Wednesday, January 4, 2006

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by William Stuart, Chairman, at 10:30 a.m. on Wednesday, January 4, 2006, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Board Members Present
William H. (Bill) Stuart, Chairman
Kenneth McGhee, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Joy Gerstein, Public Member

Board Member Absent:
Marcia Shadel was absent from the meeting, due to illness.

Staff Present
Becky Dunn, Executive Director
Lori Hayes, Inspector
Pamela Schnieders, Administrative Assistant
Tabatha Lenzini, Licensure Technician
Sharon Euler, Assistant Attorney General
David Barrett, Division’s Legal Counsel
Kimberly Harper-Grinston, Division’s Legal Counsel

Public Present
Alison Craighead, Division of Professional Registration
Tim Lueckenhoff, Central Investigative Unit
Greg Russell, Capital Reserve Life
Don Lakin, Lakin Funeral Chapel – via Conference Call
John McCullouch, APS
Steve Watkins, Missouri Funeral Director Association
Randy Singer, NPS
Approval of Agenda
Motion was made by Kenneth McGhee and seconded by Joy Gerstein to approve the open agenda. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

Chairmanship
At the September 2005 board meeting, Jerry Griffin stepped down from Chairmanship, and William Stuart as Vice Chairman, became the chairman pursuant to Robert's Rules of Order, which this governing body has adopted. The board failed to record this business in the September 29, 2005 Open Meeting Minutes. A motion was made by Kenneth McGhee and seconded by Joy Gerstein to amend the September 29, 2005 Open Meeting Minutes as noted, as clarification of board records. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

Rules
Chairman Stuart made sure that all board members and the public attending the meeting were provided a copy of the comments provided to the Board by the following: William Stalter, Wassberg & Stalter, P.C., sent to the Board Office on December 28, 2005. Valerie Bayham, Staff Attorney for Institute of Justice, sent via facsimile, e-mail, and US Mail to Sharon Euler, the board Assistant Attorney General on January 3, 2006. Joshua Slocum, Executive Director of Funeral Consumer Alliance Inc., and Bev McGill, President of Funeral Consumers Alliance of Greater Kansas City, sent via-email and US Mail to the Board office on January 3, 2006.

The members and attendees were asked to review the submissions prior to the discussion of the rules and regulations on the agenda.

The board reviewed drafts of proposed and amended language to rules as follows:

- Draft of Proposed Amendment to 4 CSR 120-2.060(18) – Funeral Directing
The board reviewed the Proposed Amendment to 4 CSR 120-2.060(18) – Funeral Directing as drafted.

Current Rule
(18) No person other than a Missouri licensed funeral director shall be allowed to make the following at-need arrangements with the person having the right to control the incidents of disposition:
   (A) Removal of a dead human body, arrangements for final disposition, supervision of visitation and memorial ceremony, grave attendance, cremation, entering into a contractual relationship for performance of any other funeral services;
   (B) Embalming, cremation, care, preparation, shipment or transportation of a dead human body; and
   (C) Sale or rental to the public of funeral merchandise, services or paraphenalia.

New Proposed Amendment
(18) The following shall be considered the practice of funeral directing for which a license is required, unless otherwise provided by statute or regulation:
   (A) Entering into a contract with a person having the right to control the disposition of a dead human body for the following services: Removal of a dead human body, arrangements for final disposition, supervision of visitation and memorial ceremonies, grave attendance, cremation, embalming, care and preparation of the dead human body, shipment and transportation of a dead human body; and
(B) Preparing, other than by embalming, a dead human body for final disposition, supervising visitation and memorial ceremonies, grave attendance, cremation, and preparation of the dead human body for shipment and transportation.

(C) Whether a fee is charged shall not be dispositive in determining whether one is engaged in the practice of funeral directing.

A motion was made by James Reinhard to adopt the new proposed amendment to 4 CSR 120-2.060 as drafted. The motion died for lack of a second.

A motion was made by Kenneth McGhee and seconded by Joy Gerstein to amend the current rule by deleting the language in subsection (C) “Sale or rental to the public of funeral merchandise, services or paraphernalia”, and replace with, “Nothing in this subsection shall be construed to apply to persons exempt from Chapter 333 RSMo.” Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

- **Draft of Proposed Amendment to 4 CSR 120-2.060 – Funeral Directing**

The board reviewed the draft of proposed amendment to 4 CSR 120-2.060 – Funeral Directing.

**New Proposed Amendment**

(29)

(A) No person shall be deemed to be engaged in the practice of funeral directing if one arranges for the disposition of the dead human body of a member of one’s own family.

