meeting Minutes as submitted. Motion carried unanimously with Marcia Shadel and Joy Gerstein being absent.

• October 30, 2002 Open Mail Ballot Meeting Minutes
  Motion was made by Jerry Griffin and seconded by William Stuart to approve the October 30, 2002 Open Mail Ballot Meeting Minutes as submitted. Motion carried unanimously with Marcia Shadel and Joy Gerstein being absent.

Executive Director’s Report
Patricia Handly reported on the FY2003 Monthly Fund Balance Sheet. The total revenue received, as of October 31, 2002 is $86,520. The projected FY2003 ending fund balance is $482,882.17.
Lawbooks and newsletters were mailed out to all embalmer and funeral director licensees and apprentices in November 2002.

Preneed Provider and Seller Annual Reports
Lori Wansing gave a report on the preneed provider and preneed seller annual reports that were not submitted prior to October 31, 2002. Ms Wansing reported that forty-three (43) preneed providers and twenty-four (24) preneed sellers were delinquent in the filing of their annual reports. A listing was sent to all inspectors notifying them of the facilities that have not sent the proper application to become compliant.
Legislation
At this time the board is not considering legislation for the upcoming session of the General Assembly.

Sales Tax Recovery
The board agreed to take no position on the sales tax recovery issue until the Missouri Supreme Court has made a ruling.

Rules
Draft of Proposed Amendment – 4 CSR 120-2.030 Registration of Licensees with Local Registrars of Vital Statistics
The board reviewed a draft of 4 CSR 120-2.030 Registration of Licensees with Local Registrars of Vital Statistics, clarifying the placement of the embalmer’s signature on the death certificate. A motion was made by Jerry Griffin and seconded by Kenneth McGhee to proceed with the filing of the proposed amendment as drafted. Motion carried unanimously with Marcia Shadel and Joy Gerstein being absent. Areas bolded are new language and those in brackets will be deleted.

PROPOSED AMENDMENT

4 CSR 120-2.030 Registration of Licensees with Local Registrars of Vital Statistics. The board is proposing to amend section (4).

PURPOSE: This amendment clarifies the placement of the embalmer’s signature on death certificates.

(1) Pursuant to section 333.091, RSMo every holder of an embalmer’s or funeral director’s license, upon receiving his/her initial or renewal license(s), shall register his/her signature, name, address and license number with the local registrar of vital statistics for the registration district in which the licensee practices.

(2) Whenever a licensee changes his/her place of employment from the jurisdiction of one (1) registration district to another registration district, within ten (10) days after that change, s/he shall register with the local registrar to whose jurisdiction s/he has moved.

(3) The boundaries of the registration district shall be determined as required by the rules promulgated by the Department of Health.

(4) Each embalmer who embalms a dead human body shall state on the [reverse side of the] death certificate that s/he embalmed the dead human body described on the [face of the] death certificate. Each statement must be signed by the licensed embalmer. If the body was not embalmed, the fact that the body was not embalmed shall be stated on [the reverse side of] the death certificate prior to the filing of the death certificate by the funeral director.

(5) Each signature of a licensed embalmer on a death certificate must correspond with the same licensee’s signature as registered with the local registrar of vital statistics.
The board reviewed a draft of 4 CSR 120-2.070 Funeral Establishments, prepared by the subcommittee. This proposed amendment would clarify the funeral establishment license classifications, establishment names and the documents to be maintained by licensed funeral homes. A motion was made by Jerry Griffin and seconded by Kenneth McGhee to proceed with the filing of the proposed amendment with changed. Motion carried unanimously with Joy Gerstein being absent. Areas bolded are new language and those in brackets will be deleted.

PROPOSED AMENDMENT

4 CSR 120-2.070 Funeral Establishments. The board is proposing to amend section (22), add a new section (23), and renumber the remaining sections accordingly.

PURPOSE: This amendment clarifies establishment license classifications, establishment names and the documents to be maintained by licensed funeral homes.

(1) Application for a funeral establishment license must be made on the forms provided by the board and must be accompanied by the appropriate fee. Applications are available from the board’s office. Each application must indicate which license classification is being sought.

[(2) The application shall indicate that the funeral establishment will be used for the—
   (A) Embalming (including transportation to and from the funeral establishment) of dead human bodies;
   (B) Cremation (including transportation to and from the funeral establishment) of dead human bodies;
   (C) Care and preparation, otherwise than by embalming or cremating, for burial or transportation of the human dead; and
   (D) Visitation and ceremonial funeral services only.]

