Amended Meeting Notice

State Board of Embalmers and Funeral Directors

December 12-13, 2018

8:00 a.m.

Adams Pointe Conference Center
1400 NE Coronado Dr
Blue Springs MO 64014

Notification of special needs as addressed by the American with Disabilities Act should be forwarded to the 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 deaf or hard of hearing is (800) 735-2966 or (800) 735-2466 for the Voice Relay Missouri.

Except to the extent disclosure is otherwise required by law, the 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 Sections 324.001.8 and 324.001.9 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.

Open session is tentatively scheduled for 11:00a.m. December 12, 2018. The agenda is attached. The local call in number is 573-526-5904 and the toll free number is 866-630-9352. The call in numbers will be open from 11:00a.m. until 3:30p.m. or upon the board going into closed session.
OPEN AGENDA

December 12, 2018 – 8:00a.m.
1. Call to Order
2. Roll Call
3. Review and Approval of Agenda
4. CLOSED

11:00a.m. – The board will convene in open session

5. Discipline Hearing – Ashton A Jones Funeral Directors Inc 11:00a.m.
6. Probation Violation Hearing – Sondra Shipman 11:30a.m.
7. Probation Violation Hearing – Derek Shipman 11:30a.m.
8. Probation Violation Hearing – Shipman Funeral Home 11:30a.m.
9. Presentation of Plaques to Past Member/s Recognizing Prior Service 1:00p.m.
10. Acknowledgement and Recognition of Newly Licensed Embalmers and Funeral Directors
11. (Tab 1) Approval of Open Minutes (approval of the Financial Examination Committee Minutes ratifies its actions)
   • June 13-14, 2018 Board Meeting
   • July 11, 2018 Conference Call
   • August 6, 2018 Conference Call
   • August 7, 2018 Exam Meeting Call
   • August 8, 2018 Conference Call
   • September 12, 2018 Board Meeting Call
   • September 14, 2018 Mail Ballot
   • October 4, 2018
12. (Tab 2) Executive Director Report
   • Financial Report
   • Renewal Update
   • St Louis Community College – Embalming Lab
14. Review of Revised Proposed Rule Changes – Per Legal Counsel / Statutory Authority
15. Election of Officers
16. Discussion of future meeting dates
17. Open Session/Discussion
18. CLOSED
19. Adjournment
BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
FOR THE STATE OF MISSOURI

State Board of Embalmers and
Funeral Directors,

3605 Missouri Blvd.
P.O. Box 423
Jefferson City, MO 65102-0423
573-751-0813

Petitioner,

v.

Ashton A. Jones Funeral Directors, Inc.,

516 E. Jackson St.
Marshall, Missouri 65340
660-886-9606

Respondent.

Case No. 16-3282

COMPLAINT

COMES NOW the Petitioner, the Missouri State Board of Embalmers and Funeral
Directors ("Petitioner" or "Board"), by and through its undersigned counsel, and for its
Complaint against the Respondent, Ashton A. Jones Funeral Directors, Inc. ("Respondent"),
respectfully states as follows:

1. The Board is an agency of the state of Missouri created and established by RSMo.
§333.151 for the purposes of executing and enforcing the provisions of RSMo. Chapter 333 and
the portions of RSMo. Chapter 436 related to preneed funeral contracts.

2. Jurisdiction and venue are proper before this Commission pursuant to RSMo.
Chapter 621 and §333.330.
3. Respondent is a Missouri corporation, with 516 E. Jackson Street, Marshall, Missouri, 65340, as its registered address with the Board; Respondent has been administratively dissolved by the Missouri Secretary of State, for failure to timely file its 2015 registration report.

4. Respondent holds funeral establishment license number 2013020808. This license expired on December 31, 2013.

5. Section 333.061, RSMo, requires a license to operate as a funeral establishment in Missouri and states, in relevant part:

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

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

   (1) That the establishment is under the general management and the supervision of a duly licensed funeral director; . . .

6. Section 333.330, RSMo, authorizes the Board to discipline a funeral establishment license and states, in relevant part:

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

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

   (3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of registration or authority, permit, or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter.

   *    *    *

2.
(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

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

* * *

(12) Issuance of a certificate of registration or authority, permit, or license based upon a material mistake of fact.

* * *

(14) Violation of any professional trust or confidence.

7. Rule 20 CSR 2120-1.040(14) defines funeral director in charge and provides as follows:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

8. Rule 20 CSR 2120-2.070 states, in relevant part, as follows:

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed 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 Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

* * *

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall 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 Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed 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.

9. RSMo. §333.071 provides, in part, that the “business or profession of an individual licensed to practice embalming or funeral directing shall be conducted and engaged in at a funeral establishment.”

10. Respondent executed its “Application for Funeral Establishment License” (the “Establishment Application”) on March 15, 2013, and submitted it to the Board. The Board received the Establishment Application on May 20, 2013.

11. Ashton Jones signed the Establishment Application as Respondent’s President.

12. The Establishment Application listed Gary W. Marshall as the funeral director in charge and contained a signature purporting to be that of Gary W. Marshall.

13. The Board issued a funeral establishment license to Ashton Jones Funeral on June 24, 2013.

14. On July 13, 2013, the Board received a letter from Gary W. Marshall making inquiry as to whether Ashton A. Jones Funeral Directors, Inc. held any licenses, as Ashton Jones had called Mr. Marshall about doing embalming for him.

15. On July 18, 2013, the Board received the following signed statement from Gary W. Marshall:

I, Gary Marshall did not sign the application for funeral establishment for Ashton A. Jones Funeral Directors, Inc. I do not have any affiliation with this funeral home.
16. On July 18, 2013, the Board contacted Mr. Jones to schedule an inspection of the funeral establishment. Mr. Jones informed the Board that he would be on vacation and unavailable for a week. The inspection was then scheduled for September 6, 2013.

17. On September 6, 2013, Mr. Jones informed the Board's inspector that he was out of state and would be unavailable for the funeral home to be inspected and also stated that the funeral director in charge was also out of town. The inspection was rescheduled for September 20, 2013.

18. During the Board's inspection on September 20, 2013, Mr. Jones informed the Board that Bobby Pearson was now the funeral director in charge.

19. Neither Respondent nor Bobby Pearson provided the Board with notice that Bobby Pearson was the funeral director in charge, prior to the inspection on September 20, 2013.

20. On October 9, 2013, the Board received a signed and notarized letter from Bobby Pearson indicating that she was now serving as Respondent's funeral director in charge.

21. On October 9, 2013, the Board received a signed and notarized letter from Ashton Jones indicating that Gary Marshall was no longer Respondent’s funeral director in charge.

22. On November 8, 2013, Bobby Pearson gave notice to the Board that she was no longer affiliated with Respondent.

23. Between November 8, 2013, and December 31, 2013, Respondent held an establishment license, but had no funeral director in charge.

24. Respondent held itself out to the public as an operating funeral establishment after its establishment license expired on December 31, 2013.

25. On August 13, 2015, the Board received a call from Jackie Williams inquiring about the status of Respondent’s establishment license.
26. Jackie Williams had received a facsimile from Respondent; this facsimile included a copy of what purported to be Respondent’s establishment license issued by the Board, with an expiration date of December 31, 2015.

27. The Board had not renewed Respondent’s establishment license after December 31, 2013, and the license provided by Respondent to Jackie Williams was a falsification.

28. Respondent submitted the Establishment Application indicating that Gary Marshall would serve as funeral director in charge and containing a signature purporting to be that of Gary Marshall when, in fact, Gary Marshall did not sign the Establishment Application and never served as Respondent’s funeral director in charge, nor was he employed by or otherwise affiliated with Respondent.

29. It was a material mistake of fact for the Board to issue the Establishment License to Respondent, because Respondent had no funeral director in charge and because the Application for Licensure did not contain the true signature of Gary Marshall.

30. Respondent held itself out to the public as an operating funeral establishment at times when it failed to meet the statutory requirements for operation and also at times when it did not hold an establishment license.

31. Respondent’s conduct, as set forth above, constitutes the use of fraud, deception, or misrepresentation in the securing of a license from the Board, within the meaning of §333.330.2(3).

32. Respondent’s conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of the functions or duties of a licensed profession, within the meaning of §333.330.2(5).
33. Respondent’s conduct, as set forth above, constitutes the violation of, or assisting or enabling another to violate, a provision of Chapter 333 or a lawful rule or regulation adopted thereto, within the meaning of §333.330.2(6).

34. Respondent’s conduct, as set forth above, demonstrates that Respondent obtained a license from the Board based upon a material mistake of fact, within the meaning of §333.330.2(12).

35. Respondent’s conduct, as set forth above, constitutes a violation of a professional trust and/or confidence, within the meaning of §333.330.2(14).

36. Given the forgoing, the Board has cause to discipline Respondent’s funeral establishment license pursuant to RSMo. §333.330.2(3), (5), (6), (12), and (14).

WHEREFORE, Petitioner respectfully requests that this Commission conduct a hearing in this matter, and, thereafter, issue its findings of fact and conclusions of law determining that Petitioner may take disciplinary action against Respondent pursuant to RSMo. Chapter 333 and grant such additional relief as is just and proper under the circumstances.

Respectfully submitted,

BRIDSON, SWEARENGEN & ENGLAND P.C.

By: [Signature]

[Name]

[Name]

[Address]

[City, State, Zip]

[Phone Number]

[Email Address]
ORDER

Petitioner's motion for continuance filed on January 11, 2017, is granted.

The hearing is rescheduled beginning at 9:00 AM, Wednesday, June 14, 2016, at the U.S. Post Office building, 131 West High Street, Third Floor, Jefferson City, Missouri. Each case will be called from a docket and each party given ample time to present its case. If you feel that two or more hours are needed to present your case, please contact this Commission.

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF EMBALMERS and
FUNERAL DIRECTORS, )
) Petitioner.
)

vs. )

Case No. 16-3282

ASHTON A. JONES FUNERAL
DIRECTORS, INC., )
) Respondent.
)

MOTION FOR CONTINUANCE

COMES NOW the Petitioner, by and through counsel, and for its Motion for Continuance, respectfully states the following:

1. A hearing in the above-referenced matter is scheduled for Friday, January 13, 2017, at 9:00 a.m.

2. As of January 11, 2017, Petitioner has been unable to accomplish service on Respondent.

3. If all personal service attempts fail, a request for service by publication will be submitted.

4. As such, Petitioner requests that the hearing be continued to allow additional time to accomplish service on Respondent.

WHEREFORE, the Petitioner respectfully requests that the Commission enter an Order continuing the hearing in this case, and requests such further relief as the Commission deems appropriate.
Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: Diana C. Carter
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102
Telephone: (573) 635-7166
Facsimile: (573) 635-3847
Email: dcarter@brydonlaw.com
ORDER

Petitioner’s motion for continuance filed on January 11, 2017, is granted.

The hearing is rescheduled beginning at 9:00 AM, Wednesday, June 14, 2016, at the U.S. Post Office building, 131 West High Street, Third Floor, Jefferson City, Missouri. Each case will be called from a docket and each party given ample time to present its case. If you feel that two or more hours are needed to present your case, please contact this Commission.


AUDREY HANSON MCINTOSH
Commissioner
BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF EMBALMERS and
FUNERAL DIRECTORS, Petitioner,

vs. ASHTON A. JONES FUNERAL
DIRECTORS, INC., Respondent.

Case No. 16-3282

SECOND MOTION FOR CONTINUANCE
AND REQUEST FOR PERMISSION TO SERVE BY PUBLICATION OR MAIL

COMES NOW the Petitioner, by and through counsel, and for its Motion for Continuance and Request for Permission to Serve by Publication or Mail, respectfully states the following:

1. A hearing in the above-referenced matter is scheduled for Wednesday, June 14, 2017, at 9:00 a.m.

2. Petitioner requested the first continuance, which was granted by the Commission, while Petitioner was attempting to personally serve the Respondent at the address of record on file with Petitioner and also at the address of record on file with the Missouri Secretary of State’s Office.

3. All attempts at personal service have failed, and, as such, Petitioner requests permission to serve the Respondent by publication or mail.

4. Additionally, Petitioner requests that the hearing be continued to allow additional time to accomplish service on Respondent by either publication or mail.
WHEREFORE, the Petitioner respectfully requests that the Commission enter an Order continuing the hearing in this case, authorizing service by publication or mail, and granting such further relief as the Commission deems appropriate.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: Diana C. Carter
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102
Telephone: (573) 635-7166
Facsimile: (573) 635-3847
Email: dcarter@brydonlaw.com
BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF EMBALMERS and
FUNERAL DIRECTORS,

Petitioner,

vs.

ASHTON A. JONES FUNERAL
DIRECTORS, INC.,

Respondent.

Case No. 16-3282

VERIFIED REQUEST FOR PERMISSION TO SERVE BY PUBLICATION OR MAIL.

COMES NOW the Petitioner, by and through counsel and pursuant to RSMo. 506.160,
and for its Verified Request for Permission to Serve by Publication or Mail, respectfully states
the following:

1. A hearing in the above-referenced matter is scheduled for August 15, 2017, at
9:00 a.m.

2. Petitioner has been unable to personally serve the Respondent, a Missouri
corporation, or anyone representing or acting on behalf of the Respondent, at the address on file
with the Petitioner. Petitioner has also been unable to personally serve the Respondent, or anyone
representing or acting on behalf of the Respondent, at the address on file with the Missouri
Secretary of State's Office.

3. It is believed that Ashton Jones, Petitioner's owner and registered agent, without
updating the Respondent's address on file with the Petitioner and/or the Missouri Secretary of
State's Office, may have left the state and may now be found at 1341 Elmwood Ave, Fort Worth,
Texas, 76104.
4. All attempts at personal service within the State of Missouri have failed and Petitioner believes that personal service on the Respondent cannot be had in this state, and, as such, Petitioner requests permission to serve the Respondent by publication and/or mail.

WHEREFORE, the Petitioner respectfully requests that the Commission enter an Order authorizing service by publication and/or mail and granting such further relief as the Commission deems appropriate.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: [Signature]

Diana C. Carter #50527
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102
Telephone: (573) 635-7166
Facsimile: (573) 635-3847
Email: dcarter@brydonlaw.com
BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF EMBALMERS and
FUNERAL DIRECTORS,

Petitioner,

vs.

ASHTON A. JONES FUNERAL DIRECTORS, INC.,

Respondent.

Case No. 16-3282

RESPONSE TO ORDER DIRECTING FILING

COMES NOW Petitioner, by and through counsel and in response to the Order issued herein on June 8, 2017, and submits its proposed Notice of Publication.

Respectfully Submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

____________________________________
Diana C. Carter  MBE #50527
312 E. Capitol Ave.
P.O. Box 456
Jefferson City, Missouri 65102
(573) 635-7266
Fax: (573) 636-6450
Email: dcarter@brydonlaw.com

ATTORNEYS FOR PETITIONER
Before the
Administrative Hearing Commission
State of Missouri

BOARD OF EMBALMERS & FUNERAL
DIRECTORS,

Petitioner,

v.

ASHTON A. JONES FUNERAL
DIRECTORS, INC.,

Respondent.

No. 16-3282

ORDER

On May 24, 2017, Petitioner filed a second motion for continuance and request for permission to serve by publication or mail.

We grant the continuance and reschedule the hearing on a docket beginning at 9:00 a.m., Tuesday, August 15, 2017, at the Administrative Hearing Commission, U.S. Post Office Building, 131 West High Street, 3rd Floor, Jefferson City, Missouri.

We deny the motion for service by publication or mail because it does not meet the requirements of § 621.100 and § 506.160, RSMo 2016.


AUDREY HANSON MCINTOSH
Commissioner
BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF EMBALMERS and
FUNERAL DIRECTORS,
)
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Petitioner,
)
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vs.
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)
)
ASHTON A. JONES FUNERAL
DIRECTORS, INC.,
)
)
)
)
Respondent.
)
)
)
)

VERIFIED REQUEST FOR PERMISSION TO SERVE BY PUBLICATION OR MAIL

COMES NOW the Petitioner, by and through counsel and pursuant to RSMo. 506.160,
and for its Verified Request for Permission to Serve by Publication or Mail, respectfully states
the following:

1. A hearing in the above-referenced matter is scheduled for August 15, 2017, at
9:00 a.m.

2. Petitioner has been unable to personally serve the Respondent, a Missouri
corporation, or anyone representing or acting on behalf of the Respondent, at the address on file
with the Petitioner. Petitioner has also been unable to personally serve the Respondent, or anyone
representing or acting on behalf of the Respondent, at the address on file with the Missouri
Secretary of State's Office.

3. It is believed that Ashton Jones, Petitioner's owner and registered agent, without
updating the Respondent's address on file with the Petitioner and/or the Missouri Secretary of
State's Office, may have left the state and may now be found at 1341 Elmwood Ave, Fort Worth,
Texas, 76104.
4. All attempts at personal service within the State of Missouri have failed and Petitioner believes that personal service on the Respondent cannot be had in this state, and, as such, Petitioner requests permission to serve the Respondent by publication and/or mail.

WHEREFORE, the Petitioner respectfully requests that the Commission enter an Order authorizing service by publication and/or mail and granting such further relief as the Commission deems appropriate.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: ________________________________

Dianna C. Carter
#50527
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102
Telephone: (573) 635-7166
Facsimile: (573) 635-3847
Email: dcarter@brydonslaw.com
Before the
Administrative Hearing Commission
State of Missouri

BOARD OF EMBALMERS & FUNERAL DIRECTORS,

Petitioner,

v.

ASHTON A. JONES FUNERAL DIRECTORS, INC.,

Respondent.

No. 16-3282

ORDER

On July 26, 2016, Petitioner filed a complaint seeking to discipline Respondent. On June 7, 2017, Petitioner filed a verified motion for service by publication as authorized by § 621.100.1.¹

We grant Petitioner's motion and authorize service of process as set forth in § 506.160.3. Petitioner shall file with us a proposed notice of publication by June 15, 2017.

We reschedule the hearing on a docket at 9:00 a.m. on Friday, October 27, 2017, at the Administrative Hearing Commission, U.S. Post Office Building, 131 West High Street, 3rd Floor, Jefferson City, Missouri. In addition to the information required by § 506.160.3, the notice by publication shall include this hearing date, location and time.

SO ORDERED on June 8, 2017.

AUDREY HANSON MCINTOSH
Commissioner

¹ Statutory references are to RSMo 2016.
BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF EMBALMERS and
FUNERAL DIRECTORS,

Petitioner,

vs.

ASHTON A. JONES FUNERAL
DIRECTORS, INC.,

Respondent.

Case No. 16-3282

RESPONSE TO ORDER DIRECTING FILING

COMES NOW Petitioner, by and through counsel and in response to the Order issued
herein on June 8, 2017, and submits its proposed Notice of Publication.

Respectfully Submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

[Signature]

Diana C. Carter  MBE #50527
312 E. Capitol Ave.
P.O. Box 456
Jefferson City, Missouri 65102
(573) 635-7266
Fax: (573) 636-6450
Email: dcarter@brydonlaw.com

ATTORNEYS FOR PETITIONER
ORDER

On June 7, 2017, Petitioner filed a verified motion for service by publication. By order dated June 8, 2017, we granted the motion.

On June 16, 2017, Petitioner filed a proposed notice by publication. We approve the notice. Petitioner shall cause the notice to be published, notify this Commission of the dates of publication, and file an affidavit verifying publication.

SO ORDERED on June 19, 2017.

AUDREY HANSON MCINTOSH
Commissioner
AFFIDAVIT OF PUBLICATION

STATE OF MISSOURI )
County of Cole )

I, Todd Frantz, being duly sworn according to law, state that I am one of the
publishers of the News Tribune, a daily newspaper of general circulation in
the County of Cole, State of Missouri, where located; which newspaper has
been admitted to the Post Office as periodical class matter in the City of
Jefferson, Missouri, the city of publication; which newspaper has been
published regularly and consecutively for a period of three years and has a
list of bona fide subscribers, voluntarily engaged as such, who have paid or
agreed to pay a stated price for a subscription for a definite period of time,
and that such newspaper has complied with the provisions of Section
493.050, Revised Statutes of Missouri 2000, and Section 59.310, Revised
Statutes of Missouri 2000. The affixed notice appeared in said newspaper on
the following issues:

1st Insertion June 29, 2017
2nd Insertion July 6, 2017
3rd Insertion July 13, 2017
4th Insertion July 20, 2017
5th Insertion
6th Insertion
7th Insertion
8th Insertion
9th Insertion
10th Insertion
11th Insertion
12th Insertion
13th Insertion
14th Insertion
15th Insertion
16th Insertion
17th Insertion
18th Insertion

$287.00
Printer's Fee

By Todd Frantz

Subscribed & sworn to before me this 20th Day of July 2017.

MAYRA LONG
Notary Public

LEGAL NOTICE to Ashton A. Jones Funeral Directors, Inc. and Ashton A. Jones: You are
hereby notified that an action has been
commenced against you before the Missouri
Administrative Hearing Commission in Jefferson
City, Cole County, Missouri, the object and
general nature of which is an action to
determine what, if any, discipline should be
imposed against your professional licenses by
Petitioner, Missouri State Board of Embalmers
and Funeral Directors.
The name and address of the attorney for
Petitioner is: Diana C. Carter; Brydon
Swearengen &
England P.C., 312 E. Capitol Avenue; Jefferson
City, MO, 65101. Petitioner and Ashton A. Jones
Funeral Directors, Inc., Respondent, are the
parties to the case.
You are notified that unless you plead or
otherwise respond and defend in this contested
case a default decision shall be entered against
you without further proceedings. You must file
an answer or other pleading in response to
Petitioner's Complaint filed with the
Administrative Hearing Commission within 45
days of June 29, 2017, the first date of
publication, or judgment by default will be
entered against you. You are further notified
that a hearing is scheduled concerning your
licenses on Friday, October 27, 2017 at 9:00 a.m.
before the Administrative Hearing Commission,
131 West High Street, 3rd Floor, Jefferson City,
Missouri.
N.T. June 29; July 6, 13, 20, 2017

MAYRA LONG
Notary Public - Notary Seal
STATE OF MISSOURI
Boone County
My Commission Expires: January 21, 2021
Commission #: 13503731
Before the
Administrative Hearing Commission
State of Missouri

BOARD OF EMBALMERS & FUNERAL
DIRECTORS

Petitioner,

v.

ASHTON A. JONES FUNERAL
DIRECTORS, INC.

Respondent,

No. 16-3282

DEFAULT DECISION

On July 26, 2016, Petitioner filed a properly pled complaint seeking to discipline Respondent. Respondent was served with a copy of the complaint and our notice of complaint/notice of hearing by publication on June 29, 2017.

More than 45 days have elapsed since Respondent was served. Respondent has not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo 2016, we enter a default decision against Respondent establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on October 25, 2017.

AUDREY HANSON MCINTOSH
Commissioner
BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
FOR THE STATE OF MISSOURI

3605 Missouri Blvd.
P.O. Box 423
Jefferson City, MO 65102-0423
573-751-0813

Petitioner,

v.

Ashton A. Jones Funeral Directors, Inc.,

516 E. Jackson St.
Marshall, Missouri 65340
660-886-9606

Respondent.

Case No.

COMPLAINT

COMES NOW the Petitioner, the Missouri State Board of Embalmers and Funeral Directors ("Petitioner" or "Board"), by and through its undersigned counsel, and for its Complaint against the Respondent, Ashton A. Jones Funeral Directors, Inc. ("Respondent"), respectfully states as follows:

1. The Board is an agency of the state of Missouri created and established by RSMo. §333.151 for the purposes of executing and enforcing the provisions of RSMo. Chapter 333 and the portions of RSMo. Chapter 436 related to preneed funeral contracts.

2. Jurisdiction and venue are proper before this Commission pursuant to RSMo. Chapter 621 and §333.330.
3. Respondent is a Missouri corporation, with 516 E. Jackson Street, Marshall, Missouri, 65340, as its registered address with the Board; Respondent has been administratively dissolved by the Missouri Secretary of State, for failure to timely file its 2015 registration report.

4. Respondent holds funeral establishment license number 2013020808. This license expired on December 31, 2013.

5. Section 333.061, RSMo, requires a license to operate as a funeral establishment in Missouri and states, in relevant part:

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

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

   (1) That the establishment is under the general management and the supervision of a duly licensed funeral director; . . .

6. Section 333.330, RSMo, authorizes the Board to discipline a funeral establishment license and states, in relevant part:

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

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

   (3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of registration or authority, permit, or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter.