(B) One’s own family shall be considered any family member within the third degree of consanguinity (by blood) or affinity (by marriage) as set forth in Missouri law, including: grandparents, parents, spouse, children, in-laws, aunts, uncles, first cousins, nieces, nephews, brothers, and sisters. A person designated in writing as next of kin pursuant to Section 194.119, RSMo, shall also be considered as one’s family for the purposes of this rule.

(C) It shall not be the practice of funeral directing for a member of a religious group or sect to bury the dead human body of another member of the same religious group or sect if that religious group or sect has a religious belief that requires the burial of its own dead.

A motion was made by Kenneth McGhee and seconded by James Reinhard to table the amended language for attorney review and clarification. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

- **Draft of Proposed Amendment to 4 CSR 120-2.060 – Funeral Directing**

The board reviewed the draft of proposed amendment to 4 CSR 120-2.060 – Funeral Directing.

**New Proposed Amendment**

(30) No funeral director or funeral establishment license shall be required for any person engaged in the business of simply providing burial receptacles for the dead including caskets, urns, vaults, and other similar merchandise.

A motion was made by Kenneth McGhee and seconded by Joy Gerstein to not pursue the proposed language at this time. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

- **Draft of Proposed Amendment to 4 CSR 120-2.070(6) – Funeral Establishments**

The board reviewed the draft of proposed amendment to CSR 120-2.070(6) – Funeral Establishments.
Current Rule
(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.

Previous proposal
(6) Each application for a funeral establishment license shall list the owner of the funeral establishment business. The owner of the funeral establishment need not be the same as the owner of the property upon which the funeral establishment is located. An owner of a funeral establishment shall be either an individual or a business entity authorized to conduct business in Missouri. No license shall be issued for a funeral establishment that does not register an owner with legal recognition. If a funeral establishment wishes a name to appear on the license, other than the owner, the application shall specify, on its written application to the board, the name to appear on the license. However, the owner of the funeral establishment shall be the name(s) of the legal person as listed on the application. The funeral establishment will be authorized to conduct business under the name of the owner, the name on the license, plus one additional “doing business as” name that is registered with the board as provided in these regulations. With each application, the funeral establishment shall provide proof, satisfactory to the Board, of the legal right of the establishment to occupy the premises to be licensed such as a copy of a lease, a deed, or other proof of right to occupy the premises.

New Amended Rule
(6)
(A) Each application for a funeral establishment license shall list the owner of the funeral establishment business. The owner of a funeral establishment shall be either an individual or a business entity authorized to conduct business in Missouri. No license shall be issued for a funeral establishment that does not register an owner with legal recognition.
(B) The owner of the funeral establishment need not be the same as the owner of the property upon which the funeral establishment is located.
(C) A funeral establishment may conduct business in Missouri using only names registered with the Board.
(D) A funeral establishment may register with the Board one name as a “doing business as” name.
(E) With each application, the funeral establishment shall provide proof, satisfactory to the Board, of the legal right of the establishment to occupy the premises to be licensed such as a copy of a lease, a deed, or other proof of right to occupy the premises.

A motion was made by Kenneth McGhee and seconded by Joy Gerstein to not pursue the proposed amended language at this time. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

- Draft of Proposed Amended Language 4 CSR 120-2.070(26) – Funeral Establishments

The board reviewed the draft of proposed amendment to 4 CSR 120-2.070(26) – Funeral Establishments.

Current Rule
(26) All documents required by this rule to be maintained, must be maintained on the premises for a minimum of the current calendar year and the previous calendar year. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

New Proposed Amendment
26) All documents required to be maintained by this rule, must be maintained on the premises of the Missouri licensed funeral establishment for a minimum of the current calendar year and the previous calendar year.
(A) However, if one owner owns more than one funeral establishment, then the owner may choose to house all records of all establishments owned at one of the licensed funeral establishment locations.
(B) If the owner of the funeral establishment elects to maintain all records at one establishment location, the owner or the funeral director in charge of one of the involved funeral establishments, must notify the board.
in writing of this intent. The notice shall be provided to the board at least 30 days prior to the document storage being centralized or at the time of application for the funeral establishment license. The written notice shall include the effective date of the record location change, the name, address and telephone number of the funeral establishment where the records will be maintained and the name of the funeral director in charge at that establishment.

(C) All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

A motion was made by James Reinhard and seconded by Kenneth McGhee to table the amended language for attorney review and simplification. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

- **Draft of Proposed Amendment to 4 CSR 120-2.070 – Funeral Establishments**

  The board reviewed the draft of proposed amendment to 4 CSR 120-2.070 – Funeral Establishments.

