

KANSAS STATE BOARD OF MORTUARY ARTS
700 SW JACKSON, SUITE #904
TOPEKA, KANSAS
Wednesday-Thursday, April 10-11, 2013

FORMAT OF MINUTES:

On each motion there appear the names of two board members in a parenthesis. The first named made the motion, and the second named made the second. Ayes and Nays will be recorded at a voter's request.

Wednesday, April 10, 2013:

- I. The Investigative Committee (IC) of the board met to discuss and make recommendations to the Board on open complaints. Those in attendance included Fred G. Holroyd, Topeka, Licensee; Theresa M. Schwartz, Lawrence, Consumer; with administrative staff assistance provided by Assistant Attorney General Steve Phillips and Executive Secretary, Mack Smith. Recommendations and Actions from this committee meeting are contained within these minutes.
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Thursday, April 11, 2013:

- II. The regularly scheduled meeting of the Kansas State Board of Mortuary Arts (KSBMA) was called to order by President Fred Holroyd.

Roll call by Executive Secretary Mack Smith found the following board members in attendance: President Fred G. Holroyd, Topeka, Licensee; Vice President Steven G. "Steve" Melby, Mankato, Licensee; Randy Duncan, Brookville, Consumer; and Theresa M. Schwartz, Lawrence, Consumer. Member William L. "Bill" Cozine, Wichita, Licensee, was unable to attend the meeting. The board's Executive Secretary Mack Smith was in attendance.

The board noted this meeting's tentative agenda that is displayed on the agency's website at: <http://www.kansas.gov/ksbma/> under the heading of *Agency Information and Tentative Board Agenda*.

(Duncan-Schwartz) To approve a **final agenda** for this meeting. Carried.

The board decided to eat lunch at the Classic Bean.

(Melby-Schwartz) To adopt the **January 9-10, 2013 regularly scheduled board meeting minutes** as amended. Carried. These minutes will be signed by President Fred Holroyd and Executive Secretary Mack Smith, then displayed on the board's website.

The board reviewed results of the written **funeral directors' examination** administered on **January 10, 2013** noting that **64% (seven of eleven applicants)** were **successful**.

The board reviewed results of the written **assistant funeral directors' examinations** administered in **February, March and April 2013** noting that **36% (four of eleven applicants)** were successful. Since the law requiring examination for assistant funeral directors was enacted in 2008, **72.6% (98 of 135 applicants)** have successfully passed the written examination.

The board reviewed the '**List of Licensure Applicants**' scheduled to interview with the board at this meeting, noting the following applicants scheduled to meet with the board include two (2) funeral director applicants. Six (6) applicants, including four (4) individuals retaking the test, are scheduled to be administered the written funeral directors' examination in conjunction with this meeting. One examinee has requested assistance and will have the test read to them.

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- III.** The board **reviewed individual applications** for licensure along with the executive secretary's summations of the applicant's apprentice and supervising licensee progress reports. Applicants for licensure will be interviewed later in this meeting. All funeral director applicants will be administered the written funeral directors' examination by Funeral Home/ Crematory Inspector Francis Mills at 1:30 p.m. this afternoon in the Florentine Room of the Jayhawk Tower.

All quarterly progress reports of embalmer/funeral director apprentices and supervising licensees were summarized by the executive secretary with copies of the individual reports available for board members to review.

Information pertaining to a second quarter apprentice and apprentice progress reports was reviewed and discussed. (Schwartz-Melby) To write the apprentice and supervising licensees to advise them of concerns with the amount of time being spent on funeral directing activities. Carried.

Information pertaining to a third quarter apprentice and apprentice progress reports was reviewed and discussed. No action was taken at this time. This apprentice has since changed employment.

Copies of all related correspondence from the January 10, 2013 meeting were reviewed.

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- IV.** **Legal Discussion: Individual Complaints/Investigations are listed numerically. The board did not necessarily take action in the order listed below:**

Complaints and legal concerns:

The board reviewed correspondence involving complaints resulting from actions taken and recommendations made at the meeting of January 10, 2013.

Information on open complaints:

The Board's Investigative Committee, which is composed of Board Members Holroyd and Schwartz met with Litigation Attorney Steve Phillips and KSBMA Executive Secretary Smith on Wednesday, April 10, 2013 at 10:00 a.m. to discuss and make recommendations on open complaints. Investigative Committee recommendations are included with the following individual complaints.

#11-35—Following review of correspondence: (Melby-Duncan) To close the file. Carried. The complaint involves unlicensed activity prior to licensure of a funeral establishment.

#12-19—Following review of correspondence: (Melby-Duncan) To close the file. Carried. The licensee was notified that future violations relating to the filing of death certificates, monthly death reports or any related documents will result in action by the Board. Potential penalties for such violations can be found in KSA 65-1751 with related information in KAR 63-5-1--copies with that information included with the letter to the licensee. The Board also informed the licensee that failure to file death certificates in a timely manner was a disservice to families served and that the supervising licensee of the funeral home needs to do a better and more timely job of communicating with the administrative staff of the Board—since it is that funeral directors license that allows the funeral establishment license to be issued. The complaint involves failure to file death certificates in a timely manner and ignoring letters sent by the Board's administrative staff.