*   *   *

2
(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

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

* * *

(12) Issuance of a certificate of registration or authority, permit, or license based upon a material mistake of fact.

* * *

(14) Violation of any professional trust or confidence.

7. Rule 20 CSR 2120-1.040(14) defines funeral director in charge and provides as follows:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

8. Rule 20 CSR 2120-2.070 states, in relevant part, as follows:

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed 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 Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

* * *

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall 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 Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed 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.

9. RSMo. §333.071 provides, in part, that the “business or profession of an individual licensee to practice embalming or funeral directing shall be conducted and engaged in at a funeral establishment.”

10. Respondent executed its “Application for Funeral Establishment License” (the “Establishment Application”) on March 15, 2013, and submitted it to the Board. The Board received the Establishment Application on May 20, 2013.

11. Ashton Jones signed the Establishment Application as Respondent’s President.

12. The Establishment Application listed Gary W. Marshall as the funeral director in charge and contained a signature purporting to be that of Gary W. Marshall.

13. The Board issued a funeral establishment license to Ashton Jones Funeral on June 24, 2013.

14. On July 13, 2013, the Board received a letter from Gary W. Marshall making inquiry as to whether Ashton A. Jones Funeral Directors, Inc. held any licenses, as Ashton Jones had called Mr. Marshall about doing embalming for him.

15. On July 18, 2013, the Board received the following signed statement from Gary W. Marshall:

I, Gary Marshall did not sign the application for funeral establishment for Ashton A. Jones Funeral Directors, Inc. I do not have any affiliation with this funeral home.
16. On July 18, 2013, the Board contacted Mr. Jones to schedule an inspection of the funeral establishment. Mr. Jones informed the Board that he would be on vacation and unavailable for a week. The inspection was then scheduled for September 6, 2013.

17. On September 6, 2013, Mr. Jones informed the Board’s inspector that he was out of state and would be unavailable for the funeral home to be inspected and also stated that the funeral director in charge was also out of town. The inspection was rescheduled for September 20, 2013.

18. During the Board’s inspection on September 20, 2013, Mr. Jones informed the Board that Bobby Pearson was now the funeral director in charge.

19. Neither Respondent nor Bobby Pearson provided the Board with notice that Bobby Pearson was the funeral director in charge, prior to the inspection on September 20, 2013.

20. On October 9, 2013, the Board received a signed and notarized letter from Bobby Pearson indicating that she was now serving as Respondent’s funeral director in charge.

21. On October 9, 2013, the Board received a signed and notarized letter from Ashton Jones indicating that Gary Marshall was no longer Respondent’s funeral director in charge.

22. On November 8, 2013, Bobby Pearson gave notice to the Board that she was no longer affiliated with Respondent.

23. Between November 8, 2013, and December 31, 2013, Respondent held an establishment license, but had no funeral director in charge.

24. Respondent held itself out to the public as an operating funeral establishment after its establishment license expired on December 31, 2013.

25. On August 13, 2015, the Board received a call from Jackie Williams inquiring about the status of Respondent’s establishment license.
26. Jackie Williams had received a facsimile from Respondent; this facsimile included a copy of what purported to be Respondent’s establishment license issued by the Board, with an expiration date of December 31, 2015.

27. The Board had not renewed Respondent’s establishment license after December 31, 2013, and the license provided by Respondent to Jackie Williams was a falsification.

28. Respondent submitted the Establishment Application indicating that Gary Marshall would serve as funeral director in charge and containing a signature purporting to be that of Gary Marshall when, in fact, Gary Marshall did not sign the Establishment Application and never served as Respondent’s funeral director in charge, nor was he employed by or otherwise affiliated with Respondent.

29. It was a material mistake of fact for the Board to issue the Establishment License to Respondent, because Respondent had no funeral director in charge and because the Application for Licensure did not contain the true signature of Gary Marshall.

30. Respondent held itself out to the public as an operating funeral establishment at times when it failed to meet the statutory requirements for operation and also at times when it did not hold an establishment license.

31. Respondent’s conduct, as set forth above, constitutes the use of fraud, deception, or misrepresentation in the securing of a license from the Board, within the meaning of §333.330.2(3).

32. Respondent’s conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of the functions or duties of a licensed profession, within the meaning of §333.330.2(5).
33. Respondent’s conduct, as set forth above, constitutes the violation of, or assisting or enabling another to violate, a provision of Chapter 333 or a lawful rule or regulation adopted thereto, within the meaning of §333.330.2(6).

34. Respondent’s conduct, as set forth above, demonstrates that Respondent obtained a license from the Board based upon a material mistake of fact, within the meaning of §333.330.2(12).

35. Respondent’s conduct, as set forth above, constitutes a violation of a professional trust and/or confidence, within the meaning of §333.330.2(14).

36. Given the forgoing, the Board has cause to discipline Respondent’s funeral establishment license pursuant to RSMo. §333.330.2(3), (5), (6), (12), and (14).

WHEREFORE, Petitioner respectfully requests that this Commission conduct a hearing in this matter, and, thereafter, issue its findings of fact and conclusions of law determining that Petitioner may take disciplinary action against Respondent pursuant to RSMo. Chapter 333 and grant such additional relief as is just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Gregory C. Mitchell  #36834
Diana C. Carter  #50527
Jamie J. Cox  #52777
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Phone: (573) 635-7166
Fax: (573) 634-7431
E-mail: Dcarter@BrydonLaw.com
AFFIDAVIT OF PUBLICATION

STATE OF MISSOURI
County of Cole

I, Todd Frantz, being duly sworn according to law, state that I am one of the publishers of the News Tribune, a daily newspaper of general circulation in the County of Cole, State of Missouri, where located; which newspaper has been admitted to the Post Office as periodical class matter in the City of Jefferson, Missouri, the city of publication; which newspaper has been published regularly and consecutively for a period of three years and has a list of bona fide subscribers, voluntarily engaged as such, who have paid or agreed to pay a stated price for a subscription for a definite period of time, and that such newspaper has complied with the provisions of Section 493.050, Revised Statutes of Missouri 2000, and Section 59.310, Revised Statutes of Missouri 2000. The affixed notice appeared in said newspaper on the following issues:

1st Insertion: June 29, 2017
2nd Insertion: July 6, 2017
3rd Insertion: July 13, 2017
4th Insertion: July 20, 2017
5th Insertion:
6th Insertion:
7th Insertion:
8th Insertion:
9th Insertion:
10th Insertion:
11th Insertion:
12th Insertion:
13th Insertion:
14th Insertion:
15th Insertion:
16th Insertion:
17th Insertion:
18th Insertion:

$287.00
Printer's Fee

By: Todd Frantz

Subscribed & sworn to before me this 20th Day of July 2017.

MAYRA LONG
Notary Public - Notary Seal
STATE OF MISSOURI
Boone County
My Commission Expires: January 21, 2021
Commission # 13503731

LEGAL NOTICE to Ashton A. Jones Funeral Directors, Inc. and Ashton A. Jones: You are hereby notified that an action has been commenced against you before the Missouri Administrative Hearing Commission in Jefferson City, Cole County, Missouri, the object and general nature of which is an action to determine what, if any, discipline should be imposed against your professional licenses by Petitioner, Missouri State Board of Embalmers and Funeral Directors.

The name and address of the attorney for Petitioner is: Diana C. Carter; Brydon Swearengen & England P.C.; 312 E. Capitol Avenue; Jefferson City, MO, 65101. Petitioner and Ashton A. Jones Funeral Directors, Inc., Respondent, are the parties to the case.

You are notified that unless you plead or otherwise respond and defend in this contest case a default decision shall be entered against you without further proceedings. You must file an answer or other pleading in response to Petitioner’s Complaint filed with the Administrative Hearing Commission within 45 days of June 29, 2017, the first date of publication, or judgment by default will be entered against you. You are further notified that a hearing is scheduled concerning your licenses on Friday, October 27, 2017 at 9:00 a.m. before the Administrative Hearing Commission, 131 West High Street, 3rd Floor, Jefferson City, Missouri.

N.T. June 29; July 6, 13, 20, 2017
Before the
Administrative Hearing Commission
State of Missouri

BOARD OF EMBALMERS & FUNERAL DIRECTORS
Petitioner,

v.

ASHTON A. JONES FUNERAL DIRECTORS, INC.
Respondent,

No. 16-3282

DEFAULT DECISION

On July 26, 2016, Petitioner filed a properly pled complaint seeking to discipline Respondent. Respondent was served with a copy of the complaint and our notice of complaint/notice of hearing by publication on June 29, 2017.

More than 45 days have elapsed since Respondent was served. Respondent has not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo 2016, we enter a default decision against Respondent establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on October 25, 2017.

[Signature]
AUDREY HANSON MCINTOSH
 Commissioner
Ashton A. Jones Funeral Directors, Inc.
516 E Jackson St
Marshall MO  65340

Dear Mr. Jones:

Enclosed is a copy of the Notice of Disciplinary Hearing relating to Case No. 16-3282. A copy of the Default Decision issued by the Administrative Hearing Commission dated October 25, 2017 is also enclosed.

This hearing is scheduled for Wednesday, March 28, 2018 at 3:30 p.m. at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri  65109.

Please make a note of the date, time and place of this hearing. The board has asked that I express the importance of your attendance at this hearing. It is in your best interest and the board encourages you to attend.

As with all appearances before the board, you may elect to have private legal counsel represent you at your expense. Separate legal entities such as corporations must be represented by legal counsel. The board will be represented by the legal counsel and the hearing will be recorded. Please complete and return the enclosed post card verifying your attendance.

Please confirm your attendance by emailing embalm@or.mo.gov or by calling (573) 751-0813.

If you have any questions, please contact our office at embalm@or.mo.gov or (573) 751-0813.

Sincerely,

[Signature]
Sandy Sebastian
Executive Director

Enclosures

cc:  Diana Carter, Counsel, Brydon, Swarenengen & England, PC
     Thomas Townsend, Legal Counsel, Division of Professional Registration

This letter sent both regular and certified mail.
BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,

Petitioner.

Vs

CASE NO. 16-3282

ASHTON A. JONES FUNERAL DIRECTORS, INC.
516 E Jackson St.
Marshall MO 65340

Respondent.

NOTICE OF DISCIPLINARY HEARING

PLEASE TAKE NOTICE that the Missouri State Board of Embalmers and Funeral Directors is in receipt of the October 30, 2015 decision of the Administrative Hearing Commission, State of Missouri, in the case of State Board of Embalmers And Funeral Directors vs Ashton A. Jones Funeral Directors, Inc., Case Number 16-3282, wherein the Administrative Hearing Commission found that cause to take disciplinary action against your license as held in the Administrative Hearing Commission decision.

Now therefore, the State Board of Embalmers and Funeral Directors shall, pursuant to Section 621.110, RSMo 2009 hold a hearing for the purpose of determining the appropriate disciplinary action. The hearing will be held on Wednesday, March 28, 2018, at 3:30p.m. or as soon thereafter as the matter may be heard. This hearing is scheduled to be held at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri 65109.

Please be advised that your failure to appear at the hearing at the above-noted time and place will result in the hearing being held in your absence.

All parties have the right to be represented by legal counsel and to a full, fair and open hearing as provided for in Chapter 556, RSMo 2009 and 324.042, RSMo 2009.

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: [Signature]
Sandy Sebastian, Executive Director

Dated: January 5, 2018
Before the
Administrative Hearing Commission
State of Missouri

BOARD OF EMBALMERS & FUNERAL DIRECTORS  )
   Petitioner,  )

v.  )

ASHTON A. JONES FUNERAL DIRECTORS, INC.  )
   Respondent,  )

No. 16-3282

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SO ORDERED on October 25, 2017.

[Signature]
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Commissioner
BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,

Petitioner,

Vs

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STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: __________________________
Sandy Sebastian, Executive Director

Dated: January 5, 2018
January 5, 2018

CERTIFIED MAIL 7014 1820 0000 3618 6384

Ashton A. Jones Funeral Directors, Inc.
516 E Jackson St
Marshall MO 65340

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Sincerely,

Sandy Sebastian
Executive Director

Enclosures

cc: Diana Carter, Counsel, Brydon, Swearengen & England, PC
    Thomas Townsend, Legal Counsel, Division of Professional Registration

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STATE BOARD OF EMBALMERS
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STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: [Signature]
Sandy Sebastian, Executive Director

Dated: January 5, 2018
Before the
Administrative Hearing Commission
State of Missouri

BOARD OF EMBALMERS & FUNERAL DIRECTORS

Petitioner,

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More than 45 days have elapsed since Respondent was served. Respondent has not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo 2016, we enter a default decision against Respondent establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

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[Signature]
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Executive Director

Enclosures

cc: Diana Carter, Counsel, Brydon, Swearengen & England, PC
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This letter sent both regular and certified mail.
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STATE OF MISSOURI

STATE BOARD OF EMBALMERS
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Vs

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STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: [Signature]

Sandy Sebastian, Executive Director

Dated: January 5, 2018
LEGAL NOTICE

Ashton A Jones Funeral Directors Inc and Ashton A Jones:

You are hereby notified that an action has been commenced against you before the Missouri State Board of Embalmers and Funeral Directors in Jefferson City, Missouri, the object and general nature of which is an action to determine what, if any, discipline should be imposed against your professional licenses by Petitioner Missouri State Board of Embalmers and Funeral Directors.

The name and address of the attorney for Petitioner Missouri State Board of Embalmers and Funeral Directors is: Diana C. Carter; Brydon Swearengen & England P.C.; 312 E. Capitol Avenue; Jefferson City, MO 65101 for the Missouri State Board of Embalmers and Funeral Directors; P.O. Box 423; Jefferson City, MO 65102. You are further notified that unless you file an answer or other pleading or otherwise appear and defend against the complaint within forty-five (45) days after the first publication, July 15, 2018, a judgment of default will be rendered against you. You are further notified that a hearing is scheduled concerning your professional licenses on September 12, 2018 at 10 a.m. at 3340 American Avenue, Jefferson City, Missouri.

SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND
SONDRA SHIPMAN AND SONDRA SHIPMAN D/B/A SHIPMAN FUNERAL HOME
(Seller, Provider and Funeral Director Licenses)

The State Board of Embalmers and Funeral Directors (the “Board”) and Sondra Shipman and Sondra Shipman d/b/a Shipman Funeral Home (“Licensee”), enter into this “Settlement Agreement Between State Board of Embalmers and Funeral Directors and Sondra Shipman and Sondra Shipman d/b/a Shipman Funeral Home” (the “Settlement Agreement”) to resolve the question of whether there is cause to discipline the seller and provider licenses issued by the Board to Sondra Shipman d/b/a Shipman Funeral Home, and the funeral director license held by Sondra Shipman; and if so, to agree on the appropriate level of discipline to impose on the licenses as a result of this violation.

Pursuant to the terms of Sections 536.060 and 621.045, RSMo¹, the parties hereto waive the right to a hearing before the Administrative Hearing Commission of the State of Missouri and the right to a disciplinary hearing before the Board and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee acknowledges that she understands the various rights and privileges afforded to her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a hearing before the Board at which time she may present evidence in mitigation of discipline;

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.
and the right to potentially recover attorney’s fees incurred in defending this action against her licenses. Being aware of these rights provided to her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to her. Licensee has been advised of her right to consult with her private legal counsel, at her expense, regarding this Settlement Agreement.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee’s licenses are subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621 RSMo.

**Joint Stipulation of Facts and Conclusions of Law**

**Parties and Jurisdiction**

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to Chapter 621, RSMo, and § 333.330, RSMo.

3. Sondra Shipman is an individual who has registered her address with the Board as P.O. Box 155, Bismarck, Missouri 63624.

4. Sondra Shipman holds funeral director license number 004493 that was current and active at all times relevant to this Agreement.
5. Sondra Shipman d/b/a Shipman Funeral Home is a sole proprietorship that has a registered address with the Board of 449 S. Cedar St., P.O. Box 155, Bismarck, Missouri.

6. Sondra Shipman d/b/a Shipman Funeral Home (“Shipman Funeral Home”) holds funeral establishment license number 001913. This license was current and active at all times relevant to this Agreement.

7. Shipman Funeral Home was a fictitious name registered with the Missouri Secretary of State by Sondra Shipman until that registration expired on or about May 29, 2012. Sondra Shipman again registered the fictitious name of Shipman Funeral Home with the Missouri Secretary of State on or about February 1, 2013.

8. Sondra Shipman d/b/a Shipman Funeral Home holds preneed seller license number 20090392C7. This license is current and active and has been so at all times relevant to this Agreement, except for when it was suspended for non-renewal as set forth in this Agreement.

9. Sondra Shipman d/b/a Shipman Funeral Home holds preneed provider license number 2009039206. This license was current and active and has been so at all times relevant to this Agreement, except for when it was lapsed for non-renewal as set forth in this Agreement.

10. As owner and operator of, as well as in her capacity as a funeral director for, Shipman Funeral Home, Sondra Shipman is responsible for ensuring that Shipman Funeral Home is in compliance with the law, including the applicable licensure requirements for preneed suppliers and providers.

11. Derek Shipman serves as Manager in Charge of Shipman Funeral Home’s seller business.
12. The Board conducted a financial examination of Shipman Funeral Home as authorized and mandated by Section 436.470, RSMo.

13. On or about September 9, 2011, the Board made an on-site visit to examine Shipman Funeral Home’s seller’s books and records.

14. On or about September 9, 2011, Derek Shipman signed the Financial Examination Attestation in which he attested that he had “provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller.”

15. Upon completion of the financial examination, the Board’s examiner prepared a Financial Examination Report, which was submitted to the Board by the examiner on or about October 6, 2011 (the “Financial Examination Report”).


17. In the October 27, 2011 letter, the Board noted the deficiencies identified in the Financial Examination Report and requested that Shipman Funeral Home send a written response to the Board within 30 days, including verification that the deficiencies were corrected or a plan to correct the deficiencies.


19. By letter dated December 16, 2011, which was sent via certified mail and by first class mail, the Board notified Shipman Funeral Home that the Board had received no response to the October 27, 2011 letter and requested a response no later than January 15, 2012.
20. The December 16, 2011 letter also notified Shipman Funeral Home that if no response was received, the Board requested Shipman Funeral Home to appear before the Board in person on January 25, 2012 at 1:45 p.m. in Jefferson City, Missouri.

21. Sondra Shipman signed the “green card” confirming receipt of the December 16, 2011 letter sent via certified mail.


26. By letter dated February 16, 2012, First Bank, Bismarck, Missouri, confirmed that all joint accounts funding preneed contracts for Shipman Funeral Home were under joint control of Shipman Funeral Home and the consumer.

27. By letter dated March 8, 2012, the Board again requested that Shipman Funeral Home appear before the Board and requested that Shipman Funeral Home appear on March 21, 2012 at 3:45 p.m. in Jefferson City, Missouri to discuss the Financial Examination Report.

28. The March 21, 2012 meeting was rescheduled by the Board, and Shipman Funeral Home’s appearance was rescheduled to April 25, 2012 at 10:30 a.m.

29. By letter dated April 11, 2012, the Board notified Shipman Funeral Home of the time, date and location of the requested appearance before the Board on April 25, 2012.
30. On or about April 24, 2012 at or about 2:15 p.m., Shipman Funeral Home called the Board office to inform the Board that no one would be available to appear at the board meeting due to receipt of a death call.

31. On or about April 24, 2012, Shipman Funeral Home faxed to the Board a copy of a blank preneed contract and preneed information sheet.

32. On April 25, 2012, no one appeared before the Board on behalf of Shipman Funeral Home.

33. Shipman Funeral Home failed to submit to the Board its completed renewal for its seller license on or before its renewal date of October 31, 2012.

34. Shipman Funeral Home failed to submit to the Board its completed renewal for its provider license on or before its renewal date of October 31, 2012.

35. On or about April 17, 2013, the Board received a seller reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

36. On or about April 17, 2013, the Board received a provider reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

37. On or about April 17, 2013, the Board faxed to Shipman Funeral Home a memo indicating the items the Board needed to complete the seller and provider reinstatements.

38. By letter dated May 7, 2013, the Board notified Shipman Funeral Home that its seller license had been suspended due to failure to file a completed annual renewal due on or before October 31, 2012 and again informed Shipman Funeral Home what additional steps were required for reinstatement.
39. By a second letter dated May 7, 2013, the Board notified Shipman Funeral Home that its provider license had expired on October 31, 2012 and had not been renewed and again informed Shipman Funeral Home what additional steps were required for reinstatement.

40. In the May 7, 2013 letters to Shipman Funeral Home, the Board asked it to report any activities it had performed as either a provider or a seller during the time its licenses were not renewed.

41. Shipman Funeral Home did not respond to the May 7, 2013 letters.

42. By letter dated May 29, 2013, Shipman Funeral Home was asked again to provide the records requested in the May 7, 2013 letters, and the Board requested that Shipman Funeral Home appear before the Board at its June 25, 2013 Board meeting.

43. The reinstatement requests were finalized by Shipman Funeral Home on or about June 17, 2013.

44. The Board reinstated Shipman Funeral Home’s seller license number 2009039207 on or about June 20, 2013.

45. The Board reinstated Shipman Funeral Home’s provider license number 2009039206 on or about June 20, 2013.

46. On June 25, 2013, Derek Shipman and Sondra Shipman appeared before the Board to discuss the lapsed seller and provider licenses. At this meeting, Mr. Shipman and Ms. Shipman discussed with the Board why the licenses had not been renewed timely and gave the Board assurances that future licenses would be renewed timely.

47. On or about October 31, 2013, Shipman Funeral Home signed its seller and provider renewal forms and its seller annual report.
48. On or about November 5, 2013, the Board notified Shipman Funeral Home that if the license renewal has not been processed by October 31, then Shipman Funeral Home could not act as a seller or a provider until the licenses were renewed. This notification was sent by facsimile transmission marked “URGENT!!!”

49. By letters dated November 5, 2013, the Board notified Shipman Funeral Home that its seller and provider licenses could not be renewed because of the noted deficiencies in the renewal information Shipman Funeral Home submitted.

50. By letter dated November 12, 2013, sent both by regular mail and by certified mail, the Board notified Shipman Funeral Home that its seller license had lapsed due to non-renewal and had been suspended, pursuant to Section 436.460.7, RSMo, for failure to file a complete annual report. This letter was received by Shipman Funeral Home on or about November 19, 2013.

51. By letter dated November 12, 2013, sent by both regular mail and by certified mail, the Board notified Shipman Funeral Home that its provider license lapsed due to failure to complete the steps necessary to renew the provider license. Shipman Funeral Home received this letter on or about November 19, 2013.

52. On or about November 22, 2013, the Board mailed Shipman Funeral Home notice of outstanding issues with the renewal forms.

53. On or about November 21, 2013, Shipman Funeral Home responded via facsimile to the Board’s notices and attempts to resolve the outstanding renewal issues.

54. By letter dated December 4, 2013, the Board invited Shipman Funeral Home to appear before it on December 16, 2013 at 3:15 p.m. to discuss the failure of Shipman Funeral
Home to renew its seller license. Shipman Funeral Home received this letter on or about December 10, 2013.

55. By e-mail dated December 12, 2013, Shipman Funeral Home declined the invitation to appear before the Board and offered an explanation of its attempts to timely complete the renewals.

56. By Memorandum dated February 4, 2014, the Board noted the remaining deficiencies that needed to be remedied in order for the seller and provider licenses to be reinstated and also requested copies of each preneed contract that had been sold or serviced since November 1, 2013.

57. Shipman Funeral Home responded with attempts at correcting the deficiencies.

58. By facsimile transmission on or about February 13, 2014, the Board again notified Shipman Funeral Home of the remaining deficiencies in the renewals.

59. On or about February 25, 2014, the Board issued renewals of Shipman Funeral Home’s seller and provider licenses.

60. Shipman Funeral Home held out to the public and operated as both a seller and a provider during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.