  **New Proposed Amendment**

  (30) The building which houses a funeral establishment may also contain living quarters so long as the following requirements are met:

  (A) Each portion of the living quarters shall be separate and apart from the portion of the building used for funeral establishment purposes.

  (B) The funeral establishment portions of the building shall be separated from the living quarters of the building by solid floor to ceiling partition. It shall be permissible for said separating partition to contain a door, capable of being closed.

  (C) No portion of the building shall be used for both living quarters purposes and for funeral establishment purposes.

  (D) The funeral establishment portion of the building shall have restroom and drinking water facilities separate and apart from that of the living quarters.

  (E) This rule shall not be applied so as to exclude occasional, de minimus, use for personal use as living quarters of those portions of the building designated for serving as the funeral establishment.

A motion was made by James Reinhard and seconded by Joy Gerstein to table the amended language for attorney review. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

- **Draft of Proposed Amendment to 4 CSR 120-2.071(6) – Funeral Establishments Containing a Crematory Area**

  The board reviewed the draft of proposed amendment to 4 CSR 120-2.071(6) – Funeral Establishments Containing a Crematory Area, to clarify that next of kin may authorize cremation only upon the death of their next of kin.

  **Current Rule**

  (6) If the deceased gave written authorization to cremate and did not revoke the authorization, that authorization shall satisfy the requirement for authorization to cremate. If the deceased did not give written authorization to cremate, the next of kin of the deceased or the county coroner or medical examiner pursuant to Chapter 58, RSMo, may give authorization to cremate. Authorization to cremate given prior to the death may be in any written document, including a preneed contract. The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

  **Previous Proposal**

  (6) No dead human body shall be cremated without a signed and dated written authorization to cremate. This authorization may be given by the following methods:
(A) Any individual may execute a written authorization to cremate his or her own body upon death. This authorization, to be valid, must not have been revoked prior to death, and may be contained in any writing which is dated and signed by the decedent and at least two witnesses who are present at the time the authorization to cremate is signed. One witness may be the funeral director assisting with the pre-death planning.

(B) Any person holding a valid power of attorney which contains specific authority to control the disposition of the body, when the principal dies, may execute a written authorization to cremate, on behalf of the principal, as provided in subsection 1 of this rule. The holder of the power of attorney may exercise this right only while the principal is alive.

(C) If the decedent executed no authorization to cremate, before death, the authorization to cremate shall be executed by the next of kin, as defined in section 194.119.2, RSMo. The authorization to cremate shall be dated and signed by the next of kin, the funeral director making the arrangements for disposition, and one witness. The next of kin may not execute the written authorization to cremate prior to the death of the decedent.

Revised Proposal

(6) No dead human body shall be cremated without a signed and dated written authorization to cremate. This authorization may be given by the following methods:

(A) Any individual may execute a written authorization to cremate his or her own body upon death. This authorization, to be valid, must not have been revoked prior to death, and may be contained in any writing which is dated and signed by the decedent and at least two witnesses who are present at the time the authorization to cremate is signed. One witness may be the funeral director assisting with the pre-death planning.

(B) If the decedent executed no authorization to cremate, before death, the authorization to cremate shall be executed by the next of kin, as defined in section 194.119.2, RSMo. The authorization to cremate shall be dated and signed by the next of kin, the funeral director making the arrangements for disposition, and one witness. The next of kin may not execute the written authorization to cremate prior to the death of the decedent.

(C) For purposes of this rule regarding authorization of cremation, the term next of kin shall include any person having legal authority to control the disposition of the body including, but not limited to, the holder of a valid power of attorney with specific authority to control disposition of the dead body.

A motion was made by Kenneth McGhee and seconded by Joy Gerstein to table revising this rule, due to potential language being proposed in the current legislative session. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

- Draft of Proposed Amended Language 4 CSR 120-2.071(13) – Funeral Establishments Containing a Crematory Area

The board reviewed the draft of proposed amendment to 4 CSR 120-2.071(13) – Funeral Establishments Containing a Crematory Area.

**Current Rule**

(13) Each body shall be delivered to the crematory in a cremation container, plastic pouch, cardboard cremation container, casket made of wood or wood product or metal. If a metal container or casket is used the purchaser must be informed of the disposition of the metal container or casket after cremation. The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease.

**Previous Proposal**

(13) Each body shall be delivered to the crematory in a cremation container, plastic pouch, cardboard cremation container, casket made of wood or wood product or metal. If a metal container or casket is used, the person making the arrangements must be informed by the Missouri licensed funeral director with whom the arrangements are made of the disposition of the metal container or casket after cremation, if not placed in retort. The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease.
Revised Proposal

(A) Each body shall be delivered to the crematory in a suitable and adequate container for the body, as if it were to be transported by common carrier, in accord with Chapter 194, RSMo, and other applicable provisions of Missouri law.

