

State Board of Embalmers and Funeral Directors

December 8-9, 2015

Stoney Creek Hotel & Conference Center
18011 Bass Pro Drive
Independence, MO 64055

OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors was called to order by Collin Follis, chairman, 10:32 a.m.

Roll Call

Board Members Present

Collin Follis, Chairman

Gary Fraker, Vice Chairman

Jerald Dickey, Secretary

Kenneth McGhee, Board Member

Eric Pitman, Board Member - 12/8/15 not present, 12/9/15 attended intermittently – motions reflect when in attendance

Archie Camden, Public Board Member

Staff Present

Sandy Sebastian, Executive Director

Tabatha Lenzini, Administrative Assistant

Lori Hayes, Inspector

Lisa Wildhaber, Examiner Supervisor

Sharon Euler, Division Legal Counsel

Leslie Nehring, Chief Financial Examiner, Insurance Division

Approval of Agenda

A motion was made by Gary Fraker and seconded by Jerald Dickey to approve the amended open agenda. Motion carried with Archie Camden and Kenneth McGhee voting in favor with no votes in opposition. Eric Pitman not present for the meeting.

Scope of Financial Examinations (Attachment A)

Sandy distributed a staff/counsel recommendation for the upcoming round of financial examinations and a memo dated September 181, 2015 assembled by Lisa Wildhaber in response to the board's request to review techniques for sampling. Sharon reviewed highlights of staff/counsel recommendation and Lisa's memo and stated that a lot of time and thought was put into the process, including consideration of the board's and public's comments. Sharon and Sandy stated that they wanted to provide to the board ahead of the public session the following day to allow the board to review and also shared with the board that Leslie Nehring, Chief Financial Examiner with the Insurance division of the department would be present tomorrow to visit with the board about how financial examinations are done in that division.

Move to Closed

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

Executive Director Report

Sandy shared with the board that Kristin Butler, financial examiner, had resigned and her last day was December 14, 2015.

Sandy reported that the financial report for October 2015 was enclosed showing the actual revenue and expenses of the board for the fiscal year thus far. She stated the projections were not yet finalized by the division accounting office and therefore the top page that is normally included was not. The board had no questions.

Sandy provided an update on the pending license system stating that the process was still underway; however the system was scheduled to go live December 1, 2015 and that timeline was not met.

Sandy shared that the reports for new licenses, closed/ceased licenses, disciplinary actions were included in the board's materials as informational.

Sandy shared with the board that upcoming conferences were as follows and asked the board if they would approve her to attend the FARB conference and stated that as a board director for The Conference she would be attending and if anyone was interested in attending.

- 40th Annual FARB Forum – January 28-31, 2016
- 112th Annual Meeting of The Conference – February 24-25, 2016

The board stated they had no concerns about Sandy attending both conferences and both Kenneth McGhee and Collin Follis expressed an interest in attending The Conference is division approves two board members to go.

Future Meeting Dates

The board set the following dates and locations for future meetings.

March 15-16, 2016 board meeting in Jefferson City

June 14-15, 2016 in St. Louis

September 14-15, 2016 in Jefferson City

December 7-8, 2016 in Kansas City

Legal Counsel Report

Sharon gave an update on National Prearranged Services (NPS) regarding PNC and National Bank having filed appeals in the case and that restitution paid to date by the NPS defendants was \$5,296,038

Approval of Minutes

A motion was made by Jerald Dickey and seconded by Archie Camden to approve the following minutes.

- May 28, 2013 Financial Examination Committee
- June 3, 2013 Financial Examination Committee
- July 10, 2013 Financial Examination Committee
- July 25, 2013 Financial Examination Committee
- August 6, 2013 Financial Examination Committee
- August 14, 2013 Financial Examination Committee
- August 27, 2013 Financial Examination Committee
- September 23, 2013 Financial Examination Committee
- October 21, 2013 Financial Examination Committee
- November 6, 2013 Financial Examination Committee
- December 16, 2013 Financial Examination Committee
- January 28, 2014 Financial Examination Committee
- February 10, 2014 Financial Examination Committee
- March 4, 2014 Financial Examination Committee
- March 18, 2014 Financial Examination Committee
- March 26, 2014 Financial Examination Committee
- April 30, 2014 Financial Examination Committee
- June 3, 2014 Financial Examination Committee
- July 15, 2014 Financial Examination Committee

July 22, 2014 Financial Examination Committee
August 5, 2014 Financial Examination Committee

Motion carried with Gary Fraker and Eric Pitman voting in favor with no votes in opposition. Kenneth McGhee abstained from voting.