**Applicable Legal Authority**

61. Section 333.011, RSMo, states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

   (1) 'Board”, the state board of embalmers and funeral directors created by this chapter;
* * *

(6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

* * *

(11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

62. Section 333.315, RSMo, requires a provider license to fulfill preneed contracts and states, in relevant portion:

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

* * *

3. Each preneed provider shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule, however no renewal fee shall be required for any funeral establishment whose Missouri license is current and active;

(3) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(4) File an annual report with the state board which shall contain:
(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

63. Section 333.320.1, RSMo, requires a license to operate as a seller and that such seller be authorized and registered with the Missouri secretary of state to conduct business in Missouri and states:

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

64. Section 333.330, RSMo, authorizes the Board to impose discipline upon funeral director, and preneed seller and provider licensees and states, in relevant portion:

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

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

   * * *

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

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

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

   * * *

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

   * * *

(14) Violation of any professional trust or confidence;

   * * *

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

65. Section 436.405, RSMo, defines terms used in Chapters 333 and 436 and states, in relevant part:
(5) "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, as provided in this chapter;

66. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

67. Section 436.415.2, RSMo, sets forth seller's duties:

The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is [sic] statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

68. Section 436.455, RSMo, states:

1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate, or in an account titled in the beneficiary's name and payable on the beneficiary's death to the seller. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.
3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within fifteen days after a provider delivers a copy of a certificate of performance to the seller, signed by the provider and the person authorized to make arrangements on behalf of the beneficiary, certifying that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the seller shall take whatever steps are required by the financial institution to secure payment of the funds from the financial institution. The seller shall pay the provider within ten days of receipt of funds.

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

69. Section 436.465, RSMo, requires a seller to maintain adequate books and records and states:

A seller shall maintain:
(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

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

70. Section 436.470, RSMo, authorizes financial examinations and requires the cooperation of the licensee and states, in relevant portion:

   * * *

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.

* * *

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.

* * *

71. The statutes regulating preneed contracts changed, effective August 28, 2009, but due to the savings clause found in Section 436.412, RSMo, portions of the law from the Revised Statutes of Missouri (2000) (the “Old Law”) are relevant to this Agreement. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.
72. Section 436.005, RSMo (2000), set forth definitions for the Old Law and stated, in relevant portion:

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

73. Section 436.007, RSMo (2000), of the Old Law stated, in relevant portion:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

(1) It is in writing;
(2) It is executed by a seller who is in compliance with the provisions of section 436.021;
(3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;
(4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
(5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
(6) It contains the name and address of the seller and the provider[.]

74. Section 436.021.2(1), RSMo (2000) of the Old Law required the seller to maintain records related to preneed contracts and stated, in relevant part:

2. Each seller under one or more preneed contracts shall:

(1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements[.]
Section 436.053.1, RSMo (2000) of the Old Law stated, in relevant part:

Notwithstanding the provisions of sections 436.021 to 436.048, the provider and the purchaser may agree that all funds paid the provider by the purchaser shall be deposited with financial institutions chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. If the purchaser has irrevocably waived and renounced his right to cancel the agreement between the provider and the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that all funds held in the account at the beneficiary’s death shall be applied toward the purchase of funeral or burial services or facilities, or funeral merchandise, selected by the purchaser or the responsible party after the beneficiary’s death[.]

Cause for Discipline

Sondra Shipman’s Funeral Director License

76. Sondra Shipman’s registered fictitious name of “Shipman Funeral Home” expired on or about May 29, 2012.

77. Sondra Shipman registered the fictitious name of “Shipman Funeral Home” again on or about February 1, 2013.

78. Between on or about May 29, 2012 through on or about January 31, 2013, Shipman Funeral Home conducted business in Missouri when it was not authorized and/or registered with the Missouri secretary of state to conduct business in Missouri in violation of Section 333.320.1, RSMo.

79. Sondra Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a funeral establishment and/or seller when it was not eligible to do so.

80. The letter dated February 15, 2012 received from Shipman Funeral Home in response to the Financial Examination Report failed to correct or sufficiently address the following deficiencies:
a. Shipman Funeral Home reported that for consumer B.Y., a life insurance policy existed to cover the amount not paid on the contract, but the financial exam found that Shipman Funeral Home failed to deposit $642.12 into the joint account that it received from the consumer and licensee failed to address the shortage issue in the joint account in their response;

b. For consumer E.W., Shipman Funeral Home reported that E.W. had died and that an insurance policy covered the balance of the policy, but did not address the financial exam finding that E.W. paid $1,607.59 that Shipman Funeral Home did not deposit into the joint account and licensee did not address the shortage of funds in the joint account in their response;

c. For consumer J.N., Shipman Funeral Home responded that the consumer was still making payments, but the financial exam found that the contract had been paid in full and that Shipman Funeral Home failed to deposit $383.83 into the account and licensee failed to address the shortage of funds in the joint account in their response;

d. For consumer L.M., Shipman Funeral Home responded that the balance in the Certificate of Deposit was $1,000, but the financial exam found that the original documents revealed a balance in a Certificate of Deposit of $2,375.82 and that Shipman Funeral Home lacked records showing how much the consumer had paid; and

e. For consumer S.K., Shipman Funeral Home responded that the balance in the Certificate of Deposit is $5,937.44, but the financial exam found that the original
documents showed a Certificate of Deposit of $6,008.11 and that Shipman Funeral Home lacked records showing how much the consumer had paid.

81. The financial examination found the following statutory violations that have not been corrected by Shipman Funeral Home:

a. Violation of Section 436.053, RSMo (2000) (Old Law) and Section 436.453, RSMo, in that the joint accounts hold less than the required amounts for consumers B.Y, E.W., J.N, L.M, and S.K.;

b. Violation of Section 436.021.2(1), RSMo (2000) (Old Law) and Section 436.465, RSMo, in that Shipman Funeral Home failed to maintain adequate records of how much consumers paid on preneed contracts, and the Board’s examiner could not confirm funds were handled properly; and

c. Violation of Section 436.470, RSMo, by not cooperating with the Board in its examination process by failing to appear before the Board when requested to discuss the findings of the financial examination.

82. Sondra Shipman failed to ensure that Shipman Funeral Home maintained records and cooperated fully with the Board in its exercise of its statutory duty to conduct a financial exam of Shipman Funeral Home’s preneed transactions as required by statute.

83. Sondra Shipman violated the above cited provisions of Chapter 436, RSMo.

84. Sondra Shipman assisted and/or enabled Shipman Funeral Home to violate the above cited provisions of Chapter 436, RSMo.

85. Sondra Shipman allowed Shipman Funeral Home to continue to hold out to the public as both a seller and a provider during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.
86. Sondra Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a seller and/or provider when it was not licensed or registered and eligible to do so.

87. Sondra Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.315, RSMo.

88. Sondra Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.320, RSMo.

89. Sondra Shipman’s conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of her functions and duties as a funeral director.

90. Sondra Shipman’s conduct, as set forth above, constitutes a violation of a professional trust and/or confidence.

91. There is cause for discipline against Sondra Shipman’s funeral director license pursuant to Sections 333.330.2 (5), (6), (7), (11), (14), and (19), RSMo.

**Preneed Seller License of Sondra Shipman d/b/a Shipman Funeral Home**

92. The letter dated February 15, 2012 received from Shipman Funeral Home failed to correct or sufficiently address the following deficiencies:

a. Shipman Funeral Home reported that for consumer B.Y., a life insurance policy existed to cover the amount not paid on the contract, but the financial exam found that Shipman Funeral Home failed to deposit $642.12 into the joint account that it received from the consumer and licensee failed to address the shortage issue in the joint account in their response;
b. For consumer E.W., Shipman Funeral Home reported that E.W. had died and that an insurance policy covered the balance of the policy, but did not address the financial exam finding that E.W. paid $1,607.59 that Shipman Funeral Home did not deposit into the joint account and licensee did not address the shortage of funds in the joint account in their response;

c. For consumer J.N., Shipman Funeral Home responded that the consumer was still making payments, but the financial exam found that the contract had been paid in full and that Shipman Funeral Home failed to deposit $383.83 into the account and licensee failed to address the shortage of funds in the joint account in their response;

d. For consumer L.M., Shipman Funeral Home responded that the balance in the Certificate of Deposit was $1,000, but the financial exam found that the original documents revealed a balance in a Certificate of Deposit of $2,375.82 and that Shipman Funeral Home lacked records showing how much the consumer had paid; and

e. For consumer S.K., Shipman Funeral Home responded that the balance in the Certificate of Deposit is $5,937.44, but the financial exam found that the original documents showed a Certificate of Deposit of $6,008.11 and that Shipman Funeral Home lacked records showing how much the consumer had paid.

93. The financial examination found the following statutory violations that have not been corrected by Shipman Funeral Home:
a. Violation of Section 436.053, RSMo (2000) (Old Law) and Section 436.455, RSMo, in that the joint accounts hold less than the required amounts for consumers B.Y., E.W., J.N., L.M., and S.K.;

b. Violation of Section 436.021.2(1), RSMo (2000) (Old Law) and Section 436.465, RSMo, in that Shipman Funeral Home failed to maintain adequate records of how much consumers paid on preneed contracts, and the Board's examiner could not confirm funds were handled properly; and

c. Violation of Section 436.470, RSMo, by not cooperating with the Board in its examination process by failing to appear before the Board when requested to discuss the findings of the financial examination.

94. Sondra Shipman d/b/a Shipman Funeral Home failed to maintain records and cooperate fully with the Board in its exercise of its statutory duty to conduct a financial exam of Shipman Funeral Home's preneed transactions as required by statute.

95. The financial examination found and established that Sondra Shipman d/b/a Shipman Funeral Home violated the above cited provisions of Chapter 436, RSMo.

96. Sondra Shipman d/b/a Shipman Funeral Home continued to hold out to the public as a seller during the time when Shipman Funeral Home's licenses were lapsed and the seller license was suspended.

97. Between on or about May 29, 2012 through on or about January 31, 2013, Shipman Funeral Home conducted business in Missouri when it was not authorized and/or registered with the Missouri secretary of state to conduct business in Missouri in violation of Section 333.320.1, RSMo.
98. Sondra Shipman d/b/a Shipman Funeral Home practiced and/or offered to practice as a seller when it was not licensed or registered and eligible to do so.

99. Sondra Shipman d/b/a Shipman Funeral Home violated Section 333.320, RSMo.

100. Sondra Shipman d/b/a Shipman Funeral Home's conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of its functions and duties as a preneed seller.

101. Sondra Shipman d/b/a Shipman Funeral Home's conduct, as set forth above, constitutes a violation of a professional trust and/or confidence.

102. There is cause for discipline against the preneed seller license of Sondra Shipman d/b/a Shipman Funeral Home pursuant to Sections 333.330.2 (5), (6), (7), (14), and (19), RSMc.

Preneed Provider License of Sondra Shipman d/b/a Shipman Funeral Home

103. Sondra Shipman d/b/a Shipman Funeral Home continued to hold out to the public as a provider during the time when Shipman Funeral Home's licenses were lapsed.

104. Sondra Shipman d/b/a Shipman Funeral Home practiced and/or offered to practice as a provider when it was not licensed or registered and eligible to do so.

105. Sondra Shipman d/b/a Shipman Funeral Home violated Section 333.315, RSMo.

106. Sondra Shipman d/b/a Shipman Funeral Home's conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of its functions and duties as a preneed provider.

107. Sondra Shipman d/b/a Shipman Funeral Home's conduct, as set forth above, constitutes a violation of a professional trust and/or confidence.
108. There is cause for discipline against the preneed provider license of Sondra Shipman d/b/a Shipman Funeral Home pursuant to Sections 333.330.2 (5), (6), (7), and (14), RSMo.

**Jointly Stipulated Disciplinary Order**

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045, RSMo:

1. Licensee's funeral director, preneed seller and preneed provider licenses are hereby placed on **PROBATION** for a period of **FIVE YEARS** (the "Disciplinary Period"), beginning on the effective date of this Settlement Agreement. During the period of probation, Sondra Shipman shall be entitled to act as a funeral director and Sondra Shipman d/b/a Shipman Funeral Home shall be entitled to operate as a preneed seller and as a preneed provider, as defined in Chapters 333 and 436, RSMo, subject to the following terms and conditions:

   **Terms and Conditions of the Disciplinary Period**

2. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

   a. Licensee shall submit written compliance reports to the Board no later than January 1, April 1, July 1, and October 1 of each year of the Disciplinary Period, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Settlement Agreement since the previous report was filed and shall fully explain any non-compliance. In addition, each compliance report shall provide a report of the preneed activity for the previous period including a listing of each new preneed contract sold (show
contract number, date sold, face value, payments received, and verification of deposit of those payments per the contract), any payments received on preneed contracts (show amount received, contract number and verification of deposit of funds per the contract), and copies of the at need contracts for all preneed contracts fulfilled since the previous report. These compliance reports shall contain all other information required by this Settlement Agreement. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

b. Within the first six months of the Disciplinary Period, Licensee shall have resolved with the Board all exceptions noted in the Financial Examination Reports;

c. Licensee shall keep the Board informed of Licensee’s current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with her current and active e-mail as well as the current and active e-mail address of Shipman Funeral Home’s funeral director in charge, if applicable, and its manager in charge;

d. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

26
e. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;

f. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board’s discretion;

g. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

h. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with the revenue laws of the state; and

i. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period.

3. Operation as a preneed seller includes selling, performing, or agreeing to perform any function of a seller that includes entering into any new preneed contracts with consumers, receiving funds to pay for any preneed contract, holding funds paid by consumers for preneed contracts whether in joint account or in trust, and disbursal of any funds to any provider in fulfillment of any preneed contract.

4. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement
Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

5. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee’s licenses shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee’s licenses.

6. The Board shall enter no order imposing further discipline on Licensee’s licenses without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

7. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning such violation(s).

8. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the licenses of Licensee. The Board has continuing jurisdiction
to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

9. Licensee, together with her heirs and assigns and her attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

10. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

11. Licensee understands that she may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit her request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

12. If Licensee requests review, this Settlement Agreement shall become effective on
the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's licenses. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

13. This Settlement Agreement constitutes discipline against Licensee's licenses.

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

Licensee

[Signature]

Sandra Shipman

d/b/a Shipman Funeral Home

[Signature]

Sandra Shipman

Dated: 8/18/15

Approved:

BANDRE HUNT SNIDER, LLC

By: [Signature]

David G. Bandre #44812

227 Madison Street:

Jefferson City, MO 65101

Telephone: (573) 635-2424

Facsimile: (573) 635-2010

E-mail: dave@bhslawmo.com

ATTORNEY FOR LICENSEE

Board

[Signature]

Sandy Sebastian

Executive Director

State Board of Embalmers and Funeral Directors

Dated: 9/10/15

EFFECTIVE DATE

9/25/15

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

BRYDON, SWEARENGEN & ENGLAND P.C.

By: [Signature]

Gregory C. Mitchell #36634

Jamie J. Cox #52777

30
Sondra Shipman  
PO Box 155  
Bismarck MO 63624

Dear Ms. Shipman:

Enclosed is a copy of the Notice of Probation Violation Hearing and Probation Violation Complaint relating to Case No. EMB 16-002-PV as issued by the State Board of Embalmers and Funeral Directors. This hearing is scheduled for Wednesday, September 12, 2018 at 2:00p.m. at the Missouri Dental Association, 3340 American Ave., Jefferson City, Missouri 65109.

Please make a note of the date, time and place of this hearing. The board has asked that I express the importance of your attendance at this hearing. It is in your best interest and the board encourages you to attend.

As with all appearances before the board, you may elect to have private legal counsel represent you at your expense. The board will be represented by the legal counsel and the hearing will be recorded.

Please email lori.hayes@pr.mo.gov or embalm@pr.mo.gov or call (573) 751-0813 to confirm your attendance.

If you have any questions, please contact our office at embalm@pr.mo.gov or (573)751-0813.

Sincerely,

Lori Hayes  
Interim Executive Director

Enclosures

cc: Greg Mitchell,Counsel Brydon Swearengen & England board PC

This letter has been sent both certified and regular mail
BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,
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)
)

Petitioner,
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)
)

VS
)
)
)
CASE NO. EMB 17-002-PV
)
)
)

SONDRA SHIPMAN
)
)
)

Respondent.
)
)
)

NOTICE OF PROBATION VIOLATION HEARING

PLEASE TAKE NOTICE that the State Board of Embalmers and Funeral Directors shall hold
a hearing for the purpose of determining the truth of the allegations set forth in the attached
Probation Violation Complaint and, if the allegations are true, whether or not disciplinary action
should be taken. The hearing will be held on Wednesday, September 12, 2018 at 2:00 p.m., or as
soon thereafter as the matter may be heard, at the Missouri Dental Association 3340 American Ave,
Jefferson City MO 65109. Please be advised that your failure to appear at the hearing at the above-
noted time and place will result in the hearing being held in your absence.

All parties have the right to be represented by legal counsel and to a full, fair and open
hearing as provided for in Chapter 536, RSMo 2009 and 324.042, RSMo 2009.

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: _________________________________

Lori Hayes, Interim Executive Director

Dated: August 10, 2018
SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND DEREK SHIPMAN
(Funeral Director)

The State Board of Embalmers and Funeral Directors (the “Board”) and Derek Shipman
(“Licensee” or “Derek Shipman”), enter into this “Settlement Agreement Between State Board
of Embalmers and Funeral Directors and Derek Shipman” (the “Settlement Agreement”) to
resolve the question of whether there is cause to discipline the funeral director license issued to
him by the Board and, if so, to agree on the appropriate level of discipline to impose on the
license as a result of this violation.

Pursuant to the terms of Sections 536.060 and 621.045, RSMo\(^1\), the parties hereto waive
the right to a hearing before the Administrative Hearing Commission of the State of Missouri
and the right to a disciplinary hearing before the Board and stipulate and agree to final
disposition of this matter by this Settlement Agreement.

Licensee acknowledges that he understands the various rights and privileges afforded to
him by law, including the right to a hearing of the charges against him; the right to appear and be
represented by legal counsel; the right to have all charges against him proven upon the record by
competent and substantial evidence; the right to cross-examine any witnesses appearing at the
hearing against him; the right to a decision upon the record by a fair and impartial administrative
hearing commissioner concerning the charges pending against him and, subsequently, the right to
a hearing before the Board at which time he may present evidence in mitigation of discipline;
and the right to potentially recover attorney’s fees incurred in defending this action against his
license. Being aware of these rights provided to him by operation of law, Licensee knowingly
and voluntarily waives each and every one of these rights and freely enters into this Settlement

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\(^1\) All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.
Agreement and agrees to abide by the terms of this document, as they pertain to him. Licensee has been advised of his right to consult with his private legal counsel, at his expense, regarding this Settlement Agreement.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621 RSMo.

**Joint Stipulation of Facts and Conclusions of Law**

**Parties and Jurisdiction**

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to Chapter 621, RSMo, and § 333.330, RSMo.

3. Derek Shipman is an individual who has registered his address with the Board at P.O. Box 117, Bismarck, Missouri 63624.

4. Derek Shipman holds funeral director license number 006414 that was current and active at all times relevant to this Agreement, except when it expired between on or about June 1, 2014 and on or about July 11, 2014.

5. Sondra Shipman d/b/a Shipman Funeral Home is a sole proprietorship that has a registered address with the Board of 449 S. Cedar St., P.O. Box 155, Bismarck, Missouri.
6. Sondra Shipman d/b/a Shipman Funeral Home ("Shipman Funeral Home") holds funeral establishment license number 001913. This license was current and active at all times relevant to this Agreement.

7. Shipman Funeral Home was a fictitious name registered with the Missouri Secretary of State by Sondra Shipman until that registration expired on or about May 29, 2012. Sondra Shipman again registered the fictitious name of Shipman Funeral Home with the Missouri Secretary of State on or about February 1, 2013.

8. Sondra Shipman d/b/a Shipman Funeral Home holds preneed seller license number 2009039207. This license is current and active and has been so at all times relevant to this Agreement, except for when it was suspended for non-renewal as set forth in this Agreement.

9. Sondra Shipman d/b/a Shipman Funeral Home holds preneed provider license number 2009039206. This license was current and active and has been so at all times relevant to this Agreement, except for when it was lapsed for non-renewal as set forth in this Agreement.

10. Derek Shipman serves as Manager in Charge of Shipman Funeral Home’s seller business and as Funeral Director in Charge of Shipman Funeral Home’s funeral establishment.

11. As Funeral Director in Charge and Manager in Charge of Shipman Funeral Home, Derek Shipman is responsible for all acts of Shipman Funeral Home related to its establishment and seller activities.

12. Derek Shipman acts on behalf of Shipman Funeral Home.

13. The Board conducted a financial examination of Shipman Funeral Home as authorized and mandated by Section 436.470, RSMo.
14. On or about September 9, 2011, the Board made an on-site visit to examine Shipman Funeral Home’s seller’s books and records.

15. On or about September 9, 2011, Derek Shipman signed the Financial Examination Attestation in which he attested that he had “provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller.”

16. Upon completion of the financial examination, the Board’s examiner prepared a Financial Examination Report, which was submitted to the Board by the examiner on or about October 6, 2011 (the “Financial Examination Report”).

17. By letter dated October 27, 2011, the Board provided a copy of the Financial Examination Report to Shipman Funeral Home.

18. In the October 27, 2011 letter, the Board noted the deficiencies identified in the Financial Examination Report and requested that Shipman Funeral Home send a written response to the Board within 30 days, including verification that the deficiencies were corrected or a plan to correct the deficiencies.


20. By letter dated December 16, 2011, which was sent via certified mail and by first class mail, the Board notified Shipman Funeral Home that the Board had received no response to the October 27, 2011 letter and requested a response no later than January 15, 2012.

21. The December 16, 2011 letter also notified Shipman Funeral Home that if no response was received, the Board requested Shipman Funeral Home to appear before the Board in person on January 25, 2012 at 1:45 p.m. in Jefferson City, Missouri.
22. Sondra Shipman signed the "green card" confirming receipt of the December 16, 2011 letter sent via certified mail.


27. By letter dated February 16, 2012, First Bank, Bismarck, Missouri, confirmed that all joint accounts funding preneed contracts for Shipman Funeral Home were under joint control of Shipman Funeral Home and the consumer.


29. The March 21, 2012 meeting was rescheduled by the Board, and Shipman Funeral Home’s appearance was rescheduled to April 25, 2012 at 10:30 a.m.

30. By letter dated April 11, 2012, the Board notified Shipman Funeral Home of the time, date and location of the requested appearance before the Board on April 25, 2012.

31. On or about April 24, 2012 at or about 2:15 p.m., Shipman Funeral Home called the Board office to inform the Board that no one would be available to appear at the board meeting due to receipt of a death call.
32. On or about April 24, 2012, Shipman Funeral Home faxed to the Board a copy of a blank preneed contract and preneed information sheet.

33. On April 25, 2012, no one appeared before the Board on behalf of Shipman Funeral Home.

34. Shipman Funeral Home failed to submit to the Board its completed renewal for its seller license on or before its renewal date of October 31, 2012.

35. Shipman Funeral Home failed to submit to the Board its completed renewal for its provider license on or before its renewal date of October 31, 2012.

36. On or about April 17, 2013, the Board received a seller reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

37. On or about April 17, 2013, the Board received a provider reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

38. On or about April 17, 2013, the Board faxed to Shipman Funeral Home a memo indicating the items the Board needed to complete the seller and provider reinstatements.

39. By letter dated May 7, 2013, the Board notified Shipman Funeral Home that its seller license had been suspended due to failure to file a completed annual renewal due on or before October 31, 2012 and again informed Shipman Funeral Home what additional steps were required for reinstatement.

40. By a second letter dated May 7, 2013, the Board notified Shipman Funeral Home that its provider license had expired on October 31, 2012 and had not been renewed and again informed Shipman Funeral Home what additional steps were required for reinstatement.
41. In the May 7, 2013 letters to Shipman Funeral Home, the Board asked it to report any activities it had performed as either a provider or a seller during the time its licenses were not renewed.

42. Shipman Funeral Home did not respond to the May 7, 2013 letters.

43. By letter dated May 29, 2013, Shipman Funeral Home was asked again to provide the records requested in the May 7, 2013 letters, and the Board requested that Shipman Funeral Home appear before the Board at its June 25, 2013 Board meeting.

44. The reinstatement requests were finalized by Shipman Funeral Home on or about June 17, 2013.

45. The Board reinstated Shipman Funeral Home’s seller license number 2009039207 on or about June 20, 2013.

46. The Board reinstated Shipman Funeral Home’s provider license number 2009039206 on or about June 20, 2013.

47. On June 25, 2013, Derek Shipman and Sondra Shipman appeared before the Board to discuss the lapsed seller and provider licenses. At this meeting, Mr. Shipman and Ms. Shipman discussed with the Board why the licenses had not been renewed timely and gave the Board assurances that future licenses would be renewed timely.

48. On or about October 31, 2013, Shipman Funeral Home signed its seller and provider renewal forms and its seller annual report.