(B) If the body is delivered to the crematory in a metal container or casket, and the metal container or casket is not placed in the retort, the purchaser shall be informed of the disposition of the metal container or casket. The Missouri licensed funeral director making the arrangements shall have the obligation to inform the purchaser of this disposition.

(C) In addition to complying with the requirements of Chapter 194, RSMo and other applicable Missouri laws, the container in which a body is delivered to a crematory shall be combustible, non-explosive, and of an opaque material. The container shall be made of a material which is adequate to protect the health and safety of any person in the crematory area.

A motion was made by Martin Vernon and seconded by James Reinhard to adopt the following amendment to current rule as noted below. Areas bolded are new language and those in brackets will be deleted. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

PROPOSED AMENDMENT

4 CSR 120-2.071(13) Each body shall be delivered to the crematory, if not already in a cremation container, plastic pouch, cardboard cremation container, casket made of wood or wood product or metal, shall be placed in such a container or casket. If a metal container or casket is used, the person making the arrangements must be informed by the Missouri licensed funeral director with whom the arrangements are made of the disposition of the metal container or casket after cremation, if not placed in a retort. The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease.

Computer Based Testing

At the December 5-6, 2005 meeting, the board had questions regarding computerized testing, such as malfunctions, available locations, and will there be a paper/pencil substitution?

The Executive Director reported that the Conference has advised they have had no problems with a test site malfunctioning, if this would happen they are willing to make it right with the candidate. There is no paper/pencil examination given after the move to computer based testing, and no ADA situation which would require that modification. The current sites available are in Jefferson City, Kansas City, Springfield and St. Louis, Missouri.

Closed Meeting

Motion was made by Kenneth McGhee and seconded by Martin Vernon 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 pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency;
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. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting.

Adjournment
A motion was made by Martin Vernon and seconded by Joy Gerstein to adjourn. Motion carried with Kenneth McGhee, James Reinhard, Martin Vernon, and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel was absent from the meeting. The meeting adjourned at 6:30 p.m. on Wednesday, January 4, 2006.

Executive Director: _________________________________

Approved by the Board on: __________________________
Meeting Notice
Missouri State Board of Embalmers and Funeral Directors

January 4, 2006 – 10:30 a.m.
Division of Professional Registration
3605 Missouri Blvd.
Jefferson City, Missouri

The Missouri State Board of Embalmers and Funeral Directors will be meeting on January 4, 2006 beginning at 10:30 a.m. Notification of special needs as addressed by the American with Disabilities Act should be forwarded to the Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, 3605 Missouri Boulevard, Jefferson City, Missouri 65102 or by calling (573) 751-0813 to ensure available accommodations. The text telephone for the hearing impaired is (800) 735-2966.

Except to the extent disclosure is otherwise required by law, the Missouri State Board of Embalmers and Funeral Directors is authorized to close meetings, records and votes, to the extent they relate to the following: Sections 610.021(1), (3), (5), (7), (13) and (14), RSMo, and Section 620.010.14(7) RSMo.

The Board may go into closed session at any time during the meeting. If the meeting is closed the appropriate section will be announced to the public with the motion and vote recorded in open session minutes.

Please see attached tentative agenda for this meeting.

Attachment

cc: Alison Craighead and Janice Sloca
AMENDED OPEN AGENDA
Missouri State Board of Embalmers
and Funeral Directors

January 4, 2006 – 10:30 a.m.
Division of Professional Registration
3605 Missouri Blvd.
Jefferson City, Missouri

Wednesday, January 4, 2006

Call to Order

Roll Call

1. Approval of Agenda

2. Chairmanship

3. Rules
   • Draft of Proposed Amended Language 4 CSR 120-2.060(18) – Funeral Directing
   • Draft of New Proposed Language 4 CSR 120-2.060(29) – Funeral Directing
   • Draft of New Proposed Language 4 CSR 120-2.060(30) – Funeral Directing
   • Draft of Proposed Amended Language 4 CSR 120-2.070(6) – Funeral Establishments
   • Draft of Proposed Amended Language 4 CSR 120-2.070(26) – Funeral Establishments
   • Draft of New Proposed Language 4 CSR 120-2.070(30) – Funeral Establishments
   • Draft of Proposed Amended Language 4 CSR 120-2.071(6) – Funeral Establishments Containing a Crematory Area
   • Draft of Proposed Amended Language 4 CSR 120-2.071(13) – Funeral Establishments Containing a Crematory Area

4. Computer Based Testing

Closed Meeting. The Board will move into closed session pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; 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