(2) There shall be the following license classifications:
   (A) Function A establishments shall have authority to embalm dead human bodies and to transport dead human bodies to and from the funeral establishment.
   (B) Function B establishments shall have authority to cremate dead human bodies and to transport dead human bodies to and from the funeral establishment.
   (C) Function C establishments shall have authority for the care and preparation of dead human bodies, other than by embalming or cremating, authority to transport dead human bodies to and from the funeral establishment, make funeral arrangements, and furnish any funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise.
   (D) Function D establishments shall have authority to conduct visitation and ceremonial funeral services only. A Function D license is dependent upon and must be operated under the supervision and ownership of a Function C establishment.

(3) A funeral establishment shall not increase the functions for which it will be used without first submitting a new application showing the function(s) for which the funeral establishment will be
used and obtaining a new funeral establishment license based upon the new application. A funeral establishment may reduce the functions for which it is licensed by surrendering the right to use the establishment for one (1) or more functions. To increase the functions authorized after rights surrender, the previously discussed procedure for increase shall be followed.

(4) A funeral establishment shall not be used for any function other than the function(s) indicated in the application upon which its license is based.

(5) The application shall indicate the name and license number of the funeral director who is in charge of the general management and supervision of the funeral establishment. When the funeral director in charge changes for a period of more than thirty (30) days, the new funeral director in charge and the former funeral director in charge, jointly or individually, shall notify the board of the change within thirty (30) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each and on the part of the funeral establishment. A change in the funeral director in charge does not require a new funeral establishment license.

(6) Within thirty (30) days after an application for a funeral establishment license has been received in the board’s office, the board will cause the establishment to be inspected. The board will act on the application and, within thirty (30) days after the application was received in the board’s office, the applicant will be advised whether the license is granted or denied. If an applicant determines the establishment will not meet the qualifications for inspection or licensure within the thirty (30)-day application period, up to two (2) thirty (30)-day extensions of the application may be requested by the applicant in writing to the board before the application expires. Each request for an extension must be received by the board prior to the expiration of the application or extension period.

(7) Because the board’s decision to grant or deny an establishment license will include a review of confidential information and may lead to legal actions, the portion of the meeting at which the board makes its decision, which may be a meeting by telephone conference call, shall be a closed meeting and the board’s vote also shall be closed.

(8) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name which may include an entity or corporate name and one doing business name. This license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location or name of the licensed establishment is changed, a new license must be obtained. If the establishment maintains a chapel, preparation room or other funeral service facility in a building or portion physically separated from and located at a location designated by an address differing from the office, chapel or other facilities of the applicant, the chapel, preparation room or other funeral facility otherwise located shall be deemed to be a separate funeral establishment. Nothing contained in this rule will be construed or interpreted to require a separate registration for a building if it is joined or connected by a private passage, walk or driveway existing between the registered establishment and the other building.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce) without the addition of any new owner(s), it is not necessary to obtain a new establishment license. However, a new application for an establishment license form must be filed as an amended application within thirty (30) days after
(B) A corporation is considered by law to be a separate person. If a corporation owns an establishment, it is not necessary to obtain a new establishment license or to file an amended application for an establishment license form if the owners of the stock change. However, as a separate person, if a corporation begins ownership of an establishment or ceases ownership of an establishment, a new establishment license must be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

(9) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment which has been licensed by the board except as permitted by section 333.071, RSMo. The funeral establishment physical facility shall be under the [actual control of the owner or operator of the establishment general management and supervision of a duly licensed Missouri funeral director]. Every funeral establishment must provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the funeral establishment and by the funeral director in charge of the funeral establishment. Additionally, if the funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

(10) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

(11) Only one (1) license will be issued by this board for any physical facility which is considered to be a funeral establishment as defined by statute. If a funeral establishment licensed by this board is destroyed by fire or some other disaster or act of God, the board, in its discretion, for a period of not more than six (6) months, may allow the licensed funeral establishment to continue its operation from another licensed funeral establishment or from a facility that has not been licensed as a funeral establishment if the facility meets the minimum requirements for the functions outlined in section (2) of this rule.

(12) All signs, stationery and advertising in newspapers, publications or otherwise must include the [establishment] entity and/or doing business name as registered with the board. The only exception to this rule is previous name listings of the establishment placed in the white pages of a telephone directory or a national directory of funeral directors. This exception does not apply to advertisements placed in paid yellow page telephone directories. The funeral establishment, however, shall not advertise its previous name(s) in signs placed in the white pages of a telephone directory of a national directory of funeral directors, unless it owns the right to use that name(s). If the funeral establishment has the right to use its previous name(s), that name must appear first, followed by the current name of the establishment. Advertisements which do not comply with this section will be deemed to be misleading as the word is used in section 333.121, RSMo.
(13) The interior and exterior of the funeral establishment physical plant shall be kept free and clean of litter, dirt, debris and clutter or other objects or conditions which present a potential or actual hazard to the health, safety or welfare of the public.

(14) The interior and exterior of the funeral establishment physical plant shall be maintained in a manner which does not present a potential or actual hazard to the health, safety or welfare of the public.