49. On or about November 5, 2013, the Board notified Shipman Funeral Home that if the license renewal has not been processed by October 31, then Shipman Funeral Home could not act as a seller or a provider until the licenses were renewed. This notification was sent by facsimile transmission marked “URGENT!!!”
50. By letters dated November 5, 2013, the Board notified Shipman Funeral Home that its seller and provider licenses could not be renewed because of the noted deficiencies in the renewal information Shipman Funeral Home submitted.

51. By letter dated November 12, 2013, sent both by regular mail and by certified mail, the Board notified Shipman Funeral Home that its seller license had lapsed due to non-renewal and had been suspended, pursuant to Section 436.460.7, RSMo, for failure to file a complete annual report. This letter was received by Shipman Funeral Home on or about November 19, 2013.

52. By letter dated November 12, 2013, sent by both regular mail and by certified mail, the Board notified Shipman Funeral Home that its provider license lapsed due to failure to complete the steps necessary to renew the provider license. Shipman Funeral Home received this letter on or about November 19, 2013.

53. On or about November 22, 2013, the Board mailed Shipman Funeral Home notice of outstanding issues with the renewal forms.

54. On or about November 21, 2013, Shipman Funeral Home responded via facsimile to the Board’s notices and attempts to resolve the outstanding renewal issues.

55. By letter dated December 4, 2013, the Board invited Shipman Funeral Home to appear before it on December 16, 2013 at 3:15 p.m. to discuss the failure of Shipman Funeral Home to renew its seller license. Shipman Funeral Home received this letter on or about December 10, 2013.

56. By e-mail dated December 12, 2013, Shipman Funeral Home declined the invitation to appear before the Board and offered an explanation of its attempts to timely complete the renewals.
57. By Memorandum dated February 4, 2014, the Board noted the remaining deficiencies that needed to be remedied in order for the seller and provider licenses to be reinstated and also requested copies of each preneed contract that had been sold or serviced since November 1, 2013.

58. Shipman Funeral Home responded with attempts at correcting the deficiencies.

59. By facsimile transmission on or about February 13, 2014, the Board again notified Shipman Funeral Home of the remaining deficiencies in the renewals.

60. On or about February 25, 2014, the Board issued renewals of Shipman Funeral Home’s seller and provider licenses.

61. Shipman Funeral Home held out to the public and operated as both a seller and a provider during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.

**Applicable Legal Authority**

62. Section 333.011, RSMo, states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

(1) "Board", the state board of embalmers and funeral directors created by this chapter;

* * *

(6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

* * *

(11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.
63. Section 333.061, RSMo, requires a license to operate as a funeral establishment in Missouri and states, in relevant part:

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

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

   (1) That the establishment is under the general management and the supervision of a duly licensed funeral director.[,]

64. Each licensed seller is to designate a manager in charge pursuant to 20 CSR 2120-3.200 that states, in relevant part:

   (1) Except as otherwise provided in sections 436.400 to 436.520, RSMo, and any rules validly promulgated pursuant to those sections—

   *   *   *

   (C) All sellers shall designate an individual to serve as manager in charge of the seller’s business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the board within thirty (30) days of the change.

65. Regulation 20 CSR 2120-1.040(14) defines funeral director—in-charge as follows:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

66. Regulation 20 CSR 2120-2.070(7) clarifies the requirement for each funeral establishment to register its funeral director-in-charge with the Board and states:
(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed 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 Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

67. Section 333.315, RSMo, requires a provider license to fulfill preneed contracts and states, in relevant portion:

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

   *   *   *

3. Each preneed provider shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule, however no renewal fee shall be required for any funeral establishment whose Missouri license is current and active;

(3) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(4) File an annual report with the state board which shall contain:
(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

68. Section 333.320.1, RSMo, requires a license to operate as a seller and that such seller be authorized and registered with the Missouri secretary of state to conduct business in Missouri and states:

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

69. Section 333.330, RSMo, authorizes the Board to impose discipline upon funeral director licensees and states, in relevant portion:

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

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

* * *

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

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

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

* * *

(14) Violation of any professional trust or confidence;

* * *

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

70. Section 436.405, RSMo, defines terms used in Chapters 333 and 436 and states, in relevant part:
(5) "Joint account-funded preneed contract", a preneed contract which
designates that payments for the preneed contract made by or on behalf of
the purchaser will be deposited and maintained in a joint account in the
names of the purchaser and seller, as provided in this chapter;

71. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and
disbursements under such contract shall continue to be governed by this
chapter as the chapter existed at the time the contract was made. Any
licensee or registrant of the board may be disciplined for violation of any
provision of sections 436.005 to 436.071* within the applicable statute of
limitations. Joint accounts in existence as of August 27, 2009, shall
continue to be governed by the provisions of section 436.053, as that
section existed on August 27, 2009.

72. Section 436.415.2, RSMo, sets forth seller's duties:

The seller designated in a preneed contract shall be obligated to collect
and properly deposit and disburse all payments made by, or on behalf of, a
purchaser of a preneed contract and ensure that is [sic] statutorily and
contractual duties are met, in compliance with sections 436.400 to
436.520.

73. Section 436.455, RSMo, states:

1. A joint account-funded preneed contract shall comply with
sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract,
the seller and the purchaser may agree in writing that all funds paid by the
purchaser or beneficiary for the preneed contract shall be deposited with a
financial institution chartered and regulated by the federal or state
government authorized to do business in Missouri in an account in the
joint names and under the joint control of the seller and purchaser,
beneficiary or party holding power of attorney over the beneficiary's
estate, or in an account titled in the beneficiary's name and payable on the
beneficiary's death to the seller. There shall be a separate joint account
established for each preneed contract sold or arranged under this section.
Funds shall only be withdrawn or paid from the account upon the
signatures of both the seller and the purchaser or under a pay-on-death
designation or as required to pay reasonable expenses of administering the
account.
3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within fifteen days after a provider delivers a copy of a certificate of performance to the seller, signed by the provider and the person authorized to make arrangements on behalf of the beneficiary, certifying that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the seller shall take whatever steps are required by the financial institution to secure payment of the funds from the financial institution. The seller shall pay the provider within ten days of receipt of funds.

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

74. Section 436.465, RSMo, requires a seller to maintain adequate books and records and states:

A seller shall maintain:
(1) Adequate records of all prereed contracts and related agreements with providers, trustees of a prereed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

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

Section 436.470, RSMo, authorizes financial examinations and requires the cooperation of the licensee and states, in relevant portion:

* * *

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and prereed agents and conduct financial examinations of the books and records of providers, sellers, and prereed 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.

* * *

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.

* * *

76. The statutes regulating preneed contracts changed, effective August 28, 2009, but due to the savings clause found in Section 436.412, RSMo, portions of the law from the Revised Statutes of Missouri (2000) (the "Old Law") are relevant to this Agreement. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.
77. Section 436.005, RSMo (2000), set forth definitions for the Old Law and stated, in relevant portion:

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

78. Section 436.007, RSMo (2000), of the Old Law stated, in relevant portion:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

(1) It is in writing;
(2) It is executed by a seller who is in compliance with the provisions of section 436.021;
(3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;
(4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
(5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
(6) It contains the name and address of the seller and the provider[.]

79. Section 436.021.2(1), RSMo (2000) of the Old Law required the seller to maintain records related to preneed contracts and stated, in relevant part:

2. Each seller under one or more preneed contracts shall:

(1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements[.]
80. Section 436.053.1, RSMo (2000) of the Old Law stated, in relevant part:

Notwithstanding the provisions of sections 436.021 to 436.048, the provider and the purchaser may agree that all funds paid the provider by the purchaser shall be deposited with financial institutions chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. If the purchaser has irrevocably waived and renounced his right to cancel the agreement between the provider and the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that all funds held in the account at the beneficiary’s death shall be applied toward the purchase of funeral or burial services or facilities, or funeral merchandise, selected by the purchaser or the responsible party after the beneficiary’s death[.]

**Cause for Discipline**

81. Sondra Shipman’s registered fictitious name of “Shipman Funeral Home” expired on or about May 29, 2012.

82. Sondra Shipman registered the fictitious name of “Shipman Funeral Home” again on or about February 1, 2013.

83. Between on or about May 29, 2012 through on or about January 31, 2013, Shipman Funeral Home conducted business in Missouri when it was not authorized and/or registered with the Missouri secretary of state to conduct business in Missouri in violation of Section 333.320.1, RSMo.

84. As funeral director in charge of the funeral establishment and as manager in charge of the seller, Derek Shipman was responsible to ensure that Shipman Funeral Home operated in compliance with the law.

85. Derek Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a funeral establishment and/or seller when it was not eligible to do so.
86. The letter dated February 15, 2012 received from Shipman Funeral Home in response to the Financial Examination Report failed to correct or sufficiently address the following deficiencies:

a. Shipman Funeral Home reported that for consumer B.Y., a life insurance policy existed to cover the amount not paid on the contract, but the financial exam found that Shipman Funeral Home failed to deposit $642.12 into the joint account that it received from the consumer and licensee failed to address the shortage issue in the joint account in their response;

b. For consumer E.W., Shipman Funeral Home reported that E.W. had died and that an insurance policy covered the balance of the policy, but did not address the financial exam finding that E.W. paid $1,607.59 that Shipman Funeral Home did not deposit into the joint account and licensee did not address the shortage of funds in the joint account in their response;

c. For consumer J.N., Shipman Funeral Home responded that the consumer was still making payments, but the financial exam found that the contract had been paid in full and that Shipman Funeral Home failed to deposit $383.83 into the account and licensee failed to address the shortage of funds in the joint account in their response;

d. For consumer L.M., Shipman Funeral Home responded that the balance in the Certificate of Deposit was $1,000, but the financial exam found that the original documents revealed a balance in a Certificate of Deposit of $2,375.82 and that Shipman Funeral Home lacked records showing how much the consumer had paid; and
e. For consumer S.K., Shipman Funeral Home responded that the balance in the Certificate of Deposit is $5,937.44, but the financial exam found that the original documents showed a Certificate of Deposit of $6,008.11 and that Shipman Funeral Home lacked records showing how much the consumer had paid.

87. The financial examination found the following statutory violations that have not been corrected by Shipman Funeral Home:

a. Violation of Section 436.053, RSMo (2000) (Old Law) and Section 436.455, RSMo, in that the joint accounts hold less than the required amounts for consumers B.Y., E.W., J.N., L.M., and S.K.;

b. Violation of Section 436.021.2(1), RSMo (2000) (Old Law) and Section 436.465, RSMo, in that Shipman Funeral Home failed to maintain adequate records of how much consumers paid on preneed contracts, and the Board’s examiner could not confirm funds were handled properly; and

c. Violation of Section 436.470, RSMo, by not cooperating with the Board in its examination process by failing to appear before the Board when requested to discuss the findings of the financial examination.

88. Derek Shipman failed to ensure that Shipman Funeral Home maintained records and cooperated fully with the Board in its exercise of its statutory duty to conduct a financial exam of Shipman Funeral Home’s preneed transactions as required by statute.

89. Derek Shipman violated the above cited provisions of Chapter 436, RSMo.

90. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate the above cited provisions of Chapter 436, RSMo.
91. Derek Shipman allowed Shipman Funeral Home to continue to hold out to the public as both a seller and a provider during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.

92. Derek Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a seller and/or provider when it was not licensed or registered and eligible to do so.

93. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.315, RSMo.

94. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.320, RSMo.

95. Derek Shipman’s conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of his functions and duties as a funeral director.

96. Derek Shipman’s conduct, as set forth above, constitutes a violation of a professional trust and/or confidence.

97. There is cause for discipline against Derek Shipman’s funeral director license pursuant to Sections 333.330.2 (5), (6), (7), (11), (14), and (19), RSMo.

**Jointly Stipulated Disciplinary Order**

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045, RSMo

1. Licensee’s license to practice as a funeral director is hereby placed on PROBATION for a period of FIVE YEARS (the “Disciplinary Period”), beginning on the
effective date of this Settlement Agreement. During the period of probation, Derek Shipman shall be entitled to act as a funeral director, subject to the following terms and conditions:

Terms and Conditions of the Disciplinary Period

2. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

   a. Licensee shall submit written compliance reports to the Board no later than January 1, April 1, July 1, and October 1 of each year of the Disciplinary Period, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Settlement Agreement since the previous report was filed and shall fully explain any non-compliance. In addition, Derek Shipman shall ensure that any written reports of compliance for Shipman Funeral Home are timely and accurately filed. These compliance reports shall contain all other information required by this Settlement Agreement. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

   b. Within the first six months of the Disciplinary Period, Derek Shipman shall have resolved with the Board all exceptions noted in the Financial Examination Reports of Shipman Funeral Home;

   c. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee
utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;

d. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;

f. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board’s discretion;

g. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

h. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with the revenue laws of the state;

i. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period; and
j. Licensee shall not serve as funeral director in charge or as manager in charge at any facility other than Shipman Funeral Home during the Disciplinary Period without the written consent of the Board.

3. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

4. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee’s license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee’s license.

5. The Board shall enter no order imposing further discipline on Licensee’s license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

6. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation(s).
7. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

8. Licensee, together with his heirs and assigns and his attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

9. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

10. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties
constitute grounds for disciplining Licensee’s license. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

11. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee’s license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

12. This Settlement Agreement constitutes discipline against Licensee’s license.

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

Licensee
Derek Shipman

Board
Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors
Dated: 9.10.15

Dated: 8.13.15

Approved:

BANDRE HUNT SNIDER, LLC
By: David G. Bandre #44812
227 Madison Street:
Jefferson City, MO 65101
Telephone: (573) 635-2424
Facsimile: (573) 635-2010

EFFECTIVE DATE
9.26.15
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
E-mail: dave@bhslawmo.com
ATTORNEY FOR LICENSEE

BRYDON, SWEARENGEN & ENGLAND P.C.

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    Jamie J. Cox #52777
312 East Capitol Avenue
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ATTORNEY FOR BOARD
BEFORE THE STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

State Board of Embalmers
and Funeral Directors,

Petitioner,

v.

Derek S. Shipman,

Respondent.

Case No. EMB-17-003-PV

PROBATION VIOLATION COMPLAINT

The Missouri State Board of Embalmers and Funeral Directors (the “Board”) for its
Probation Violation Complaint against Respondent Derek S. Shipman (“Shipman” or
“Licensee”) states:

The Parties and Licenses

1. The Board is an agency of the state of Missouri created and established by Section
333.151, RSMo\(^1\), for the purposes of executing and enforcing the provisions of Chapter 333,
RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Derek S. Shipman is an individual who has registered his address with the Board
as P.O. Box 117, Bismarck, Missouri 63624.

3. Derek S. Shipman holds Missouri funeral director license number 00614 that is
and was current and active at all time relevant to this Complaint, but subject to Probation per the
“Settlement Agreement Between State Board of Embalmers and Funeral Directors and Derek

\(^1\) All statutory references are to the Revised Statutes of Missouri (2000), as amended, unless otherwise indicated.
Shipman" (the “Settlement Agreement”) which placed Shipman’s funeral director license on probation for five years beginning on September 25, 2015. A true and accurate copy of the Settlement Agreement is attached as Exhibit A and is incorporated by reference as if fully set forth in this Complaint.

4. Shipman serves as funeral director in charge for licensee Sondra Shipman d/b/a Shipman Funeral Home (“Shipman Funeral Home”) that holds establishment license 0019:3 which is and was current and active at all times relevant to this Complaint, but subject to probation.

5. Shipman serves as manager in charge for Shipman Funeral Home that holds seller license number 2009039207, which was and is current and active at all times relevant to this Complaint, but subject to probation.

6. Per a “Settlement Agreement Between State Board of Embalmers and Funeral Directors And Sondra Shipman and Sondra Shipman d/b/a Shipman Funeral Home” (the “Shipman Funeral Home Settlement Agreement”, Shipman Funeral Home’s establishment, provider, and seller licenses are on probation for five years beginning on September 25, 2015.

**Jurisdiction and Venue**

7. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to paragraphs 5, 6 and 7 on pages 25 and 26 of the Settlement Agreement.

8. Venue is proper.

**Relevant Statutes**

9. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board,
commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

Relevant Terms and Conditions of the Disciplinary Period

10. The Settlement Agreement placed Shipman’s funeral director license on probation for a period of 5 years (the “Disciplinary Period”), all subject to compliance with the terms of the Disciplinary Period. Settlement Agreement, page 22, paragraph 1.

11. The terms and conditions of the Disciplinary Period are set forth on page 23 of the Settlement Agreement and include:

   a. Licensee shall submit written compliance reports to the Board no later than January 1, April 1, July 1, and October 1 of each year, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of the Settlement Agreement since the previous report was filed and shall fully explain any non-compliance. In addition, Derek Shipman shall ensure that any written reports of compliance for Shipman Funeral Home are timely and accurately filed. These compliance reports shall contain all other information required by this Settlement Agreement. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

   * * *
b. Within the first six months of the Disciplinary Period, Derek Shipman shall have resolved with the Board all exceptions noted in the Financial Examination Reports of Shipman Funeral Home;

**Disciplinary Period Violations**

12. Licensee submitted a compliance report for January, 2016 and submitted a compliance report dated October 4, 2016. Shipman failed to submit his written reports of compliance due on April 1, 2016, and July 1, 2016 as required by paragraph 2.a. on page 23 of the Settlement Agreement.

13. Paragraph 2.a. on page 23 of the Settlement Agreement also required that Shipman ensure timely filing of any compliance reports of Shipman Funeral Home per the Shipman Funeral Home Settlement Agreement. Shipman Funeral Home filed its compliance report for January, 2016 and for October, 2016, but they failed to contain the required information. Shipman Funeral Home failed to file its compliance reports that were due on April 1, 2016 and July 1, 2016. Shipman failed to comply with the condition of his probation that he ensure that Shipman Funeral Home timely filed its compliance reports.

14. As of the date of this filing, Shipman has failed to provide the information to the Board necessary to resolve the exceptions noted on the financial examination of Shipman Funeral Home. Paragraph 2.b. on page 23 of the Settlement Agreement required that Shipman resolve the exceptions in the Shipman Funeral financial examination report no later than March 25, 2016.

15. Cause exists to impose additional discipline on the funeral director license held by Shipman.
WHEREFORE, Petitioner asks that the Board provide notice and opportunity to be heard to Licensee pursuant to the provisions of Chapters 333 and 536, RSMo, and thereafter issue its findings of fact, conclusions of law and order imposing further discipline on the license of Licensee and for such other relief as the Board deems just and proper.

Respectfully submitted,

[Signature]

Sharon K. Euler
Missouri Bar No. 42950

Legal Counsel
Division of Professional Registration
Fletcher Daniels State Office Building
615 East 13th Street, Suite 510
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ATTORNEY FOR THE BOARD
SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND DEREK SHIPMAN
(Funeral Director)

The State Board of Embalmers and Funeral Directors (the “Board”) and Derek Shipman
(“Licensee” or “Derek Shipman”), enter into this “Settlement Agreement Between State Board
of Embalmers and Funeral Directors and Derek Shipman” (the “Settlement Agreement”) to
resolve the question of whether there is cause to discipline the funeral director license issued to
him by the Board and, if so, to agree on the appropriate level of discipline to impose on the
license as a result of this violation.

Pursuant to the terms of Sections 536.060 and 621.045, RSMo¹, the parties hereto waive the
right to a hearing before the Administrative Hearing Commission of the State of Missouri and the right to a disciplinary hearing before the Board and stipulate and agree to final
disposition of this matter by this Settlement Agreement.

Licensee acknowledges that he understands the various rights and privileges afforded to
him by law, including the right to a hearing of the charges against him; the right to appear and be
represented by legal counsel; the right to have all charges against him proven upon the record by
competent and substantial evidence; the right to cross-examine any witnesses appearing at the
hearing against him; the right to a decision upon the record by a fair and impartial administrative
hearing commissioner concerning the charges pending against him and, subsequently, the right to
a hearing before the Board at which time he may present evidence in mitigation of discipline;
and the right to potentially recover attorney's fees incurred in defending this action against his
license. Being aware of these rights provided to him by operation of law, Licensee knowingly
and voluntarily waives each and every one of these rights and freely enters into this Settlement

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.
Agreement and agrees to abide by the terms of this document, as they pertain to him. Licensee has been advised of his right to consult with his private legal counsel, at his expense, regarding this Settlement Agreement.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621 RSMo.

**Joint Stipulation of Facts and Conclusions of Law**

**Parties and Jurisdiction**

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to Chapter 621, RSMo, and § 333.330, RSMo.

3. Derek Shipman is an individual who has registered his address with the Board as P.O. Box 117, Bismarck, Missouri 63624.

4. Derek Shipman holds funeral director license number 006414 that was current and active at all times relevant to this Agreement, except when it expired between on or about June 1, 2014 and on or about July 11, 2014.

5. Sondra Shipman d/b/a Shipman Funeral Home is a sole proprietorship that has a registered address with the Board of 449 S. Cedar St., P.O. Box 155, Bismarck, Missouri.
6. Sondra Shipman d/b/a Shipman Funeral Home ("Shipman Funeral Home") holds funeral establishment license number 001913. This license was current and active at all times relevant to this Agreement.

7. Shipman Funeral Home was a fictitious name registered with the Missouri Secretary of State by Sondra Shipman until that registration expired on or about May 29, 2012. Sondra Shipman again registered the fictitious name of Shipman Funeral Home with the Missouri Secretary of State on or about February 1, 2013.

8. Sondra Shipman d/b/a Shipman Funeral Home holds preneed seller license number 2009039207. This license is current and active and has been so at all times relevant to this Agreement, except for when it was suspended for non-renewal as set forth in this Agreement.

9. Sondra Shipman d/b/a Shipman Funeral Home holds preneed provider license number 2009039206. This license was current and active and has been so at all times relevant to this Agreement, except for when it was lapsed for non-renewal as set forth in this Agreement.

10. Derek Shipman serves as Manager in Charge of Shipman Funeral Home's seller business and as Funeral Director in Charge of Shipman Funeral Home's funeral establishment.

11. As Funeral Director in Charge and Manager in Charge of Shipman Funeral Home, Derek Shipman is responsible for all acts of Shipman Funeral Home related to its establishment and seller activities.

12. Derek Shipman acts on behalf of Shipman Funeral Home.

13. The Board conducted a financial examination of Shipman Funeral Home as authorized and mandated by Section 436.470, RSMo.
14. On or about September 9, 2011, the Board made an on-site visit to examine Shipman Funeral Home's seller's books and records.

15. On or about September 9, 2011, Derek Shipman signed the Financial Examination Attestation in which he attested that he had "provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller."

16. Upon completion of the financial examination, the Board's examiner prepared a Financial Examination Report, which was submitted to the Board by the examiner on or about October 6, 2011 (the "Financial Examination Report").

17. By letter dated October 27, 2011, the Board provided a copy of the Financial Examination Report to Shipman Funeral Home.

18. In the October 27, 2011 letter, the Board noted the deficiencies identified in the Financial Examination Report and requested that Shipman Funeral Home send a written response to the Board within 30 days, including verification that the deficiencies were corrected or a plan to correct the deficiencies.


20. By letter dated December 16, 2011, which was sent via certified mail and by first class mail, the Board notified Shipman Funeral Home that the Board had received no response to the October 27, 2011 letter and requested a response no later than January 15, 2012.

21. The December 16, 2011 letter also notified Shipman Funeral Home that if no response was received, the Board requested Shipman Funeral Home to appear before the Board in person on January 25, 2012 at 1:45 p.m. in Jefferson City, Missouri.
22. Sondra Shipman signed the “green card” confirming receipt of the December 16, 2011 letter sent via certified mail.


27. By letter dated February 16, 2012, First Bank, Bismarck, Missouri, confirmed that all joint accounts funding preneed contracts for Shipman Funeral Home were under joint control of Shipman Funeral Home and the consumer.


29. The March 21, 2012 meeting was rescheduled by the Board, and Shipman Funeral Home’s appearance was rescheduled to April 25, 2012 at 10:30 a.m.

30. By letter dated April 11, 2012, the Board notified Shipman Funeral Home of the time, date and location of the requested appearance before the Board on April 25, 2012.

31. On or about April 24, 2012 at or about 2:15 p.m., Shipman Funeral Home called the Board office to inform the Board that no one would be available to appear at the board meeting due to receipt of a death call.
32. On or about April 24, 2012, Shipman Funeral Home faxed to the Board a copy of a blank preneed contract and preneed information sheet.

33. On April 25, 2012, no one appeared before the Board on behalf of Shipman Funeral Home.

34. Shipman Funeral Home failed to submit to the Board its completed renewal for its seller license on or before its renewal date of October 31, 2012.