Review of Proposed Rules (Attachment B)

The board reviewed draft regulations.

20 CSR 2120-3.525

The board discussed the draft and expressed concerns regarding approval of the investment advisor and the seller being given notice if such changes because the seller is the licensee the board would hold accountable as it is the licensee regulated.

What Constitutes Adequate Records for a Seller

The board discussed the draft and comments, among others, were made regarding the acceptability of electronic records and that if the seller has a trustee that records are maintained somewhere.

A motion was made by Kenneth McGhee and seconded by Jerald Dickey to table both drafts and ask staff to rework them given the comments. Motion carried with Archie Camden and Gary Fraker voting in favor with no votes in opposition. Eric Pitman was not present.

Scope of Financial Examination (Attachment A)

Sharon stated that the staff/counsel took the comments that were made during the previous discussions and worked diligently to review sampling techniques as well as rework the previous scope that was on the August 4-5, 2015 and August 10, 2015 meetings and develop the recommendation for 2016 that the board was reviewing. Sharon stated that Leslie Nehring, Chief Financial Examiner, with the Insurance division of the department agreed to come and talk to the board about how their examinations are conducted.

Leslie stated that insurance follows NAIC guidelines that provide basic authority but that they follow state law; that many years and revisions have gone into the guidelines used today; that insurance has of almost a staff 50; that they examine approximately 250 licensees; that they have 2 audit managers in charge of scheduling and they assign an examiner in charge. She stated that NAIC takes the best practices from across 56 jurisdictions and that the guidelines have been around for approximately 20 years. Leslie stated that they do 5 stages before sampling which includes understanding the company and reviewing quarterly reports, annual reports and reports from certified public accountants; reviewing internal controls; and that are times they would review 100% of the contracts, depending on the risk. She further stated that they examination reports are public. She stated that if there were any problems identified during sampling they would expand their review and that if underfunding is identified they require it be paid immediately and if not resolve they can move to put a company in administrative supervision and then receivership. Leslie stated that they have access to the companies web feeds to pull sampling from online purchases, have access to all computers of the company and passwords.

She suggested looking at more contracts rather than less because of how the funds are handled and that she felt it was appropriate to review 100% of all deposits and a sampling for consumer confirmation.

Sandy shared that out of 344 examinations completed, the top 5 exceptions noted were insurance assignments lacking a preneed contract, underfunding/shortages identified (approximately \$7.2million), seller was the owner of insurance policies after August 28, 2009, joint account titling, and contract language that conflicts with funding sources.

Members of the public questioned the consumer letter process; asked if there was a plan to adopt a plan that requires additional staff; questioned what the letter meant when seller received it stating examination file was being closed; questioned the board's authority regarding sellers making restitution; does the shortage reflect market loss. Members of the public also commented that maybe the board consider doing a percentage review based on those with no signatures; that the staff/counsel recommendation conflicted with what the board discussed during the rewrite of chapter 436 in 2009; and a request that the board look to add language to #4 of the recommendation to expand that if an examiner is offered an employment opportunity or has another conflict that they must notify their supervisors.

Following discussion a motion was made by Kenneth McGhee and seconded by Gary Fraker to table a decision to the January 6, 2015 meeting. Motion carried with Jerald Dickey, Eric Pitman and Archie Camden voting in favor with no votes in opposition.

Open Session/Discussion

No discussion

Move to Closed

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

Mark Collier - Probation Violation Hearing

A motion was made by Kenneth McGhee and seconded by Gary Fraker to approve the request for continuance. Motion carried with Archie Camden, Eric Pitman and Jerald Dickey voting in favor with no votes in opposition

Move to Closed

A motion was made by Gary Fraker and seconded by Jerald Dickey to into executive session. Sharon asked him to state what specifically he wanted to go into executive session for. Motion was withdrawn.

A motion was made by Kenneth McGhee and seconded by Jerald Dickey to move into closed pursuant to numbers 1, 2, 7, 8 and 9 of the attached motions to close. Motion carried with Archie Camden, Gary Fraker and Eric Pitman voting in favor with no votes in opposition.

Adjourn

A motion was made by Eric Pitman and seconded by Jerald Dickey to adjourn. Motion carried with Kenneth McGhee voted in favor with no votes in opposition. Archie Camden and Gary Fraker were not present.

Executive Director Sandy Sebastian

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