(15) Each funeral establishment used solely or partially for embalming shall contain a preparation room which shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in 4 CSR 120-2.090.

(16) No person shall be permitted in a preparation room during the course of embalming a dead human body except the employees of the funeral establishment in which the human body is being embalmed, members of the family of the deceased and persons authorized by the members of the family of the deceased or by law.

(17) Each funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in 4 CSR 120-2.071.

(18) Each funeral establishment which is used solely or partially for the care and preparation, other than by embalming, for burial or transportation of the human dead, but not solely for visitation and ceremonial funeral service, shall contain a separate area for the care and custody of dead human remains and a separate area for confidential funeral arrangement conferences.

(19) Each funeral establishment which is used solely or partially for the care and preparation, other than by embalming, for burial or transportation of the human dead or solely for visitation and ceremonial funeral services shall—

(A) Contain a restroom, available drinking water and an area where funeral services may be conducted;

(B) Be equipped with, or have access to, equipment necessary for conducting and arranging funeral services, such as tables or desks and chairs for arrangement conferences, file cabinets for the confidential storage of funeral records, seating for chapel-visitation room, casket bier, register book stand, officiate stand, flower display stands, organ, piano, music-producing equipment, or any combination of these; and
(C) Not make, through its representative, arrangements for the embalming of remains at a facility unless embalming may be performed legally at that facility according to the law of the jurisdiction in which the facility is located.

(19) Each Function C or Function D establishment shall contain a restroom, available drinking water, and an area where services or visitations may be conducted. The establishment must be equipped with seating for visitations or funeral services, casket bier, register book stand, officiate stand, flower display stands and music-producing equipment.

(20) According to section 333.121.2(17), RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed. If the body is not embalmed, a funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed body is refrigerated or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed. If the deceased gave written authorization to embalm and did not revoke the authorization, the authorization shall satisfy this requirement. If the deceased did not give written authorization to embalm, the next of kin of the deceased may give authorization to embalm. Authorization to embalm may be given by the next of kin prior to the death of the person whose body is to be embalmed. Authorization to embalm given prior to death may be in any written document, including a preneed contract. Authorization for embalming may be given by the following:

(A) The next of kin, for purposes of this rule, shall be the following person(s), in the priority listed, if that person is over the age of eighteen (18) years and is mentally competent:

1. Surviving spouse;
2. Any surviving child;
3. Any surviving parent. If the deceased was a minor, a surviving parent who had custody of the minor;
4. Any surviving brother or sister; or
5. Any surviving relative by blood or marriage;

(B) Any person or friend who assumes responsibility for the disposition of the deceased’s remains if no next of kin assumes such responsibility;

(C) The county coroner or medical examiner pursuant to the provisions of Chapter 58, RSMo;

(D) If the body is required to be buried at public expense, the body shall be disposed of according to the terms of section 194.150, RSMo;

(E) If the funeral establishment receives no authorization to embalm from any of the persons identified in subsections (20)(A), (B), or (C) of this rule, the funeral establishment may proceed with embalming if it has attempted to locate a person from whom authorization to embalm may be obtained for at least six (6) hours and it has a written statement from city, county, or state law enforcement officials that they have assisted the funeral establishment in attempting to locate such a person. However, the embalmer may proceed to embalm sooner if the condition of the body is such that waiting for six (6) hours would substantially impair the ability to effectively embalm the body or if the deceased died as a result of a communicable disease, was subject to isolation at the time of death, and has not been properly embalmed;

and

(F) If an embalmer proceeds to embalm a body under the provisions of subsection (20)(E), the funeral establishment which employs the embalmer shall not require payment for the
embalming unless the funeral arrangements which are subsequently made are those that embalming is required.

(21) Each funeral establishment shall maintain documentation of the following information regarding authorization to embalm a body which is embalmed by or on behalf of the funeral establishment:

(A) When authorization to embalm is given in writing—
   1. The name and signature of the person who is authorizing embalming;
   2. The relationship of that person to the deceased;
   3. The time and date authorization to embalm was given; and
   4. The name and title of the person receiving authorization to embalm on behalf of the funeral establishment; and

(B) Authorization to embalm must be given in writing if the person authorizing embalming is present in the funeral establishment or in the physical presence of the person receiving authorization to embalm on behalf of the funeral establishment. If verbal authorization to embalm is given, the funeral establishment must document—
   1. The name of the person who is actually authorizing embalming (surviving spouse), if different from the person who is verbally communicating authorization to embalm to the funeral establishment;
   2. The relationship of that person to the deceased;
   3. The name of the person who is verbally communicating authorization to embalm and that person’s relationship to the person who is actually authorizing embalming;
   4. The time and date authorization to embalm was given; and
   5. The name and title of the person receiving authorization to embalm on behalf of the funeral establishment.