35. Shipman Funeral Home failed to submit to the Board its completed renewal for its provider license on or before its renewal date of October 31, 2012.

36. On or about April 17, 2013, the Board received a seller reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

37. On or about April 17, 2013, the Board received a provider reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

38. On or about April 17, 2013, the Board faxed to Shipman Funeral Home a memo indicating the items the Board needed to complete the seller and provider reinstatements.

39. By letter dated May 7, 2013, the Board notified Shipman Funeral Home that its seller license had been suspended due to failure to file a completed annual renewal due on or before October 31, 2012 and again informed Shipman Funeral Home what additional steps were required for reinstatement.

40. By a second letter dated May 7, 2013, the Board notified Shipman Funeral Home that its provider license had expired on October 31, 2012 and had not been renewed and again informed Shipman Funeral Home what additional steps were required for reinstatement.
41. In the May 7, 2013 letters to Shipman Funeral Home, the Board asked it to report any activities it had performed as either a provider or a seller during the time its licenses were not renewed.

42. Shipman Funeral Home did not respond to the May 7, 2013 letters.

43. By letter dated May 29, 2013, Shipman Funeral Home was asked again to provide the records requested in the May 7, 2013 letters, and the Board requested that Shipman Funeral Home appear before the Board at its June 25, 2013 Board meeting.

44. The reinstatement requests were finalized by Shipman Funeral Home on or about June 17, 2013.

45. The Board reinstated Shipman Funeral Home’s seller license number 2009039207 on or about June 20, 2013.

46. The Board reinstated Shipman Funeral Home’s provider license number 2009039206 on or about June 20, 2013.

47. On June 25, 2013, Derek Shipman and Sondra Shipman appeared before the Board to discuss the lapsed seller and provider licenses. At this meeting, Mr. Shipman and Ms. Shipman discussed with the Board why the licenses had not been renewed timely and gave the Board assurances that future licenses would be renewed timely.

48. On or about October 31, 2013, Shipman Funeral Home signed its seller and provider renewal forms and its seller annual report.

49. On or about November 5, 2013, the Board notified Shipman Funeral Home that if the license renewal has not been processed by October 31, then Shipman Funeral Home could not act as a seller or a provider until the licenses were renewed. This notification was sent by facsimile transmission marked “URGENT!!!”
50. By letters dated November 5, 2013, the Board notified Shipman Funeral Home that its seller and provider licenses could not be renewed because of the noted deficiencies in the renewal information Shipman Funeral Home submitted.

51. By letter dated November 12, 2013, sent both by regular mail and by certified mail, the Board notified Shipman Funeral Home that its seller license had lapsed due to non-renewal and had been suspended, pursuant to Section 436.460.7, RSMo, for failure to file a complete annual report. This letter was received by Shipman Funeral Home on or about November 19, 2013.

52. By letter dated November 12, 2013, sent by both regular mail and by certified mail, the Board notified Shipman Funeral Home that its provider license lapsed due to failure to complete the steps necessary to renew the provider license. Shipman Funeral Home received this letter on or about November 19, 2013.

53. On or about November 22, 2013, the Board mailed Shipman Funeral Home notice of outstanding issues with the renewal forms.

54. On or about November 21, 2013, Shipman Funeral Home responded via facsimile to the Board's notices and attempts to resolve the outstanding renewal issues.

55. By letter dated December 4, 2013, the Board invited Shipman Funeral Home to appear before it on December 16, 2013 at 3:15 p.m. to discuss the failure of Shipman Funeral Home to renew its seller license. Shipman Funeral Home received this letter on or about December 10, 2013.

56. By e-mail dated December 12, 2013, Shipman Funeral Home declined the invitation to appear before the Board and offered an explanation of its attempts to timely complete the renewals.
57. By Memorandum dated February 4, 2014, the Board noted the remaining deficiencies that needed to be remedied in order for the seller and provider licenses to be reinstated and also requested copies of each preneed contract that had been sold or serviced since November 1, 2013.

58. Shipman Funeral Home responded with attempts at correcting the deficiencies.

59. By facsimile transmission on or about February 13, 2014, the Board again notified Shipman Funeral Home of the remaining deficiencies in the renewals.

60. On or about February 25, 2014, the Board issued renewals of Shipman Funeral Home’s seller and provider licenses.

61. Shipman Funeral Home held out to the public and operated as both a seller and a provider during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.

Applicable Legal Authority

62. Section 333.011, RSMo, states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

   (1) "Board", the state board of embalmers and funeral directors created by this chapter;

       * * *

   (6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

       * * *

   (11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.
63. Section 333.061, RSMo, requires a license to operate as a funeral establishment in Missouri and states, in relevant part:

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

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director.

64. Each licensed seller is to designate a manager in charge pursuant to 20 CSR 2120-3.200 that states, in relevant part:

(1) Except as otherwise provided in sections 436.400 to 436.520, RSMo, and any rules validly promulgated pursuant to those sections—

* * *

(C) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the board within thirty (30) days of the change.

65. Regulation 20 CSR 2120-1.040(14) defines funeral director-in-charge as follows:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

66. Regulation 20 CSR 2120-2.070(7) clarifies the requirement for each funeral establishment to register its funeral director-in-charge with the Board and states:
(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed 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 Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

67. Section 333.315, RSMo, requires a provider license to fulfill preneed contracts and states, in relevant portion:

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

* * *

3. Each preneed provider shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule, however no renewal fee shall be required for any funeral establishment whose Missouri license is current and active;

(3) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(4) File an annual report with the state board which shall contain:
(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

68. Section 333.320.1, RSMo, requires a license to operate as a seller and that such seller be authorized and registered with the Missouri secretary of state to conduct business in Missouri and states:

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

69. Section 333.330, RSMo, authorizes the Board to impose discipline upon funeral director licensees and states, in relevant portion:

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

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

* * *

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

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

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

* * *

(14) Violation of any professional trust or confidence;

* * *

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

70. Section 436.405, RSMo, defines terms used in Chapters 333 and 436 and states, in relevant part:
(5) "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, as provided in this chapter;

71. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

72. Section 436.415.2, RSMo, sets forth seller’s duties:

The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is [sic] statutory and contractual duties are met, in compliance with sections 436.400 to 436.520.

73. Section 436.455, RSMo, states:

1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate, or in an account titled in the beneficiary's name and payable on the beneficiary's death to the seller. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.
3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within fifteen days after a provider delivers a copy of a certificate of performance to the seller, signed by the provider and the person authorized to make arrangements on behalf of the beneficiary, certifying that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the seller shall take whatever steps are required by the financial institution to secure payment of the funds from the financial institution. The seller shall pay the provider within ten days of receipt of funds.

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

74. Section 436.465, RSMo, requires a seller to maintain adequate books and records and states:

A seller shall maintain:
(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

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

75. Section 436.470, RSMo, authorizes financial examinations and requires the cooperation of the licensee and states, in relevant portion:

* * *

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.

* * *

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.

* * *

76. The statutes regulating preneed contracts changed, effective August 28, 2009, but due to the savings clause found in Section 436.412, RSMo, portions of the law from the Revised Statutes of Missouri (2000) (the “Old Law”) are relevant to this Agreement. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.
77. Section 436.005, RSMo (2000), set forth definitions for the Old Law and stated, in relevant portion:

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

78. Section 436.007, RSMo (2000), of the Old Law stated, in relevant portion:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

(1) It is in writing;
(2) It is executed by a seller who is in compliance with the provisions of section 436.021;
(3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;
(4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
(5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
(6) It contains the name and address of the seller and the provider[.]

79. Section 436.021.2(1), RSMo (2000) of the Old Law required the seller to maintain records related to preneed contracts and stated, in relevant part:

2. Each seller under one or more preneed contracts shall:

(1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements[.]
80. Section 436.053.1, RSMo (2000) of the Old Law stated, in relevant part:

Notwithstanding the provisions of sections 436.021 to 436.048, the provider and the purchaser may agree that all funds paid the provider by the purchaser shall be deposited with financial institutions chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. If the purchaser has irrevocably waived and renounced his right to cancel the agreement between the provider and the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that all funds held in the account at the beneficiary's death shall be applied toward the purchase of funeral or burial services or facilities, or funeral merchandise, selected by the purchaser or the responsible party after the beneficiary's death.

Cause for Discipline

81. Sondra Shipman's registered fictitious name of "Shipman Funeral Home" expired on or about May 29, 2012.

82. Sondra Shipman registered the fictitious name of "Shipman Funeral Home" again on or about February 1, 2013.

83. Between on or about May 29, 2012 through on or about January 31, 2013, Shipman Funeral Home conducted business in Missouri when it was not authorized and/or registered with the Missouri secretary of state to conduct business in Missouri in violation of Section 333.320.1, RSMo.

84. As funeral director in charge of the funeral establishment and as manager in charge of the seller, Derek Shipman was responsible to ensure that Shipman Funeral Home operated in compliance with the law.

85. Derek Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a funeral establishment and/or seller when it was not eligible to do so.
86. The letter dated February 15, 2012 received from Shipman Funeral Home in response to the Financial Examination Report failed to correct or sufficiently address the following deficiencies:

a. Shipman Funeral Home reported that for consumer B.Y., a life insurance policy existed to cover the amount not paid on the contract, but the financial exam found that Shipman Funeral Home failed to deposit $642.12 into the joint account that it received from the consumer and licensee failed to address the shortage issue in the joint account in their response;

b. For consumer E.W., Shipman Funeral Home reported that E.W. had died and that an insurance policy covered the balance of the policy, but did not address the financial exam finding that E.W. paid $1,607.59 that Shipman Funeral Home did not deposit into the joint account and licensee did not address the shortage of funds in the joint account in their response;

c. For consumer J.N., Shipman Funeral Home responded that the consumer was still making payments, but the financial exam found that the contract had been paid in full and that Shipman Funeral Home failed to deposit $383.83 into the account and licensee failed to address the shortage of funds in the joint account in their response;

d. For consumer L.M., Shipman Funeral Home responded that the balance in the Certificate of Deposit was $1,000, but the financial exam found that the original documents revealed a balance in a Certificate of Deposit of $2,375.82 and that Shipman Funeral Home lacked records showing how much the consumer had paid; and
e. For consumer S.K., Shipman Funeral Home responded that the balance in the Certificate of Deposit is $5,937.44, but the financial exam found that the original documents showed a Certificate of Deposit of $6,008.11 and that Shipman Funeral Home lacked records showing how much the consumer had paid.

87. The financial examination found the following statutory violations that have not been corrected by Shipman Funeral Home:

a. Violation of Section 436.053, RSMo (2000) (Old Law) and Section 436.455, RSMo, in that the joint accounts hold less than the required amounts for consumers B.Y., E.W., J.N., L.M., and S.K.;

b. Violation of Section 436.021.2(1), RSMo (2000) (Old Law) and Section 436.465, RSMo, in that Shipman Funeral Home failed to maintain adequate records of how much consumers paid on preneed contracts, and the Board's examiner could not confirm funds were handled properly; and

c. Violation of Section 436.470, RSMo, by not cooperating with the Board in its examination process by failing to appear before the Board when requested to discuss the findings of the financial examination.

88. Derek Shipman failed to ensure that Shipman Funeral Home maintained records and cooperated fully with the Board in its exercise of its statutory duty to conduct a financial exam of Shipman Funeral Home's preneed transactions as required by statute.

89. Derek Shipman violated the above cited provisions of Chapter 436, RSMo.

90. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate the above cited provisions of Chapter 436, RSMo.
91. Derek Shipman allowed Shipman Funeral Home to continue to hold out to the public as both a seller and a provider during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.

92. Derek Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a seller and/or provider when it was not licensed or registered and eligible to do so.

93. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.315, RSMo.

94. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.320, RSMo.

95. Derek Shipman’s conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of his functions and duties as a funeral director.

96. Derek Shipman’s conduct, as set forth above, constitutes a violation of a professional trust and/or confidence.

97. There is cause for discipline against Derek Shipman’s funeral director license pursuant to Sections 333.330.2 (5), (6), (7), (11), (14), and (19), RSMo.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045, RSMo:

1. Licensee’s license to practice as a funeral director is hereby placed on PROBATION for a period of FIVE YEARS (the “Disciplinary Period”), beginning on the
effective date of this Settlement Agreement. During the period of probation, Derek Shipman shall be entitled to act as a funeral director, subject to the following terms and conditions:

Terms and Conditions of the Disciplinary Period

2. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

a. Licensee shall submit written compliance reports to the Board no later than January 1, April 1, July 1, and October 1 of each year of the Disciplinary Period, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Settlement Agreement since the previous report was filed and shall fully explain any non-compliance. In addition, Derek Shipman shall ensure that any written reports of compliance for Shipman Funeral Home are timely and accurately filed. These compliance reports shall contain all other information required by this Settlement Agreement. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

b. Within the first six months of the Disciplinary Period, Derek Shipman shall have resolved with the Board all exceptions noted in the Financial Examination Reports of Shipman Funeral Home;

c. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee
utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;

d. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

e. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;

f. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board’s discretion;

g. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

h. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with the revenue laws of the state;

i. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period; and
j. Licensee shall not serve as funeral director in charge or as manager in charge at any facility other than Shipman Funeral Home during the Disciplinary Period without the written consent of the Board.

3. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

4. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee’s license.

5. The Board shall enter no order imposing further discipline on Licensee’s license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

6. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation(s).
7. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

8. Licensee, together with his heirs and assigns and his attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

9. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

10. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties
constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

11. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

12. This Settlement Agreement constitutes discipline against Licensee's license.

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

Licensee

Derek Shipman

Dated: 8/13/15

Board

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors
Dated: 9/10/15

Approved:

BANDRE HUNT SNIDER, LLC
By: David G. Bandre #44812

227 Madison Street
Jefferson City, MO 65101
Telephone: (573) 635-2424
Facsimile: (573) 635-2010

EFFECTIVE DATE 9/25/15
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
E-mail: dave@bhslawmo.com
ATTORNEY FOR LICENSEE

BRYDON, SWEARENGIN & ENGLAND P.C.
By:  
Gregory C. Mitchell  #36634
Jamie J. Cox  #52777
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone:  (572) 635-7166
Facsimile:  (572) 635-3847
E-mail: gregbse@brydonlaw.com
ATTORNEY FOR BOARD
BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS,
AND FUNERAL DIRECTORS

Petitioner,

v.

Case No. EMB 17-002- PV

SONDRA SHIPMAN

AND

SONDRA SHIPMAN
D/B/A SHIPMAN FUNERAL HOME

Respondent.

ORDER GRANTING PETITIONER’S REQUEST FOR MOTION FOR CONTINUANCE

According to law and pursuant to notice, the Missouri State Board of Embalmers and Funeral Directors had set a hearing on December 7, 2016 at 10:45 a.m., to determine whether or not Respondent had violated the terms and conditions of its probated funeral director, funeral establishment and pre-need provider and seller licenses.

On December 7, 2016, licensee Derek Shipman, also a funeral director for Shipman Funeral Home, requested a continuance of his hearing before the Board.

The Missouri State Board of Embalmers and Funeral Directors GRANTS the request for continuance of the December 7, 2016 probation violation hearing scheduled for 10:45 a.m. at Holiday Inn Country Club Plaza, One E. 45th Street, Kansas City, Missouri. A subsequent order will be issued by the Board resetting the time and date of the hearing.

Missouri State Board of Embalmers and Funeral Directors

Sandy Sebastian, Executive Director
Certificate of Service

Copies of this Order were sent via e-mail and mailed, first class U.S. Postage prepaid on December 27, 2016, to the following parties, as follows:

Sondra Shipman
Shipman Funeral Home
449 S. Cedar Street
Bismarck, MO 63624

Sharon Euler
Legal Counsel
Division of Professional Registration
Fletcher Daniel State Office Building
615 East 13th Street, Suite 510
Kansas City, MO 64106
(816) 889 – 3687 (Telephone)
(816) 889 – 2345 (Facsimile)

Missouri State Board of Embalmers and Funeral Directors

Sandy Sebastian, Executive Director
Derek Shipman
PO Box 117
Bismarck MO 63624

Dear Mr. Shipman:

Enclosed is a copy of the Notice of Probation Violation Hearing and Probation Violation Complaint relating to Case No. EMB 17-003-PV as issued by the State Board of Embalmers and Funeral Directors. This hearing is scheduled for Wednesday, September 12, 2018 at 2:00p.m. at the Missouri Dental Association, 3340 American Ave., Jefferson City, Missouri 65109.

Please make a note of the date, time and place of this hearing. The board has asked that I express the importance of your attendance at this hearing. It is in your best interest and the board encourages you to attend.

As with all appearances before the board, you may elect to have private legal counsel represent you at your expense. The board will be represented by the legal counsel and the hearing will be recorded.

Please email lori.hayes@pr.mo.gov or embalm@pr.mo.gov or call (573) 751-0813 to confirm your attendance.

If you have any questions, please contact our office at embalm@pr.mo.gov or (573)751-0813.

Sincerely,

Lori Hayes
Interim Executive Director

Enclosures

cc: Greg Mitchell, Counsel Brydon Swearengen & England board PC

This letter has been sent both certified and regular mail
BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,

Petitioner,

VS

CASE NO. EMB 17-003-PV

DEREK SHIPMAN

Respondent.

NOTICE OF PROBATION VIOLATION HEARING

PLEASE TAKE NOTICE that the State Board of Embalmers and Funeral Directors shall hold a hearing for the purpose of determining the truth of the allegations set forth in the attached Probation Violation Complaint and, if the allegations are true, whether or not disciplinary action should be taken. The hearing will be held on Wednesday, September 12 at 2:00p.m., or as soon thereafter as the matter may be heard, at the at the Missouri Dental Association 3340 American Ave, Jefferson City MO 65109. Please be advised that your failure to appear at the hearing at the above-noted time and place will result in the hearing being held in your absence.

All parties have the right to be represented by legal counsel and to a full, fair and open hearing as provided for in Chapter 536, RSMo 2009 and 324.042, RSMo 2009.

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: ____________________________

Lori Hayes, Interim Executive Director

Dated: August 8, 2018
Derek Shipman
PO Box 117
Bismarck MO 63624

Dear Mr. Shipman:

Enclosed is a copy of the Notice of Probation Violation Hearing and Probation Violation Complaint relating to Case No. EMB 17-003-PV as issued by the State Board of Embalmers and Funeral Directors. This hearing is scheduled for Wednesday, September 12, 2018 at 2:00p.m. at the Missouri Dental Association, 3340 American Ave., Jefferson City, Missouri 65109.

Please make a note of the date, time and place of this hearing. The board has asked that I express the importance of your attendance at this hearing. It is in your best interest and the board encourages you to attend.

As with all appearances before the board, you may elect to have private legal counsel represent you at your expense. The board will be represented by the legal counsel and the hearing will be recorded.

Please email lori.hayes@pr.mo.gov or embalm@pr.mo.gov or call (573) 751-0813 to confirm your attendance.

If you have any questions, please contact our office at embalm@pr.mo.gov or (573)751-0813.

Sincerely,

Lori Hayes
Interim Executive Director

Enclosures

cc: Greg Mitchell, Counsel Brydon Swearengen & England board PC

This letter has been sent both certified and regular mail
BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,

Petitioner,

VS

DEREK SHIPMAN

CASE NO. EMB 17-003-PV

Respondent.

NOTICE OF PROBATION VIOLATION HEARING

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a hearing for the purpose of determining the truth of the allegations set forth in the attached
Probation Violation Complaint and, if the allegations are true, whether or not disciplinary action
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thereafter as the matter may be heard, at the at the Missouri Dental Association 3340 American
Ave, Jefferson City MO 65109. Please be advised that your failure to appear at the hearing at the
above-noted time and place will result in the hearing being held in your absence.

All parties have the right to be represented by legal counsel and to a full, fair and open
hearing as provided for in Chapter 536, RSMo 2009 and 324.042, RSMo 2009.

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: ________________________________
Lori Hayes, Interim Executive Director

Dated: August 8, 2018
SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND
SONDRA SHIPMAN AND SONDA SHIPMAN D/B/A SHIPMAN FUNERAL HOME
(Seller, Provider and Funeral Director Licenses)

The State Board of Embalmers and Funeral Directors (the "Board") and Sondra Shipman and Sondra Shipman d/b/a Shipman Funeral Home ("Licensee"), enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Sondra Shipman and Sondra Shipman d/b/a Shipman Funeral Home" (the "Settlement Agreement") to resolve the question of whether there is cause to discipline the seller and provider licenses issued by the Board to Sondra Shipman d/b/a Shipman Funeral Home, and the funeral director license held by Sondra Shipman; and if so, to agree on the appropriate level of discipline to impose on the licenses as a result of this violation.

Pursuant to the terms of Sections 536.060 and 621.045, RSMo¹, the parties hereto waive the right to a hearing before the Administrative Hearing Commission of the State of Missouri and the right to a disciplinary hearing before the Board and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee acknowledges that she understands the various rights and privileges afforded to her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a hearing before the Board at which time she may present evidence in mitigation of discipline;

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.
5. Sondra Shipman d/b/a Shipman Funeral Home is a sole proprietorship that has a registered address with the Board of 449 S. Cedar St., P.O. Box 155, Bismarck, Missouri.

6. Sondra Shipman d/b/a Shipman Funeral Home ("Shipman Funeral Home") holds funeral establishment license number 001913. This license was current and active at all times relevant to this Agreement.

7. Shipman Funeral Home was a fictitious name registered with the Missouri Secretary of State by Sondra Shipman until that registration expired on or about May 29, 2012. Sondra Shipman again registered the fictitious name of Shipman Funeral Home with the Missouri Secretary of State on or about February 1, 2013.

8. Sondra Shipman d/b/a Shipman Funeral Home holds preneed seller license number 2009039207. This license is current and active and has been so at all times relevant to this Agreement, except for when it was suspended for non-renewal as set forth in this Agreement.

9. Sondra Shipman d/b/a Shipman Funeral Home holds preneed provider license number 2009039206. This license was current and active and has been so at all times relevant to this Agreement, except for when it was lapsed for non-renewal as set forth in this Agreement.

10. As owner and operator of, as well as in her capacity as a funeral director for, Shipman Funeral Home, Sondra Shipman is responsible for ensuring that Shipman Funeral Home is in compliance with the law, including the applicable licensure requirements for preneed suppliers and providers.

11. Derek Shipman serves as Manager in Charge of Shipman Funeral Home’s seller business.
20. The December 16, 2011 letter also notified Shipman Funeral Home that if no response was received, the Board requested Shipman Funeral Home to appear before the Board in person on January 25, 2012 at 1:45 p.m. in Jefferson City, Missouri.

21. Sondra Shipman signed the “green card” confirming receipt of the December 16, 2011 letter sent via certified mail.


26. By letter dated February 16, 2012, First Bank, Bismarck, Missouri, confirmed that all joint accounts funding preneed contracts for Shipman Funeral Home were under joint control of Shipman Funeral Home and the consumer.

27. By letter dated March 8, 2012, the Board again requested that Shipman Funeral Home appear before the Board and requested that Shipman Funeral Home appear on March 21, 2012 at 3:45 p.m. in Jefferson City, Missouri to discuss the Financial Examination Report.

28. The March 21, 2012 meeting was rescheduled by the Board, and Shipman Funeral Home’s appearance was rescheduled to April 25, 2012 at 10:30 a.m.

29. By letter dated April 11, 2012, the Board notified Shipman Funeral Home of the time, date and location of the requested appearance before the Board on April 25, 2012.
39. By a second letter dated May 7, 2013, the Board notified Shipman Funeral Home that its provider license had expired on October 31, 2012 and had not been renewed and again informed Shipman Funeral Home what additional steps were required for reinstatement.

40. In the May 7, 2013 letters to Shipman Funeral Home, the Board asked it to report any activities it had performed as either a provider or a seller during the time its licenses were not renewed.

41. Shipman Funeral Home did not respond to the May 7, 2013 letters.

42. By letter dated May 29, 2013, Shipman Funeral Home was asked again to provide the records requested in the May 7, 2013 letters, and the Board requested that Shipman Funeral Home appear before the Board at its June 25, 2013 Board meeting.

43. The reinstatement requests were finalized by Shipman Funeral Home on or about June 17, 2013.

44. The Board reinstated Shipman Funeral Home’s seller license number 2009039207 on or about June 20, 2013.

45. The Board reinstated Shipman Funeral Home’s provider license number 2009039206 on or about June 20, 2013.

46. On June 25, 2013, Derek Shipman and Sondra Shipman appeared before the Board to discuss the lapsed seller and provider licenses. At this meeting, Mr. Shipman and Ms. Shipman discussed with the Board why the licenses had not been renewed timely and gave the Board assurances that future licenses would be renewed timely.

47. On or about October 31, 2013, Shipman Funeral Home signed its seller and provider renewal forms and its seller annual report.
Home to renew its seller license. Shipman Funeral Home received this letter on or about December 10, 2013.

55. By e-mail dated December 12, 2013, Shipman Funeral Home declined the invitation to appear before the Board and offered an explanation of its attempts to timely complete the renewals.

56. By Memorandum dated February 4, 2014, the Board noted the remaining deficiencies that needed to be remedied in order for the seller and provider licenses to be reinstated and also requested copies of each preneed contract that had been sold or serviced since November 1, 2013.

57. Shipman Funeral Home responded with attempts at correcting the deficiencies.

58. By facsimile transmission on or about February 13, 2014, the Board again notified Shipman Funeral Home of the remaining deficiencies in the renewals.

59. On or about February 25, 2014, the Board issued renewals of Shipman Funeral Home’s seller and provider licenses.

60. Shipman Funeral Home held out to the public and operated as both a seller and a provider during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.

**Applicable Legal Authority**

61. Section 333.011, RSMo, states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

(1) "Board", the state board of embalmers and funeral directors created by this chapter;
(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

63. Section 333.320.1, RSMo, requires a license to operate as a seller and that such seller be authorized and registered with the Missouri secretary of state to conduct business in Missouri and states:

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

64. Section 333.330, RSMo, authorizes the Board to impose discipline upon funeral director, and preneed seller and provider licensees and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall
(5) "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, as provided in this chapter;

66. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

67. Section 436.415.2, RSMo, sets forth seller's duties:

The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is [sic] statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

68. Section 436.455, RSMo, states:

1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate, or in an account titled in the beneficiary's name and payable on the beneficiary's death to the seller. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.
(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

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

70. Section 436.470, RSMo, authorizes financial examinations and requires the cooperation of the licensee and states, in relevant portion:

* * *

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
72. Section 436.005, RSMo (2000), set forth definitions for the Old Law and stated, in relevant portion:

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

73. Section 436.007, RSMo (2000), of the Old Law stated, in relevant portion:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

(1) It is in writing;
(2) It is executed by a seller who is in compliance with the provisions of section 436.021;
(3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;
(4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
(5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
(6) It contains the name and address of the seller and the provider[.]

74. Section 436.021.2(1), RSMo (2000) of the Old Law required the seller to maintain records related to preneed contracts and stated, in relevant part:

2. Each seller under one or more preneed contracts shall:

(1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements[.]
a. Shipman Funeral Home reported that for consumer B.Y., a life insurance policy existed to cover the amount not paid on the contract, but the financial exam found that Shipman Funeral Home failed to deposit $642.12 into the joint account that it received from the consumer and licensee failed to address the shortage issue in the joint account in their response;

b. For consumer E.W., Shipman Funeral Home reported that E.W. had died and that an insurance policy covered the balance of the policy, but did not address the financial exam finding that E.W. paid $1,607.59 that Shipman Funeral Home did not deposit into the joint account and licensee did not address the shortage of funds in the joint account in their response;

c. For consumer J.N., Shipman Funeral Home responded that the consumer was still making payments, but the financial exam found that the contract had been paid in full and that Shipman Funeral Home failed to deposit $383.83 into the account and licensee failed to address the shortage of funds in the joint account in their response;

d. For consumer L.M., Shipman Funeral Home responded that the balance in the Certificate of Deposit was $1,000, but the financial exam found that the original documents revealed a balance in a Certificate of Deposit of $2,375.82 and that Shipman Funeral Home lacked records showing how much the consumer had paid; and

e. For consumer S.K., Shipman Funeral Home responded that the balance in the Certificate of Deposit is $5,937.44, but the financial exam found that the original
86. Sondra Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a seller and/or provider when it was not licensed or registered and eligible to do so.

87. Sondra Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.315, RSMo.

88. Sondra Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.320, RSMo.

89. Sondra Shipman’s conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of her functions and duties as a funeral director.

90. Sondra Shipman’s conduct, as set forth above, constitutes a violation of a professional trust and/or confidence.

91. There is cause for discipline against Sondra Shipman’s funeral director license pursuant to Sections 333.330.2 (5), (6), (7), (11), (14), and (19), RSMo.

_Preqeed Seller License of Sondra Shipman d/b/a Shipman Funeral Home_

92. The letter dated February 15, 2012 received from Shipman Funeral Home failed to correct or sufficiently address the following deficiencies:

   a. Shipman Funeral Home reported that for consumer B.Y., a life insurance policy existed to cover the amount not paid on the contract, but the financial exam found that Shipman Funeral Home failed to deposit $642.12 into the joint account that it received from the consumer and licensee failed to address the shortage issue in the joint account in their response;
a. Violation of Section 436.053, RSMo (2000) (Old Law) and Section 436.455, RSMo, in that the joint accounts hold less than the required amounts for consumers B.Y, E.W., J.N, L.M. and S.K.;

b. Violation of Section 436.021.2(1), RSMo (2000) (Old Law) and Section 436.465, RSMo, in that Shipman Funeral Home failed to maintain adequate records of how much consumers paid on preneed contracts, and the Board’s examiner could not confirm funds were handled properly; and

c. Violation of Section 436.470, RSMo, by not cooperating with the Board in its examination process by failing to appear before the Board when requested to discuss the findings of the financial examination.

94. Sondra Shipman d/b/a Shipman Funeral Home failed to maintain records and cooperate fully with the Board in its exercise of its statutory duty to conduct a financial exam of Shipman Funeral Home’s preneed transactions as required by statute.

95. The financial examination found and established that Sondra Shipman d/b/a Shipman Funeral Home violated the above cited provisions of Chapter 436, RSMo.

96. Sondra Shipman d/b/a Shipman Funeral Home continued to hold out to the public as a seller during the time when Shipman Funeral Home’s licenses were lapsed and the seller license was suspended.

97. Between on or about May 29, 2012 through on or about January 31, 2013, Shipman Funeral Home conducted business in Missouri when it was not authorized and/or registered with the Missouri secretary of state to conduct business in Missouri in violation of Section 333.320.1, RSMo.
108. There is cause for discipline against the preneed provider license of Sondra Shipman d/b/a Shipman Funeral Home pursuant to Sections 333.330.2 (5), (6), (7), and (14), RSMo.

**Jointly Stipulated Disciplinary Order**

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045, RSMo:

1. Licensee's funeral director, preneed seller and preneed provider licenses are hereby placed on **PROBATION** for a period of **FIVE YEARS** (the “Disciplinary Period”), beginning on the effective date of this Settlement Agreement. During the period of probation, Sondra Shipman shall be entitled to act as a funeral director and Sondra Shipman d/b/a Shipman Funeral Home shall be entitled to operate as a preneed seller and as a preneed provider, as defined in Chapters 333 and 436, RSMo, subject to the following terms and conditions:

   **Terms and Conditions of the Disciplinary Period**

2. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

   a. Licensee shall submit written compliance reports to the Board no later than January 1, April 1, July 1, and October 1 of each year of the Disciplinary Period, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Settlement Agreement since the previous report was filed and shall fully explain any non-compliance. In addition, each compliance report shall provide a report of the preneed activity for the previous period including a listing of each new preneed contract sold (show
e. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;

f. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;

g. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

h. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with the revenue laws of the state; and

i. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period.

3. Operation as a preneed seller includes selling, performing, or agreeing to perform any function of a seller that includes entering into any new preneed contracts with consumers, receiving funds to pay for any preneed contract, holding funds paid by consumers for preneed contracts whether in joint account or in trust, and disbursement of any funds to any provider in fulfillment of any preneed contract.

4. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement
to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

9. Licensee, together with her heirs and assigns and her attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

10. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

11. Licensee understands that she may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee’s licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit her request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

12. If Licensee requests review, this Settlement Agreement shall become effective on
August 7, 2018

CERTIFIED MAIL 7014 1820 0000 3618 6957

Derek Shipman
Shipman Funeral Home
PO Box 155
Bismarck MO 63624

Dear Mr. Shipman:

Enclosed is a copy of the Notice of Probation Violation Hearing and Probation Violation Complaint relating to Case No. EMB 17-002-PV as issued by the State Board of Embalmers and Funeral Directors. This hearing is scheduled for Wednesday, September 12, 2018 at 2:00p.m. at the Missouri Dental Association, 3340 American Ave., Jefferson City, Missouri 65109.

Please make a note of the date, time and place of this hearing. The board has asked that I express the importance of your attendance at this hearing. It is in your best interest and the board encourages you to attend.

As with all appearances before the board, you may elect to have private legal counsel represent you at your expense. The board will be represented by the legal counsel and the hearing will be recorded.

Please email lori.hayes@pr.mo.gov or embalm@pr.mo.gov or call (573) 751-0813 to confirm your attendance.

If you have any questions, please contact our office at embalm@pr.mo.gov or (573)751-0813.

Sincerely,

Lori Hayes
Interim Executive Director

Enclosures

cc: Greg Mitchell, Counsel Brydon Swearengen & England board PC

This letter has been sent both certified and regular mail
BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,

Petitioner,

VS

CASE NO. EMB 17-002-PV

SONDRA SHIPMAN and
SONDRA SHIPMAN
d/b/a SHIPMAN FUNERAL HOME,

Respondent.

NOTICE OF PROBATION VIOLATION HEARING

PLEASE TAKE NOTICE that the State Board of Embalmers and Funeral Directors shall hold a hearing for the purpose of determining the truth of the allegations set forth in the attached Probation Violation Complaint and, if the allegations are true, whether or not disciplinary action should be taken. The hearing will be held on Wednesday, September 12, 2018 at 2:00 p.m., or as soon thereafter as the matter may be heard, at the Missouri Dental Association 3340 American Ave, Jefferson City MO 65109. Please be advised that your failure to appear at the hearing at the above-noted time and place will result in the hearing being held in your absence.

All parties have the right to be represented by legal counsel and to a full, fair and open hearing as provided for in Chapter 536, RSMo 2009 and 324.042, RSMo 2009.

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

By: ____________________________
    Lori Hayes, Interim Executive Director

Dated: August 7, 2018

SEAL
OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors was called to order on June 13, 2018 by Gary Fraker, chairman at 8:25 a.m.

Roll Call
Board Members Present
Gary Fraker, Chairman
Scott Meierhoffer, Vice Chairman
James Reinhard, Secretary
Kenneth McGhee, Board Member
Jerald Dickey, Board Member

Board Members Absent
Vacant, Public Member

Staff Present
Sandy Sebastian, Executive Director
Teri Forck, Administrative Assistant
Lori Hayes, Inspector
Thomas Townsend, Division Counsel

The order of the items reflected in these minutes is not necessarily reflective of the order in which the items were reviewed and discussed by the board.

Approval of Agenda
A motion was made by Scott Meierhoffer and seconded by Kenneth McGhee to approve the agenda. Motion carried with Gary Fraker, Jerald Dickey and James Reinhard voting in favor with no votes in opposition.

Move to Closed
A motion was made by Kenneth McGhee and seconded by Scott Meierhoffer to move into closed session pursuant to #1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with Jerald Dickey, James Reinhard and Gary Fraker voting in favor with no votes in opposition.

Roll Call – Return to Open 12:37 p.m.
Gary Fraker performed roll call. Present were Kenneth McGhee, Scott Meierhoffer, James Reinhard, Gary Fraker and Jerald Dickey.

Presentation of Plaques to Past Member/s Recognizing Prior Service
Collin Follis was presented with a plaque recognizing service to the board.
Approval of Open Minutes
A motion was made by James Reinhard and seconded by Scott Meierhoffer to approve the following minutes.

- January 30, 2018 Financial Examination Committee Minutes
- March 15, 2018 Board Meeting Minutes
- March 28, 2018 Board Meeting Minutes
- April 24, 2018 Board Meeting Minutes
- May 1, 2018 Financial Examination Committee Minutes
- May 16, 2018 Financial Examination Committee Minutes
- May 17, 2018 Board Meeting Minutes

Motion carried with Gary Fraker, Jerald Dickey and Kenneth McGhee voting in favor with no votes in opposition.

Executive Director Report
The Executive Director reported that as of April 30, 2018 financial statement the board's fund balance was $2,892,599.25, which reflected revenue collected to date as $499,310.25 and the board had projected $485,030 for the fiscal year; expenditures of $121,184.87 with $43,015.13 of the total $164,200 appropriate remaining and total transfer expenditures of $469,503.10, with a remaining $223,908.76 of the total projected $693,411.86. Executive Director reminded the board that the renewal fee being reduced for all professions was intended to keep the board's fund balance at a lower amount.

Licensee Reports (new, disciplined, closed/ceased)
The Executive Director stated that the licensee reports (new, disciplined, closed/cease) covering the period March 2, 2018 to May 30, 2018 were included as informational only. The Executive Director provided an update on renewal for embalmer and funeral director professions.

The Executive Director discussed upcoming conferences and advised the board of Lisa Wildhaber's acceptance of a job offer and the subsequent posting of her job position.

The Executive Director discussed possible educational outreach regarding the financial examination process, including surveys, frequently asked questions, and videos.

The Executive Director discussed the convention hosted by the Missouri Association of Funeral Directors and Embalmers that was attended by Sandy Sebastian, Lori Hayes, Kenneth McGhee and James Reinhard.

The Executive Director discussed senate bill 843 regarding fees, senate bill 840 education and experience requirements, and house bill 1719 regarding the licensing requirement regarding age (minimum 18).

The Executive Director shared that Pearson view is working on an open book law exam.

The Executive Director asked the board about stopping immediately the requesting to review the most recent backflow inspection during our inspections of funeral establishments and the process that the office is requesting business licenses for entities applying for licensure with the board. A motion was made by Ken McGhee and seconded by Scott Meierhoffer to stop this process immediately. Motion carried with Gary Fraker and Scott Meierhoffer voting in favor with no votes in opposition. James Reinhard was absent for the vote.

Discussion and Review of Public Comment/Proposed Draft of 20 CSR 2120-2.110. This was tabled to closed to seek legal advice.

Discussion of Legal Counsel Contract with Brydon, Swearengen and England
A motion was made by Kenneth McGhee and seconded by Jerald Dickey to continue with the two year contract with the firm. Motion carried with Gary Fraker and Scott Meierhoffer voting in favor with no votes in
opposition. James Reinhard was absent for the vote.

**Discussion of Future Meeting Date**
The board discussed and chose to schedule the next meeting for September 12-13, 2018 in Jefferson City.

A motion was made by James Reinhard and seconded by Scott Meierhoffer to review the financial examination process and receive input from the public, finish those exam in process and suspend all exams for 30 days. The motion carried with Kenneth McGhee, Jerald Dickey yes but opposed to it and Gary Fraker voting in favor with no votes in opposition.

**FYI**
Bill Stalter- Handling of complaints – 20 CSR 2120-2.110 the board reviewed Mr. Stalter's comments. A motion was made by Jim Reinhard and seconded by Scott Meierhoffer to add the rule with the other drafts for revision previously submitted to the division once the board has input from legal in close. The motion carried with Kenneth McGhee, Jerald Dickey and Gary Fraker voting in favor with no votes in opposition.

**Open Session/Discussion**

**Closed – Personnel Discussion**

**Move to Closed**
A motion was made by Kenneth McGhee and seconded by James Reinhard to move into closed session pursuant to #1, 2, 3, 6, 7, 8, and 9 of the attached motions to close. Motion carried with Scott Meierhoffer and Gary Fraker voting in favor with no votes in opposition.

Executive Director ______________________________

Approved by the board on ________________________
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 324.001.8 and 324.017 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 2018-01
The meeting of the State Board of Embalmers and Funeral Directors was called to order on July 11, 2018 by Gary Fraker, chairman at 10.07 a.m.

Roll Call
Board Members Present
Gary Fraker, Chairman
Scott Meierhoffer, Vice Chairman
James Reinhard, Secretary
Kenneth McGhee, Board Member

Board Members Absent
Vacant, Public Member
Jerald Dickey, Board Member

Staff Present
Lori Hayes, Interim Executive Director
Teri Forck, Administrative Assistant
Thomas Townsend, Division Counsel

The order of the items reflected in these minutes is not necessarily reflective of the order in which the items were reviewed and discussed by the board.

Approval of Agenda
A motion was made by Scott Meierhoffer and seconded by James Reinhard to approve the agenda. Motion carried with Gary Fraker and Kenneth McGhee voting in favor with no votes in opposition. Jerald Dickey was not present.

Executive Director Report
There was nothing to report.

Legislative Proposals
The Interim Executive Director notified the board that if the board wished to open up the statutes for changes, the deadline was August 1, 2018. A motion was made by Scott Meierhoffer and seconded by James Reinhard not to open up the statutes for changes. Motion carried with Gary Fraker and Kenneth McGhee voting in favor with no votes in opposition. Jerald Dickey was not present.

Preneed Agent Funeral Director
Kenneth McGhee asked about the possibility of the funeral director application including a checkbox for preneed agent funeral director option. A motion was made by Scott Meierhoffer and seconded by Kenneth
McGhee to pass for further discussion. Motion carried with Gary Fraker and James Reinhard voting in favor with no votes in opposition. Jerald Dickey was not present.

**Move to Closed**
A motion was made by Scott Meierhoffer and seconded by James Reinhard to move into closed session pursuant to #1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with Kenneth McGhee and Gary Fraker voting in favor with no votes in opposition. Jerald Dickey was not present.

**Roll Call – Return to Open**
Gary Fraker performed roll call. Present were Kenneth McGhee, Scott Meierhoffer, James Reinhard, and Gary Fraker. Jerald Dickey was not present.

**Adjournment**
A motion was made by James Reinhard and seconded by Scott Meierhoffer to adjourn at 11:27a.m. on July 11, 2018. Motion carried with Gary Fraker and Kenneth McGhee voting in favor with no votes in opposition. Jerald Dickey was not present.

Executive Director ______________________________

Approved by the board on ________________________
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 324.001.8 and 324.017 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 2018-01
The meeting of the State Board of Embalmers and Funeral Directors was called to order on August 6, 2018 by Gary Fraker, chairman at 9:00 a.m.

Roll Call
Board Members Present
Gary Fraker, Chairman
Scott Meierhoffer, Vice Chairman
James Reinhard, Secretary

Board Members Absent
Vacant, Public Member
Jerald Dickey, Board Member
Kenneth McGhee, Board Member

Staff Present
None

The order of the items reflected in these minutes is not necessarily reflective of the order in which the items were reviewed and discussed by the board.

Move to Closed
A motion was made by Gary Fraker and seconded by Scott Meierhoffer to move into closed session pursuant to #1, 2, 3, 7, 8, and 9 of the attached motions to close. Motion carried with James Reinhard voting in favor with no votes in opposition. Jerald Dickey and Kenneth McGhee were not present.

Adjournment
A motion was made by Scott Meierhoffer and seconded by Gary Fraker to adjourn at 10:50 a.m. on August 6, 2018. Motion carried with James Reinhard voting in favor with no votes in opposition. Jerald Dickey and Kenneth McGhee were not present.

Executive Director ______________________________

Approved by the board on ________________________
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

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   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

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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

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   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 324.001.8 and 324.017 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 2018-01
The meeting of the State Board of Embalmers and Funeral Directors Financial Examination Committee was called to order by Kenneth McGhee, committee chair, at 9:00 a.m.

Roll Call
Board Members Present
Kenneth McGhee, Chairman – left the call at 10:00 a.m.
James Reinhard, Member
Gary Fraker, Member

Staff Present
Lori Hayes, Interim Executive Director
Randall Jennings, Examiner Supervisor

The order of the items reflected in these minutes is not necessarily reflective of the order in which the items were reviewed and discussed by the committee.

Approval of Agenda
A motion was made by Gary Fraker and seconded by James Reinhard to approve the agenda. Motion carried with Kenneth McGhee voting in favor with no votes in opposition.

Approval of Minutes
A motion was made by James Reinhard and seconded by Gary Fraker to approve the May 31, 2018 minutes. Motion carried with Kenneth McGhee voting in favor with no votes in opposition.

Executive Director Report
Executive Director discussed with the board the directive of staff to close examinations without committee review if examinations satisfactorily completed.

Executive Director discussed the examination supervisor responding to responses received by all exceptions not satisfied.

Executive Director discussed exception letters and bringing them back to the board for discussion.

No motion was made on these matters.

Move to Closed
A motion was made by Gary Fraker and seconded by James Reinhard to move to closed session pursuant to numbers 1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with Kenneth McGhee voting in favor with no votes in opposition.
Adjourn
A motion was made by Gary Fraker and seconded by James Reinhard to adjourn at 10:00a.m. Motion carried with no votes in opposition. Kenneth McGhee was not present.

Executive Director: ________________________

Approved by the board on: _________________________
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

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   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 324.001.8 and 324.017 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 2018-01
The meeting of the State Board of Embalmers and Funeral Directors was called to order on August 8, 2018 by Gary Fraker, chairman at 9:07 a.m.

Roll Call
Board Members Present
Gary Fraker, Chairman
Scott Meierhoffer, Vice Chairman
James Reinhard, Secretary joined the meeting at 9:25 a.m.
Jerald Dickey, Board Member
Kenneth McGhee, Board Member

Board Members Absent
Vacant, Public Member

Staff Present
Division of Professional Registration Director Katie Steele Danner
Division of Professional Registration General Counsel Sarah Ledgerwood

The order of the items reflected in these minutes is not necessarily reflective of the order in which the items were reviewed and discussed by the board.

Move to Closed
A motion was made by Gary Fraker and seconded by Scott Meierhoffer to move into closed session pursuant to #1, 2, 3, 7, 8, and 9 of the attached motions to close. Motion carried with Jerald Dickey and Kenneth McGhee voting in favor with no votes in opposition. James Reinhard was not present.

The board reconvened during open session. Noting the absence of Board Member James Reinhard, the board discussed reconvening on Thursday, August 9th at 9:30 am to reach consensus on the business at hand. A motion was made by Gary Fraker and seconded by Scott Meierhoffer to adjourn and reconvene on Thursday, August 9th at 9:30 am. During that discussion, James Reinhard was able to join the meeting in progress via phone at 9:25 am. Gary Fraker then withdrew his motion for adjournment.

Move to Closed
A motion was made by James Reinhard and seconded by Scott Meierhoffer to proceed back into closed session pursuant to #1, 2, 3, 7, 8, and 9 of the attached motions to close. Motion carried with Gary Fraker, Scott Meierhoffer, Jerald Dickey, Kenneth McGhee, and James Reinhard voting in support.

Adjournment
A motion was made by Scott Meierhoffer and seconded by Kenneth McGhee to adjourn at 9:50 a.m. on August 8, 2018. Motion carried with Gary Fraker, James Reinhard, Jerald Dickey and Kenneth McGhee voting in favor with no votes in opposition.

Executive Director ______________________________

Approved by the board on ______________________
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 324.001.8 and 324.017 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 2018-01
The meeting of the State Board of Embalmers and Funeral Directors was called to order on September 12, 2018 by Gary Fraker, chairman at 8:37 a.m.

Roll Call
Board Members Present
Gary Fraker, Chairman
Scott Meierhoffer, Vice Chairman
James Reinhard, Secretary
Jerald Dickey, Board Member

Board Members Absent
Kenneth McGhee, Board Member
Vacant, Public Member

Staff Present
Lori Hayes, Executive Director
Teri Forck, Administrative Assistant
Thomas Townsend, Division Counsel

The order of the items reflected in these minutes is not necessarily reflective of the order in which the items were reviewed and discussed by the board.

Approval of Agenda
A motion was made by Jerald Dickey and seconded by James Reinhard to approve the agenda. Motion carried with Gary Fraker and Scott Meierhoffer voting in favor with no votes in opposition. Kenneth McGhee was not present.

Move to Closed
A motion was made by Jerald Dickey and seconded by Scott Meierhoffer to move into closed session pursuant to #1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with James Reinhard and Gary Fraker voting in favor with no votes in opposition. Kenneth McGhee was not present.

Roll Call – Return to Open
Gary Fraker performed roll call. Present were Scott Meierhoffer, James Reinhard, Gary Fraker and Jerald Dickey. Kenneth McGhee was not present.