(22) Each Function C funeral establishment must maintain on the premises the following documents for a minimum of one (1) year:

[(A) Embalming logs;
(B) Purchase agreements;
(C) Authorizations to embalm;
(D) Preneed contracts which have been cancelled or fulfilled;
(E) Authorizations to cremate; and
(F) General price list.]

(A) General price list;
(B) Preneed contracts which have been cancelled or fulfilled;
(C) Purchase agreements; and
(D) Authorizations to embalm or cremate.

(23) Each Function A funeral establishment must maintain in the preparation room an embalming log for a minimum of one (1) year.

[(23)] (24) No dead human body shall be buried, interred, cremated, or be removed from this state, unless the burial, interment, cremation, removal, or other authorized disposition, is performed under the direction of a Missouri licensed funeral establishment or Missouri licensed funeral director who is engaged in the practice of funeral directing in a licensed funeral establishment in an adjacent and contiguous county to the state of Missouri.
Whenever a dead human body is donated to a medical or educational institution for medical and/or scientific study and arrangements for return of the body to the legal next of kin have not been made, then delivery of the body to the medical or educational institution shall constitute final disposition. If, however, arrangements for return of the body to the legal next of kin have been made, then final disposition shall be the burial, interment, cremation, or removal of the body out of this state, after the medical or educational institution has returned the body.

ICFSEB Examination Committee – October 23-27, 2002 – San Antonio, TX
Jerry Griffin gave a report on the International Conference of Funeral Service Examining Boards Examination Committee held October 23-27, 2002 in San Antonio, Texas. The ICFSEB Examination Committee meets twice a year.

Allied Memorial Council Meeting – November 7, 2002 - Patricia Handly
Patricia Handly and Becky Dunn attended the Allied Memorial Council Meeting that was held November 7, 2002 at the Elks Lodge in Jefferson City.

Funeral Service Advisory Board – December 6, 2002
St. Louis Community College at Forest Park invited the board to an open house sponsored by the funeral service class of 2003, to be held December 6, 2002 at the college. The board selected Kenneth McGhee to represent the board at the open house and to serve on the Funeral Service Advisory Board for future meetings.

CLEAR Mid-Year Meeting – January 8-11, 2003 – New Orleans – Jerry Griffin
The International Conference of Funeral Service Examining Boards will hold their mid-year meeting, January 8-11, 2003, in New Orleans, Louisiana. Jerry Griffin is scheduled to attend this meeting on behalf of the board.

Missouri Funeral Director Association Annual Meeting – May 31– June 4, 2003, Sheraton Westport Plaza, St. Louis
The Missouri Funeral Director Association will hold their Annual Convention, May 31-June 4, 2003 at the Sheraton Westport Plaza in St. Louis.

Future Meeting Dates
The next meeting of the board is scheduled for February 25-26, 2003, at Zeno’s Restaurant, in Rolla. The board asked the executive director to check the possibility of having a June board meeting in conjunction with the Missouri Funeral Directors’ Annual Convention.

Closed Meeting
Motion was made by Jerry Griffin and seconded by Kenneth McGhee to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed under Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing investigative reports and/or complaints and/or audits and/or other information pertaining to the licensee or applicant; Section 610.020 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and
any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo for deliberation on discipline; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings.

Tuesday, December 3, 2002

Roll Call

Board Members Present
Donn James, Chairman
William H. (Bill) Stuart, Vice Chairman
Marcia Shadel, Secretary
Jerry Griffin, Member
Kenneth McGhee, Member
Joy Gerstein, Public Member

Staff Present
Patricia Handly, Executive Director
Becky Dunn, Incoming Executive Director
Pamela Schnieders, Clerk IV
Lori Wansing, Inspector
Sharon Euler, Assistant Attorney General

Rules
Jerry Griffin advised the board members of his interest in language relative to who should be present during the cremation process, and to include the word “Missouri” throughout board regulations, where license funeral director is mentioned. A motion was made by Jerry Griffin and seconded by Marcia Shadel to have the executive director and the assistant attorney general draft language for the board to review at the next meeting. Motion carried unanimously with all members participating.

Closed Meeting
Motion was made by Jerry Griffin and seconded by Kenneth McGhee to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed under Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing investigative reports and/or complaints and/or audits and/or other information pertaining to the licensee or applicant; Section 610.020 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo for deliberation on discipline; Section 610.021 Subsection (14) RSMo and Section 620.010.14 Subsection (7) RSMo for reviewing applicants for licensure; and, Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for
proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees.

Adjournment
A motion was made by Jerry Griffin and seconded by Kenneth McGhee to adjourn. Motion carried unanimously with all members participating. The meeting adjourned at 12:10 p.m. on Tuesday, December 3, 2002.

Executive Director: ________________________________

Approved by the Board on: __________________________