Adjournment
A motion was made by James Reinhard and seconded by Scott Meierhoffer to adjourn at 9:43 a.m. on September 12, 2018. Motion carried with Gary Fraker and Jerald Dickey voting in favor with no votes in opposition. Kenneth McGhee was not present.
Executive Director ______________________________

Approved by the board on ________________________
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 324.001.8 and 324.017 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 2018-01
State Board of Embalmers and Funeral Directors  
3605 Missouri Boulevard  
Jefferson City, Missouri  

September 14, 2018  

OPEN MAIL BALLOT MINUTES*  

Mail Ballot Emailed to Members September 14, 2018 at 3:37p.m.  

Board Members  
Gary Fraker, President  
Scott Meierhoffer, Vice President  
James Reinhard, Secretary  
Kenneth McGhee, Member  
Jerald Dickey, Member  
Vacant, Public Member  

Closed Session  
The chairman declared the meeting to be closed pursuant to 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; 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.  

Executive Director ___________________________  

Approved by Board on ________________________
The meeting of the State Board of Embalmers and Funeral Directors Financial Examination Committee was called to order by Kenneth McGhee, committee chair, at 1:30 p.m.

Roll Call
Board Members Present
Kenneth McGhee, Chairman
James Reinhard, Member
Gary Fraker, Member

Staff Present
Lori Hayes, Interim Executive Director
Randall Jennings, Examiner Supervisor

The order of the items reflected in these minutes is not necessarily reflective of the order in which the items were reviewed and discussed by the committee.

Approval of Agenda
A motion was made by Gary Fraker and seconded by James Reinhard to approve the agenda. Motion carried with Kenneth McGhee voting in favor with no votes in opposition.

Approval of Minutes
A motion was made by James Reinhard and seconded by Gary Fraker to approve the August 22, 2018 minutes. Motion carried with Kenneth McGhee voting in favor with no votes in opposition.

Executive Director Report
Nothing to report.

Move to Closed
A motion was made by Gary Fraker and seconded by James Reinhard to move to closed session pursuant to numbers 1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with Kenneth McGhee voting in favor with no votes in opposition.

Adjourn
A motion was made by James Reinhard and seconded by Gary Fraker to adjourn at 2:54 p.m. Motion carried with Kenneth McGhee voting in favor with no votes in opposition.

Executive Director: ________________________________

Approved by the board on: ________________________________
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 324.001.8 and 324.017 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 2018-01
MISSOURI
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

FINANCIAL EXAMINATION PROCEDURE HANDBOOK

2018
General Board Directives to Staff

1. Examinations are done to fulfill the board’s statutory direction in Section 436.470, RSMo, to conduct financial examinations of each preneed seller at least once every 5 years.

2. Examinations are done within the scope of the board’s statutory authority and to fulfill the board’s purpose of protecting the public by ensuring that preneed sellers are complying with their statutory requirements and duties.

3. Examinations are done for the purpose of ensuring that sellers are safeguarding preneed funds and that the funds are properly utilized per contracts with the consumer and in accord with statutory requirements.

4. Staff shall work diligently and with good faith and fairness to ensure that each financial exam is conducted lawfully and with professional conduct to fulfill the board’s directives.

5. The board has directed the Staff to prepare a written financial exam procedures handbook to be used by all examiners in conducting financial examinations and to be provided to the industry as a guideline. Subject to approval by the board, the handbook shall set out all techniques for confirming data provided by sellers, consumers, financial institutions and insurance companies.

6. Staff may request information from sellers, consumers, providers, preneed agents, that may be needed to reconcile financial information provided by the seller. The staff may not utilize any court or administrative process to require any person to comply with any staff request for information without prior board approval.

Scope of Exams This portion is a duplicate of what is in #5 Scope of Financial Examination

7. For all preneed sellers, the examiners shall confirm:
   a. Seller’s seller license is current and active; (§ 333.320, RSMo)
   b. Seller affirms that it has provided the board access to all preneed contracts by signing the Financial Examination Attestation form; (§ 436.420, RSMo)
   c. Preneed contracts meet the statutory requirements as interpreted by the board; (§ 436.425, RSMo)
   d. Seller maintains adequate records to demonstrate handling of consumer funds in compliance with Chapter 436; (§ 436.465, RSMo)
   e. If applicable, seller provides written notification to consumers of any change in funding source; (§ 436.425, RSMo)
   f. Consumer funds are deposited timely and adequately documented by the seller so that the examiner can reconcile monthly activity; (§§ 436.430, 450 and 456, RSMo)
   g. If the seller’s preneed contracts are performed by a third party provider, that such seller has a written provider agreement with each provider; (§§ 333.320 and 436.420, RSMo)
   h. Seller maintains its fulfilled contracts and related records for 5 years; (§ 436.465, RSMo)
   i. Seller records confirm annual reports filed with the board; (§ 436.460, RSMo)
   j. Seller handled cancellations or transfers in accordance with statute; (§ 436.456, RSMo)
   k. If a provider funeral home has complained to the board, whether seller complies with statutes regarding payments at death of preneed beneficiary; (§§ 436.430, 450, 465, RSMo)

Commented [A1]: Staffs has a concern with interpreted by the board if it’s not outlined somewhere.
1. Staff shall look at 100% of all active preneed contracts that have been sold since the last financial examination and may look at a sampling of other active and fulfilled preneed contracts, at the direction of the financial supervisor and executive director, as required to assure fulfillment of the general directives of the board as set forth in these guidelines.

8. For trust funded preneed contracts, the examiner shall also:
   a. Confirm that the trust agreement complies with statutory requirements found in chapters 333 and 436, RSMo.

9. For joint account funded preneed contracts, established since the prior financial examination the examiner shall also:
   a. Confirm that joint accounts are under joint control of the seller and the purchaser; (§436.455, RSMo) (the examiner may rely upon a certification from the issuing bank)
   b. Confirm that 100% of consumer paid funds are deposited to the joint account; (§436.455, RSMo)

10. For insurance funded preneed contracts issued since the prior financial examination, the examiner shall also:
    a. Confirm that the seller is not the owner of the insurance policy, for preneed contracts under the new law; (§ 436.450, RSMo) (the examiner may rely upon a certification from the issuing insurance company)
    b. Seller shall request from the insurance company a report of all premium payments received from the seller.
    c. Seller shall request from the insurance company a report of all policy surrenders or maturities, and the payee.

Commented [A2]: Staff is asking if this should be done by board counsel instead of staff
Financial Examination Evaluation Procedures

1. For each financial examination, the examiner shall prepare an exceptions report for review by the financial examination supervisor.

2. Upon receipt of a financial examination report, unless there is a need for immediate action as set forth in Sections 333.330.4 or 333.335, RSMo, the financial examination committee shall evaluate the exceptions pursuant to the criteria established by the board. Based on such evaluation the examination committee shall send a copy of the financial examination report to the licensee for response with recommendations for future corrective actions and/or corrective actions to be taken regarding existing exceptions, giving the licensee at least 30 days to file a written response with the examination committee. This response may dispute the findings and provide evidence to support the seller’s response, it may present a plan to remedy the exceptions noted in the final examination report or it may provide any other response the seller wishes the board to consider.

3. After the response time has passed, the financial examination report and the licensee’s response shall be considered by the examination committee*. The examination committee may take one of the following actions:
   a. The committee staff may accept the financial examination report if it has no exceptions unless otherwise directed or if
   b. If all exceptions have been resolved the committee may direct staff to close the exam;
   c. The committee may accept the seller’s plan to resolve the exceptions and give the seller up to 18 months a timeframe to resolve the exceptions, at the committee’s discretion;
   d. The committee may offer additional direction to the licensee as to what is required to resolve the exceptions and the committee may offer the licensee additional time to resolve the exceptions, but no longer than 18 months unless there are special circumstances, at the committee’s discretion;
   e. The committee may refer the financial examination report and the seller’s response to the full board for further action.

4. The examination committee shall have no authority to seek any judicial action or to initiate any disciplinary process.

5. Upon direction by either the examination committee or the full board to close a financial examination, board staff shall provide the seller with a written notice that the exam has been closed.

End of directives

* Financial Examination Committee is official name of committee
Implementation
The following outlines staff implementation of the board’s directives.

1. PRE ONSITE VISIT

- A random selection of preneed sellers is created using electronic means.
- From that random selection, examination notification letters are mailed to sellers, requesting specific information within thirty (30) days of letter date. Examination information is received in office and scanned for use by the examiners. Thirty day extensions will be granted when a reasonable basis for additional time is given by the seller.
- The notification letter shall also request a copy of all preneed contract forms used since the seller’s prior financial examination.
- The notification letter shall specify the monthly consumer payment reports and bank/insurance reports for production for the desk top review of timely deposits.
- The notification letter shall request information about each trustee or insurance company utilized by the seller since the seller's prior financial examination, and shall provide a sample of the report requests to be made of each such entity.
- Examiner supervisor assigns examination to examiner via email, pursuant to section 436.470.3.
- The examiner shall review the preneed contract forms provided by the seller and determine the funding used and whether the contract involves price guarantees. The examiner will review the contract form for Section 436.425 compliance pursuant to the board’s directives. The examiner supervisor will communicate with the seller of any and all items missing from the contract so the seller can make the changes and provide a revised contract. This will be noted on the exam report; however no photos or exceptions will be made solely on this matter for this exam.
- The examiner shall reconcile the seller’s deposit reports to the trust reports or insurance reports as appropriate.
- Examiner records scanned information from seller into a working document, including details of the contracts as provided, and conducts preliminary analysis of this information prior to the onsite visit.
- Upon completion of the preliminary analysis, examiner contacts seller to schedule the onsite visit.

2. ONSITE VISIT

- Examiner meets with person in charge or their representative to determine location of preneed contracts, trustee reports, insurance company reports, and related information, as well as the assigned work area. (See Preliminary Interview steps below.)

Preliminary Interview
The examiner may ask, at a minimum, the following questions in order to obtain sufficient information about the seller’s practices.
1. Where are the requested contract files located?
2. Where are the consumer payment reports?
3. Where are the preneed funding agent reports?
4. Who is the contact person for questions during and after the onsite visit?
5. What are the funding sources used in the past and currently used, including specific names of trust companies, financial institutions, and insurance companies.
6. How does seller handle cancellations and transfers (if this information was not already provided in the random examination information)?
7. Discuss and provide the Financial Examination Attestation document and explain its purpose.
8. Has the seller’s preneed contract form changed since the last examination?
9. Copy consumer payment reports and current bank/trust/insurance reports.
   • Examiner reviews contract files, following specific steps (listed under Scope of Examinations).
   • Examiner explains and obtains seller’s signature on “Financial Examination Attestation” form (sample on page 12-13), which states that the seller has not used any preneed contracts as collateral or security for a loan, and that the seller has provided access to all records necessary to conduct the examination.
   • Examiner explains the current status of examination process to the seller’s representative, including the possibility of a consumer letter mailing.
   • Photos are to be taken of all exceptions.
   • If the examiner notices the seller is not completing the consumer telephone number, listing the provider/seller number on the contract, and disclosure pages the examiner shall document these matters on the report and have a discussion with the seller. This matter will be documented in the financial exam; however the seller will not be required to correct the contracts for this exam. Exams in the future will site these items as exceptions and the seller will be required to correct the exceptions.
   • At the conclusion of the examiners review of contract files, the examiner will meet with the seller’s representative to discuss any exceptions regarding missing contract files, trustee or insurance reports, or related files to give the seller an opportunity to locate such records.
3. POST ONSITE VISIT

- Consumer letters will only be done at the direction of the financial committee or the full board.

  - Examiner creates a listing of those consumers randomly selected for consumer letters.
    
    A. Criteria for consumer letters, which applies only to contracts that are trust-funded and joint account funded: send to 100% of those still making payments or some evidence of a less than full payment, 5% of those already paid in full, and 100% of those with contracts where no payment made (that are still considered valid contracts and not just consumer “wishes” lists). Consumer letters are only derived from joint account-funded contracts or trust accounts when the trust is owned by the seller. Insurance-funded contracts and contracts through other sellers are NOT included in the consumer letter mailing, as well as no letters for pre-1982 contracts.
    
    B. If the contract payment information letter is more than 60 days past the information provided by the seller, obtain an updated report from the seller. Consumer letters should be mailed within 30 days of the information provided by the seller, and should disclose the date of the information to the consumer.
    
    C. Discrepancies from consumers are noted (examiner to refer to seller for explanation prior to writing-up report).
    
    C. If no contact is made by the consumer, the examiner assumes the consumer considers the information as correct.

- Examiner conducts further analysis of data.
- Examiner contacts seller or visits again to discuss any concerns/discrepancies, sending list of any questions to seller.
- Examiner prepares final examination report.

4. POST ONSITE EVALUATION

- Final examination report is reviewed first by examiner supervisor and executive director and if no corrections are made, then by the examination committee.

- Unless there is a need for immediate action as set forth in sections 333.330.4 or 333.335, RSMo, the examination committee shall evaluate the exceptions pursuant to the criteria established by the board. Based on such evaluation, the examination committee the examiner supervisor will send a copy of the financial examination report to the seller with recommendations for future corrective actions and/or corrective actions to be taken regarding existing exceptions and the seller is given giving the seller at least 30 days to provide a written response to the board. The response may dispute the findings and provide evidence to support the seller’s response, it may present a plan to remedy the exceptions noted, or it may provide any other response the seller wishes the board to consider.

- Examination report and seller’s response is reviewed by the financial examination committee (committee), who may take one of the following actions:
  a. The staff may Accept the final examination report if it has no exceptions unless otherwise directed or
cb. If all exceptions have been resolved the committee may and direct staff to close the exam;
c. The committee may accept the seller’s plan to resolve the exceptions and give the seller additional time up to 18 months to resolve the exceptions, at the committee’s discretion;

d. Offer additional direction to the seller as to what is required to resolve the exceptions and the committee may offer the seller additional time to resolve the exceptions, but no longer than 18 months unless there are special circumstances, at the committee’s discretion;

e. Refer the financial examination report and the seller’s response to the full board for further action.

• The committee shall have no authority to seek any judicial action or to initiate any disciplinary process.

• Upon direction by either the committee or the full board to close a financial examination, board staff shall provide the seller with a written notice that the financial examination has been closed.
5. SCOPE OF FINANCIAL EXAMINATION

A. General
For all preneed sellers, the examiners shall confirm:
1) Seller license is current and active;
2) Seller affirms it has provided the board access to all preneed contracts by signing the Financial Examination Attestation form;
3) Preneed contracts meet the applicable statutory requirements (Section 436.425);
4) Seller maintains records of preneed contracts, trustee reports, insurance reports and related documents that are adequate to allow the examiner to reconcile consumer payments received by the seller to the funds reported by the seller’s funding agents;
5) Seller obtains written consent from purchaser of any change in funding type for contracts after August 28, 2009;
6) Consumer funds are timely deposited and consumer payments are adequately tracked by the seller. Examiner will conduct a sampling of consumer payments (5% of contracts entered since previous exam) to check for timeliness of deposits, depending on the funding source, as required by statutes. (Trust payments must be deposited within 60 days of receipt, insurance payments must be remitted within 30 days of receipt, and joint account funds must be deposited within 10 days of receipt);
7) Seller has contracts with its providers and trustee; (examiner will confirm the existence of trust agreements and any agreements with providers, if applicable)
8) Seller maintains its fulfilled contracts and related records for 5 years;
9) Seller records are in agreement with seller’s reporting on annual reports;
10) Seller properly handled cancellations or transfers in accordance with statute;
11) Seller complies with statutes regarding payments at death of preneed beneficiary;
12) The examiner shall also note in the financial examination report any other findings that the seller is not in compliance with provisions of chapters 333, 436, RSMo, related to being a preneed seller;
13) Staff shall look at 100% of all active preneed contracts that have been sold since the period covered under the last financial examination and may look at a sampling of other active and fulfilled preneed contracts, at the direction of the executive director and examiner supervisor, as required to assure fulfillment of the general directives of the board as set forth in these guidelines.

B. Applicable To All Contracts
1) Prior to on-site visit, examiner is to review the contract forms provided by the seller, checking for the following below, and also recording any additional contracts found onsite but not previously provided to ensure compliance with statutory requirements of Section 436.425 RSMo. This will require the examiner to determine the funding contemplated by the contract form, and whether the contract form contemplates price guarantees. (Note: it is acceptable for seller to use the preprinted contract numbers stamped on the contract, such as standard preneed contracts from an insurance company or other seller) Each contract form shall clearly and conspicuously:
   a) Be in writing and in a font type and size that are easily read.
   b) Be sequentially numbered (Examiner will review the seller’s annual report to confirm sequential numbers used and ask seller about their sequential numbering system if clarification is necessary.)
   c) Include space for the name, address and phone number of the purchaser and beneficiary;


d) Include the name, address, phone and license number of the provider and the seller;

e) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested, which could include that specifics will be determined at a later date or similar wording;

f) Identify the funding source as either trust funded, insurance funded, or joint account funded (examiner will also confirm that the contract wording for funding is in agreement with the actual funding source);

g) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;

h) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;

i) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;

j) Prominently identify whether the contract is revocable or irrevocable;

k) Set forth the terms for cancellation by the purchaser or by the seller if applicable;

l) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;

m) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;

n) Include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative;

o) Prominently identify whether the contract is a guaranteed or nonguaranteed contract;

p) Include any applicable consumer disclosures required by the board by rule;

q) Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the purchaser for the funeral services in such an event;

r) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

2) Examiner will collect copies/take photos of any documentation to support any exceptions.

3) For any contract information previously provided by the seller on a printed report (trust report, insurance report, or bank account listing), examiner will compare previously reported information to the actual contract for consumer name, contract amount, consumer payments, etc. and note any differences. Examiner will note any contracts listed on trust, insurance or bank reports but contracts not found onsite, as well as any contracts found onsite but with no supporting funding source as noted in the contract. Examiner will also compare preneed contracts located onsite to preneed contracts listed on the annual renewals.

4) Examiner will also record any additional contracts found onsite but not previously provided, as well as noting any insurance policies naming the seller as beneficiary, or assignee but lacking a preneed contract.

5) Examiner will conduct a sample of cancelled contracts (minimum of 5, or all if less than 5 available) to ensure that cancellations were handled in accordance with
statutes (section 436.456 for consumer cancellations and section 436.457 for seller cancellations).

6) Examiner will conduct a sample of consumer payments (5%, minimum of 20 or all if less than 20 available, of contracts entered since previous exam) to confirm timeliness of deposits by the seller.

C. Applicable to Trust Funded Preneed Contracts

- For trust funded contracts sold prior to August 28, 2009, seller could retain from consumer payments an amount up to 20% of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.
- For trust funded contracts sold after August 28, 2009, seller can request trustee to distribute to the seller an amount up to 15% of the face value of the contract, after 15% of consumer payments are made.
- Examiner’s work product will include a calculation of the amount that should be in trust, taking into account the amount of consumer payments and allowable retainage percentage. This amount will be compared to the amount of deposits into the trust accounts, and any corresponding shortages in the deposits will be noted and later forwarded to the seller for explanation.
- Examiner will also verify that while funds relating to two or more contracts may be deposited into and commingled in the same preneed trust, the trustee must maintain records to separately identify the payments, deposits, earnings, and distributions for each preneed contract.
- Examiner will confirm the existence of trust agreements, verifying that the seller is listed as the grantor or trustor and the financial institution is listed as the trustee.

D. Applicable to Joint Account Funded Preneed Contracts

- Examiner’s work product will include a comparison of funds paid by the consumer to the amount held in the bank account on the consumer’s behalf.
  - Funds are allowed to be held in savings accounts, checking accounts, passbooks, certificates of deposit, etc.
  - Funds deposited in the bank account must be at least as much as the total consumer payments. Any shortages will be noted and later forwarded to the seller for explanation.
- Examiner will verify that each consumer’s funds are held in separate bank accounts.
- Examiner will also verify (by means of a written attestation received from each financial institution used by the seller) that the accounts are under joint control of the seller and consumer. If such joint control confirmation is not received from the financial institution through the initial receipt of examination information prior to the onsite, examiner will request seller to obtain such written confirmation from all financial institutions holding consumer funds.
- Titling of accounts is not specifically reviewed, but examiner will make inquiries for any questions.

E. Applicable to Insurance Funded Preneed Contracts

- A preneed contract is required in situations where seller has written documentation from an insurance company indicating they are the owner, beneficiary, or assignee of an insurance policy.
For contracts entered after August 28, 2009, the seller or provider must be named as the beneficiary or assignee of the life insurance policy funding the contract.

For contracts entered prior to August 28, 2009, the seller was allowed to be the owner of the policy, but seller is prohibited from being the owner of the policy for contracts after August 28, 2009.

- If seller collected payments from the purchaser, payments shall be promptly remitted to the insurer pursuant to Section 436.450.3.
- If the seller is provided with an affiliated insurance report, the examiner will confirm that the report matches the preneed contracts.

F. Other

**Chapter 436 vs 214:** Prior to August 28, 2010, all preneed sales had to be under Chapter 436; cemeteries could only sell monuments/markers. If contract is prior to August 28, 2010, it is treated as all Chapter 436 except monuments, markers, and grave spaces. For contracts written after August 28, 2010, if the contract mentions 436 or states it is a 436 contract, then the entire contract is treated as under 436. If the contract (after August 28, 2010) is silent as to being 436 or 214, the examiner will analyze all pertinent facts to determine whether it is 436 or 214.
I. INSTRUCTIONS
Please read the below statements and page 2 of this attestation prior to signing the form.

II. GENERAL INFORMATION

SELLER NAME (PRINT FULL NAME)
SELLER ADDRESS (CITY, STATE, ZIP)
SELLER LICENSE NUMBER (REQUIRED)

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

As a preneed seller, I attest to the following:

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

SIGNATURE OF SELLER REPRESENTATIVE
DATE
PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER

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

As a preneed seller, I attest to the following:

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

SIGNATURE OF SELLER REPRESENTATIVE
DATE
PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER
Below are listed the statutory references relating to the affidavits in sections III and IV on the reverse side of this page. Prior to signing the affidavits on the reverse, please read the below.

**LOAN COLLATERAL STATUTORY REFERENCES**

**Statute 436.435.6 Compliance of contracts entered into prior to effective date—investment of trust property and assets—loans against assets prohibited:**
No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

**Statute 436.450 Insurance-funded preneed contract requirements:**
436.450.2 As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.
436.450.4 It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

**Statute 436.455.7 Joint account-funded preneed contract requirements:**
Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

**RECORDS ACCESS STATUTORY REFERENCES**

333.101 Places of business may be inspected.
333.101. The board or any member thereof or any agent duly authorized by it may enter the office, premises, establishment or place of business of any licensee or registrant, or any office, premises, establishment or place where the practice of funeral directing, embalming, preneed selling or providing is carried on, or where such practice is advertised as being carried on for the purpose of inspecting said office, premises or establishment and for the purpose of inspecting the license and registration of any licensee or registrant and the manner and scope of training given by the licensee or registrant to the apprentice operating therein.

436.470 Complaint procedure—violation, attorney general may file court action
436.470.2 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 436.440 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.
436.470.6 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 436.460 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.

436.485 Violations, penalties.
436.485.1 Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.440 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.440 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction with any local prosecutor to prosecute under this section.
436.485.2 Any violation of the provisions of sections 436.440 to 436.520 shall constitute a violation of the provisions of section 407.020. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.440 to 436.520, the court may order all relief and penalties authorized under chapter 407 and, in addition to imposing the penalties provided for in sections 436.440 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or preneed agent.
MISSOURI
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

FINANCIAL EXAMINATION PROCEDURE HANDBOOK

2018
EXAMINATION DIRECTIVES - APPROVED BY BOARD .........................................................03

IMPLEMENTATION ...........................................................................................................05

PRE ONSITE VISIT ...........................................................................................................05

ONSITE VISIT ..................................................................................................................06

POST ONSITE VISIT .........................................................................................................07

POST ONSITE EVALUATION .............................................................................................07

SCOPE OF FINANCIAL EXAMINATION ..........................................................................08

GENERAL ..........................................................................................................................08

APPLICABLE TO ALL CONTRACTS ..................................................................................08

APPLICABLE TO TRUST FUNDED PRENEED CONTRACTS ..............................................10

APPLICABLE TO JOINT ACCOUNT FUNDED PRENEED CONTRACTS ............................10

APPLICABLE TO INSURANCE FUNDED PRENEED CONTRACTS ......................................10

OTHER ................................................................................................................................11

FINANCIAL EXAMINATION ATTESTATION DOCUMENT ................................................12
General Board Directives to Staff

1. Examinations are done to fulfill the board’s statutory direction in Section 436.470, RSMo, to conduct financial examinations of each preneed seller at least once every 5 years.

2. Examinations are done within the scope of the board’s statutory authority and to fulfill the board’s purpose of protecting the public by ensuring that preneed sellers are complying with their statutory requirements and duties.

3. Examinations are done for the purpose of ensuring that sellers are safeguarding preneed funds and that the funds are properly utilized per contracts with the consumer and in accord with statutory requirements.

4. Staff shall work diligently and with good faith and fairness to ensure that each financial exam is conducted lawfully and with professional conduct to fulfill the board’s directives.

5. The board has prepared a financial exam procedures handbook to be used by all examiners in conducting financial examinations and to be provided to the industry as a guideline, the handbook shall set out all techniques for confirming data provided by sellers, consumers, financial institutions and insurance companies.

6. Staff may request information from sellers, consumers, providers, preneed agents, that may be needed to reconcile financial information provided by the seller. The staff may not utilize any court or administrative process to require any person to comply with any staff request for information without prior board approval.

7. For trust funded preneed contracts, the examiner shall also:
   a. Confirm that the trust agreement complies with statutory requirements found in chapters 333 and 436, RSMo;

8. For joint account funded preneed contracts, established since the prior financial examination the examiner shall also:
   a. Confirm that joint accounts are under joint control of the seller and the purchaser; (§436.455, RSMo) (the examiner may rely upon a certification from the issuing bank)
   b. Confirm that 100% of consumer paid funds are deposited to the joint account; (§436.455, RSMo)

9. For insurance funded preneed contracts issued since the prior financial examination, the examiner shall also:
   a. Confirm that the seller is not the owner of the insurance policy, for preneed contracts under the new law; (§ 436.450, RSMo) (the examiner may rely upon a certification from the issuing insurance company)
   b. Seller shall request from the insurance company a report of all premium payments received from the seller.
   c. Seller shall request from the insurance company a report of all policy surrenders or maturities, and the payee.
Financial Examination Evaluation Procedures

1. For each financial examination, the examiner shall prepare an exceptions report for review by to the financial examination supervisor.

2. Upon receipt of a financial examination report, unless there is a need for immediate action as set forth in Sections 333.330.4 or 333.335, RSMo, the financial examination committee shall evaluate the exceptions pursuant to the criteria established by the board. Based on such evaluate the examiner supervisor shall send a copy of the financial examination report to the licensee for response, giving the licensee at least 30 days to file a written response with the examination committee. This response may dispute the findings and provide evidence to support the seller’s response, it may present a plan to remedy the exceptions noted in the final examination report or it may provide any other response the seller wishes the board to consider.

End of directives

* Financial Examination Committee is official name of committee
Implementation
The following outlines staff implementation of the board’s directives.

1. PRE ONSITE VISIT

- A random selection of preneed sellers is created using electronic means.
- From that random selection, examination notification letters are mailed to sellers, requesting specific information within thirty (30) days of letter date. Examination information is received in office and scanned for use by the examiners. Thirty day extensions will be granted when a reasonable basis for additional time is given by the seller.
- The notification letter shall also request a copy of all preneed contract forms used since the seller’s prior financial examination.
- The notification letter shall specify the monthly consumer payment reports and bank/insurance reports for production for the desk top review of timely deposits.
- The notification letter shall request information about each trustee or insurance company utilized by the seller since the seller’s prior financial examination, and shall provide a sample of the report requests to be made of each such entity.
- Examiner supervisor assigns examination to examiner via email, pursuant to section 436.470.3.
- The examiner shall review the preneed contract forms provided by the seller and determine the funding used and whether the contract involves price guarantees. The examiner will review the contract form for Section 436.425 compliance pursuant to the board’s directives. The examiner supervisor will communicate with the seller of any and all items missing from the contract so the seller can make the changes and provide a revised contract. This will be noted on the exam report; however no photos or exceptions will be made solely on this matter for this exam.
- The examiner shall reconcile the seller’s deposit reports to the trust reports or insurance reports as appropriate.
- Examiner records scanned information from seller into a working document, including details of the contracts as provided, and conducts preliminary analysis of this information prior to the onsite visit.
- Upon completion of the preliminary analysis, examiner contacts seller to schedule the onsite visit.

2. ONSITE VISIT

- Examiner meets with person in charge or their representative to determine location of preneed contracts, trustee reports, insurance company reports, and related information, as well as the assigned work area. (See Preliminary Interview steps below.)

Preliminary Interview
The examiner may ask, at a minimum, the following questions in order to obtain sufficient information about the seller’s practices.
1. Where are the requested contract files located?
2. Where are the consumer payment reports?
3. Where are the preneed funding agent reports?
4. Who is the contact person for questions during and after the onsite visit?
5. What are the funding sources used in the past and currently used, including specific names of trust companies, financial institutions, and insurance companies.
6. How does seller handle cancellations and transfers (if this information was not already provided in the random examination information)?
7. Discuss and provide the Financial Examination Attestation document and explain its purpose.
8. Has the seller’s preneed contract form changed since the last examination?
9. Copy consumer payment reports and current bank/trust/insurance reports.
   - Examiner reviews contract files, following specific steps (listed under Scope of Examinations).
   - Examiner explains and obtains seller’s signature on “Financial Examination Attestation” form (sample on page 12-13), which states that the seller has not used any preneed contracts as collateral or security for a loan, and that the seller has provided access to all records necessary to conduct the examination.
   - Examiner explains the current status of examination process to the seller’s representative, including the possibility of a consumer letter mailing.
   - Photos are to be taken of all exceptions.
   - If the examiner notices the seller is not completing the consumer telephone number, listing the provider/seller number on the contract, and disclosure pages the examiner shall document these matters on the report and have a discussion with the seller. This matter will be documented in the financial exam; however the seller will not be required to correct the contracts for this exam. Exams in the future will site these items as exceptions and the seller will be required to correct the exceptions.
   - At the conclusion of the examiners review of contract files, the examiner will meet with the seller’s representative to discuss any exceptions regarding missing contract files, trustee or insurance reports, or related files to give the seller an opportunity to locate such records.
3. POST ONSITE VISIT

- Consumer letters will only be done at the direction of the financial committee or the full board.
- Examiner conducts further analysis of data.
- Examiner contacts seller or visits again to discuss any concerns/discrepancies, sending list of any questions to seller.
- Examiner prepares final examination report.

4. POST ONSITE EVALUATION

- Final examination report is reviewed first by examiner supervisor and executive director and if no corrections are made, then by the examination committee.
- Unless there is a need for immediate action as set forth in sections 333.330.4 or 333.335, RSMo, the examiner supervisor will send a copy of the financial examination report to the seller giving the seller at least 30 days to provide a written response to the board. The response may dispute the findings and provide evidence to support the seller’s response, it may present a plan to remedy the exceptions noted, or it may provide any other response the seller wishes the board to consider.
- Examination report and seller’s response is reviewed by the financial examination committee (committee), who may take one of the following actions:
  a. The staff may accept the final examination report if it has no exceptions unless otherwise directed.
  b. If all exceptions have been resolved the committee may direct staff to close the exam;
  c. The committee may accept the seller’s plan to resolve the exceptions and give the seller additional time to resolve the exceptions, at the committee’s discretion;
  d. Offer additional direction to the seller as to what is required to resolve the exceptions and the committee may offer the seller additional time to resolve the exceptions;
  e. Refer the financial examination report and the seller’s response to the full board for further action.
- The committee shall have no authority to seek any judicial action or to initiate any disciplinary process.
- Upon direction by either the committee or the full board to close a financial examination, board staff shall provide the seller with a written notice that the financial examination has been closed.
5. SCOPE OF FINANCIAL EXAMINATION

A. General
For all preneed sellers, the examiners shall confirm:
1) Seller license is current and active;
2) Seller affirms it has provided the board access to all preneed contracts by signing the Financial Examination Attestation form;
3) Preneed contracts meet the applicable statutory requirements (Section 436.425);
4) Seller maintains records of preneed contracts, trustee reports, insurance reports and related documents that are adequate to allow the examiner to reconcile consumer payments received by the seller to the funds reported by the sellers funding agents;
5) Seller obtains written consent from purchaser of any change in funding type for contracts after August 28, 2009;
6) Consumer funds are timely deposited and consumer payments are adequately tracked by the seller. Examiner will conduct a sampling of consumer payments (5% of contracts entered since previous exam) to check for timeliness of deposits, depending on the funding source, as required by statutes. (Trust payments must be deposited within 60 days of receipt, insurance payments must be remitted within 30 days of receipt, and joint account funds must be deposited within 10 days of receipt);
7) Seller has contracts with its providers and trustee; (examiner will confirm the existence of trust agreements and any agreements with providers, if applicable)
8) Seller maintains its fulfilled contracts and related records for 5 years;
9) Seller records are in agreement with seller’s reporting on annual reports;
10) Seller properly handled cancellations or transfers in accordance with statute;
11) Seller complies with statutes regarding payments at death of preneed beneficiary;
12) The examiner shall also note in the financial examination report any other findings that the seller is not in compliance with provisions of chapters 333, 436, RSMo, related to being a preneed seller;
13) Staff shall look at 100% of all active preneed contracts that have been sold since the period covered under the last financial examination and may look at a sampling of other active and fulfilled preneed contracts, at the direction of the executive director and examiner supervisor, as required to assure fulfillment of the general directives of the board as set forth in these guidelines.

B. Applicable To All Contracts
1) Prior to on-site visit, examiner is to review the contract forms provided by the seller,, checking for the following below, and also recording any additional contracts found onsite but not previously provided to ensure compliance with statutory requirements of Section 436.425 RSMo. This will require the examiner to determine the funding contemplated by the contract form, and whether the contract form contemplates price guarantees. (Note: it is acceptable for seller to use the preprinted contract numbers stamped on the contract, such as standard preneed contracts from an insurance company or other seller) Each contract form shall clearly and conspicuously:
   a) Be in writing and in a font type and size that are easily read.
   b) Be sequentially numbered (Examiner will review the seller’s annual report to confirm sequential numbers used and ask seller about their sequential numbering system if clarification is necessary.)
   c) Include space for the name, address and phone number of the purchaser and beneficiary;
d) Include the name, address, phone and license number of the provider and the seller;

e) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested, which could include that specifics will be determined at a later date or similar wording;

f) Identify the funding source as either trust funded, insurance funded, or joint account funded (examiner will also confirm that the contract wording for funding is in agreement with the actual funding source);

g) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;

h) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;

i) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;

j) Prominently identify whether the contract is revocable or irrevocable;

k) Set forth the terms for cancellation by the purchaser or by the seller if applicable;

l) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;

m) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;

n) Include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative;

o) Prominently identify whether the contract is a guaranteed or nonguaranteed contract;

p) Include any applicable consumer disclosures required by the board by rule;

q) Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the purchaser for the funeral services in such an event;

r) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

2) Examiner will collect take photos of any documentation to support any exceptions.

3) For any contract information previously provided by the seller on a printed report (trust report, insurance report, or bank account listing), examiner will compare previously reported information to the actual contract for consumer name, contract amount, consumer payments, etc. and note any differences. Examiner will note any contracts listed on trust, insurance or bank reports but contracts not found onsite, as well as any contracts found onsite but with no supporting funding source as noted in the contract. Examiner will also compare preneed contracts located onsite to preneed contracts listed on the annual renewals.

4) Examiner will also record any additional contracts found onsite but not previously provided, as well as noting any insurance policies naming the seller as beneficiary, or assignee but lacking a preneed contract.

5) Examiner will conduct a sample of cancelled contracts (minimum of 5, or all if less than 5 available) to ensure that cancellations were handled in accordance with
statutes (section 436.456 for consumer cancellations and section 436.457 for seller cancellations).

6) Examiner will conduct a sample of consumer payments (5%, minimum of 20 or all if less than 20 available, of contracts entered since previous exam) to confirm timeliness of deposits by the seller.

C. Applicable to Trust Funded Preneed Contracts
- For trust funded contracts sold prior to August 28, 2009, seller could retain from consumer payments an amount up to 20% of the of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.
- For trust funded contracts sold after August 28, 2009, seller can request trustee to distribute to the seller an amount up to 15% of the face value of the contract, after 15% of consumer payments are made.
- Examiner’s work product will include a calculation of the amount that should be in trust, taking into account the amount of consumer payments and allowable retainage percentage. This amount will be compared to the amount of deposits into the trust accounts, and any corresponding shortages in the deposits will be noted and later forwarded to the seller for explanation.
- Examiner will also verify that while funds relating to two or more contracts may be deposited into and commingled in the same preneed trust, the trustee must maintain records to separately identify the payments, deposits, earnings, and distributions for each preneed contract.
- Examiner will confirm the existence of trust agreements, verifying that the seller is listed as the grantor or trustor and the financial institution is listed as the trustee.

D. Applicable to Joint Account Funded Preneed Contracts
- Examiner’s work product will include a comparison of funds paid by the consumer to the amount held in the bank account on the consumer’s behalf.
  - Funds are allowed to be held in savings accounts, checking accounts, passbooks, certificates of deposit, etc.
  - Funds deposited in the bank account must be at least as much as the total consumer payments. Any shortages will be noted and later forwarded to the seller for explanation.
- Examiner will verify that each consumer’s funds are held in separate bank accounts.
- Examiner will also verify (by means of a written attestation received from each financial institution used by the seller) that the accounts are under joint control of the seller and consumer. If such joint control confirmation is not received from the financial institution through the initial receipt of examination information prior to the onsite, examiner will request seller to obtain such written confirmation from all financial institutions holding consumer funds.
- Titling of accounts is not specifically reviewed, but examiner will make inquiries for any questions.

E. Applicable to Insurance Funded Preneed Contracts
- A preneed contract is required in situations where seller has written documentation from an insurance company indicating they are the owner, beneficiary, or assignee of an insurance policy.
o For contracts entered after August 28, 2009, the seller or provider must be named as the beneficiary or assignee of the life insurance policy funding the contract.

o For contracts entered prior to August 28, 2009, the seller was allowed to be the owner of the policy, but seller is prohibited from being the owner of the policy for contracts after August 28, 2009.

- If seller collected payments from the purchaser, payments shall be promptly remitted to the insurer pursuant to Section 436.450.3.
- If the seller is provided with an affiliated insurance report, the examiner will confirm that the report matches the preneed contracts.

F. Other

Chapter 436 vs 214: Prior to August 28, 2010, all preneed sales had to be under Chapter 436; cemeteries could only sell monuments/markers. If contract is prior to August 28, 2010, it is treated as all Chapter 436 except monuments, markers, and grave spaces. For contracts written after August 28, 2010, if the contract mentions 436 or states it is a 436 contract, then the entire contract is treated as under 436. If the contract (after August 28, 2010) is silent as to being 436 or 214, the examiner will analyze all pertinent facts to determine whether it is 436 or 214.
I. INSTRUCTIONS

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

II. GENERAL INFORMATION

<table>
<thead>
<tr>
<th>SELLER NAME (PRINT FULL NAME)</th>
<th>SELLER ADDRESS (CITY, STATE, ZIP)</th>
<th>SELLER LICENSE NUMBER (REQUIRED)</th>
</tr>
</thead>
</table>

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

As a preneed seller, I attest to the following:

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

<table>
<thead>
<tr>
<th>SIGNATURE OF SELLER REPRESENTATIVE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER</td>
<td></td>
</tr>
</tbody>
</table>

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

As a preneed seller, I attest to the following:

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

<table>
<thead>
<tr>
<th>SIGNATURE OF SELLER REPRESENTATIVE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER</td>
<td></td>
</tr>
</tbody>
</table>
Below are listed the statutory references relating to the affidavits in sections III and IV on the reverse side of this page. Prior to signing the affidavits on the reverse, please read the below.

**LOAN COLLATERAL STATUTORY REFERENCES**

Statute 436.435.6 Compliance of contracts entered into prior to effective date—investment of trust property and assets—loans against assets prohibited:

No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

Statute 436.450 Insurance-funded preneed contract requirements:

436.450.2 As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

436.450.4 It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

Statute 436.455.7 Joint account-funded preneed contract requirements:

Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

**RECORDS ACCESS STATUTORY REFERENCES**

333.101 Places of business may be inspected.

333.101. The board or any member thereof or any agent duly authorized by it may enter the office, premises, establishment or place of business of any licensee or registrant, or any office, premises, establishment or place where the practice of funeral directing, embalming, preneed selling or providing is carried on, or where such practice is advertised as being carried on for the purpose of inspecting said office, premises or establishment and for the purpose of inspecting the license and registration of any licensee or registrant and the manner and scope of training given by the licensee or registrant to the apprentice operating therein.

436.470 Complaint procedure—violation, attorney general may file court action

436.470.2 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.

436.470.6 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.

436.485 Violations, penalties.

436.485.1 Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.400 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.400 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction with any local prosecutor to prosecute under this section.

436.485.2 Any violation of the provisions of sections 436.400 to 436.520 shall constitute a violation of the provisions of section 407.020. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.400 to 436.520, the court may order all relief and penalties authorized under chapter 407 and, in addition to imposing the penalties provided for in sections 436.400 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or preneed agent.
20 CSR 2120-3.105 Filing of Annual Reports

Purpose: The purpose of the readoption is to outline the procedures for filing of annual reports for preneed sellers and preneed providers as amended when chapter 436 was revised in 2009.

PURPOSE: This rule prescribes the board's process for the filing of annual reports under the revised sections of Chapters 333 and 436, RSMo.

(1) For sellers:
    (A) Each preneed seller shall file a completed renewal on or by October 31st each year. If the license is not renewed by this date the license shall expire.
    (B) Each preneed seller shall file a completed annual report by October 31st each year. If this is not filed the license shall be automatically suspended until the time the completed annual report is filed and all applicable fees have been paid.
    (C) In completing the seller annual report the following is applicable:
        (1) The number of preneed contracts sold in the reporting year (including those written that were cancelled, fulfilled, transferred or serviced in the same reporting year);
        (2) If a consumer has more than one preneed contract with different preneed sellers the contract should be identified on the annual report and the per contract fee is required for each preneed contract;
        (3) If a consumer has one (1) preneed contract with multiple funding sources the contract should be identified on the annual report and one (1) per contract fee is to be submitted.
    (D) For the seller annual report, if the seller is unable to validate the status and face value of the insurance policy and unable to obtain the certification from the insurance company, the following information will meet the requirements of Section 436.460.4 for the reporting requirements for insurance funded preneed contracts:
        (1) The name and address of the company issuing the policy or annuity funding the preneed;
        (2) The amount of the policy or balance on account at the time the preneed contract was sold, and;
        (3) An attestation from the seller that since these accounts are funded by insurance, the seller has no ability to confirm the existence or amount of the policies or accounts.
    (E) If the license is suspended the applicant must file the annual report and renewal and pay the delinquent fee established by the board before the license is issued.
    (F) If the licensee fails to file the renewal from every reporting period and pay the renewal and delinquent fee within two (2) years from date of expiration the license shall become void and the licensee will have to reapply.
    (G) If the license is not current the licensee shall not act as a preneed seller in any capacity, such as maintaining an active trust account or paying providers for fulfilled preneed contracts.

(2) For providers:
    (A) Each preneed provider shall file a completed annual report on or by October 31st each year. If the license is not renewed by this date the license shall expire.
    (B) If the license expires the applicant must file the annual report pay the renewal and delinquent fee established by the board before the license is issued.
(C) If the licensee fails to file the annual report from every reporting period and pay the delinquent fee within two (2) years from date of expiration the license shall become void and the licensee will have to reapply.

(D) If the license is not current the licensee shall not act as a preneed provider in any capacity, such as servicing preneed contracts or being named as a provider on such.

Authority: 333.315, 333.320, and 436.460 RSMo 2009
Purpose: The purpose of the proposed amendment is to simplify the language relating to acceptable funding mechanisms for preneed contracts.


PURPOSE: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) [Preneed contracts shall only be funded by:
(A) A preneed trust as defined by section 436.405.1(8), RSMo;
(B) An insurance policy or single premium annuity contract as defined by section 436.405.1(3), RSMo; or
(C) A joint account as defined by section 436.405.1(4), RSMo.]

The assignment of an insurance policy does not create a preneed contract.

(2) Preneed contracts funded by any [other] mechanism not provided for in Chapter 436 are [shall be] non-compliant with the requirements of sections 436.400 to 436.52[0]5, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the board under sections 436.400 to 436.52[0]5, RSMo.


<table>
<thead>
<tr>
<th></th>
<th>Year-To-Date</th>
<th>Projected</th>
<th>Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2019 Beginning Fund Balance</td>
<td>2,710,632.30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue</td>
<td>468,896.00</td>
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<td></td>
</tr>
<tr>
<td>Expense and Equipment</td>
<td>28,478.54</td>
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</tr>
<tr>
<td>Total Transfers</td>
<td>168,088.42</td>
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<tr>
<td>Ending Fund Balance</td>
<td>2,982,961.34</td>
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</table>
## FY 2019 Monthly Fund Balance Sheet

<table>
<thead>
<tr>
<th>Month</th>
<th>Projected (PENDING)</th>
<th>Actual</th>
<th>Remaining</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>July</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td>2,710,632.30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td>2,658,256.01</td>
<td>2,617,623.33</td>
<td></td>
</tr>
<tr>
<td>November</td>
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<td>2,617,623.33</td>
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<td>2,617,623.33</td>
</tr>
<tr>
<td>December</td>
<td></td>
<td>2,982,961.34</td>
<td>2,982,961.34</td>
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</tr>
<tr>
<td>January</td>
<td></td>
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<td>2,982,961.34</td>
</tr>
<tr>
<td>February</td>
<td></td>
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</tr>
<tr>
<td>March</td>
<td></td>
<td>2,982,961.34</td>
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</tr>
<tr>
<td>April</td>
<td></td>
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<td>2,982,961.34</td>
</tr>
<tr>
<td>May</td>
<td></td>
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</tr>
<tr>
<td>June</td>
<td></td>
<td>2,982,961.34</td>
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</tr>
<tr>
<td>Lapsed July</td>
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</tr>
<tr>
<td>Total</td>
<td></td>
<td>2,982,961.34</td>
<td>2,982,961.34</td>
<td>2,982,961.34</td>
</tr>
</tbody>
</table>

### Appropriation Costs:

- **Beginning Fund Balance**: 2,710,632.30
- **Revenue**: 6,194.00
- **Revenue Adjustment**: 0.00
- **Total Revenue**: 6,194.00
- **Appropriation Costs**:
  - **Expense and Equipment**: 9,751.47
  - **Personal Service and Per Diem**: 0.00
  - **Total Appropriation Costs**: 9,751.47

### PR Transfers (HB 7.530):

- **PR Transfers**:
  - **Rent**: 2,013.18
  - **DIFP Department Cost Allocation**: 445.45
  - **Licensee Refunds**: 2,079.00
  - **Start-Up Loan**: 0.00
  - **Division PR Transfer**:
    - **Division-Wide Costs**: 1,939.02
    - **Purchasing Staff**: 67.04
    - **Legal Team**: 2,377.05
    - **CRR**: 311.27
    - **Total Division PR Transfer**: 0.00
  - **Total PR Transfers**: 0.00

### GR Transfer (HB 7.535):

- **GR Transfer**:
  - **Attorney General**: 0.00
  - **Administrative Hearing Comm.**: 43.00
  - **Total GR Transfer**: 0.00

### Other Transfers:

- **Workers Compensation**: 0.00
- **Unemployment**: 0.00
- **Board Staff Fringe Benefits**: 0.00
- **Biennium Sweep**: 0.00
- **OA Cost Allocation Transfer**: 1,259.00

### FY 2018 Transfers Carried Over:

- **FY 2018 May/June PR Transfer**: 47,527.18
- **FY 2018 July Lapse PR Transfer**: 0.00
- **FY 2018 PR Transfer Adjustment**: (1,489.11)
- **FY 2018 Final Rent Transfer**: 8.01
- **FY 2018 DIFP Transfer Adjustment**: 0.00
- **FY 2018 AG - June**: 0.00
- **FY 2018 AHC - June**: 24.63

### Total FY 2018 Transfers Carried Over:

- **Total Transfers**: 47,559.82
- **Total Transfers Carried Over**: 47,559.82

### Difference of 0.02 due to rounding
Sandy,

As mentioned some time ago, the college is considering the installation of an embalming lab on the Forest Park Campus. With that said, administration has researched the state board requirements regarding licensure as a funeral establishment. Regarding rule 20 CSR 2120-2.70 Funeral Establishments number four states that a funeral establishment may be located in another building however, it must have its own address. Would this apply to an embalming room in the college?

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Program Director
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Fax: 314-644-9327
e-mail: dcoughran@stlcc.edu