#12-26—Following review of correspondence: (Melby-Duncan) To close the file. Carried. Effectuated parties were notified of no apparent violations of laws regulated by the KSBMA. The complaint involves unprofessional conduct relating to at-need funeral arrangements.

#12-27—Following review of correspondence: (Melby-Duncan) To close the file. Carried. Effectuated parties were notified of no apparent violations. The complaint involves unprofessional conduct relating to a funeral bill and requirements of a cemetery involving an outer container.

#12-28—Following review of correspondence: (Melby-Duncan) To close the file. Carried. The Board advised the licensee that a better job of communicating with the family may have avoided the situation from occurring. The funeral director was advised to review the funeral home's price lists and Statement of Funeral Goods and Services Selected to ensure they meet the requirements in the Federal Trade Commission's Funeral Rule. The complaint involves unprofessional conduct relating to a funeral bill and funeral services.

#12-29—Following review of correspondence: (Melby-Duncan) To close the file. Carried. The licensee was advised that while the allegations of uninvited/at-need distribution of business cards would constitute a violation of law, under the circumstances presented, the Investigative Committee did not believe it had adequate evidence to prove such a violation had occurred. The Board advised the licensee that uninvited/at need solicitation is a violation of law—one that the Board considers a serious violation and one which would warrant prosecution were there provable facts of a future occurrence. The complaint involves uninvited and at-need solicitation.

#12-33—Following review of correspondence: (Melby-Duncan) To close the file. Carried. Effected parties were notified of no apparent violations. The complaint involves unprofessional conduct involving the transfer of a deceased human being from one funeral home to another funeral home.

#12-34—Following review of correspondence: (Melby-Duncan) To close the file. Carried. Effected parties were notified of no apparent violations. The complaint involves unprofessional conduct with at-need funeral arrangements.

#12-35—A letter from the consumer expressing disappointment regarding the Board's decision was discussed. Following review of correspondence: (Melby-Duncan) To close the file. Carried. The licensee was informed that better communication would have avoided the situation from occurring and of the importance of record keeping. The complaint involves unprofessional conduct relating to funeral services.

#12-36—Following review of correspondence: (Melby-Duncan) To close the file. Carried. Effected parties were notified of no apparent violations. The complaint involves the value of a prefinanced funeral agreement upon death.

#12-37—Following review of correspondence: (Melby-Duncan) To close the file. Carried. The licensee was informed that better communication would have avoided the situation from occurring. The complaint involves unprofessional conduct with at-need funeral arrangements.

#12-38 and #12-39—Following review of correspondence: (Melby-Duncan) To close the file. Carried. The funeral director was advised that based on the LLC being in compliance with the Office of the Kansas Secretary of State and that both the funeral establishment and branch establishment are registered with the KSBMA as identically owned—there were no violations. The funeral director in charge was reminded that Kansas law requires that both funeral homes and all assistant funeral director licenses are under his supervision and are his responsibilities. The complaint involves LLC ownership status forfeited 7/15/2012.

#12-40—Following review of correspondence: (Melby-Duncan) To close the file. Carried. The Board notified both funeral homes and the funeral director no longer employed that there are no apparent violations of laws regulated by the KSBMA. The Board recommended that written protocol be established by both facilities in an effort to avoid a similar situation from occurring in the future. The consumer was advised to notify the KSBMA should there be a police investigation resulting in charges being filed. The complaint involves unprofessional conduct relating to missing personal items.

#13-01—(Schwartz-Duncan) To adopt the recommendations of the Investigative Committee and inform the consumer that the facts are consistent with standard cremation procedures and based on information provided, there are no violations of laws regulated by the KSBMA. Carried. The complaint involves unprofessional conduct relating to cremation.

#13-02—(Schwartz-Duncan) To close the file. Carried. An individual who provided some information and inquired about applying for licensure did not file an application.

#13-03—(Schwartz-Duncan) To adopt the recommendations of the Investigative Committee that based on information provided, there are no violations of laws regulated by the KSBMA. The unintentional ministerial error of \$10.00 appears to have been corrected. Carried. The complaint involves unprofessional conduct with the funeral home overdrawing money from a financial institution to pay for funeral expenses without receiving authorization to access the account.

#13-04—(Schwartz-Duncan) To adopt the recommendations of the Investigative Committee and based on information provided, there are no violations of laws regulated by the KSBMA. Carried. The complaint involves unprofessional conduct and a legal next-of-kin issue.

#13-05—No action necessary at this time.

#13-06—(Schwartz-Duncan) To adopt the recommendations of the Investigative Committee and close the file. Carried. The complaint involves concerns currently outside the scope of the KSBMA.

The Board discussed a *Kansas Supreme Court Case* (No. 102,921) concerning disciplinary proceedings against a person who was a licensee at the time of alleged misconduct not dependent of the status of a person's license on the date a disciplinary proceeding is filed.

V. Legislative Update

The Board reviewed and discussed:

Roster of all Bills involving the *KSBMA/funeral service/state agencies*.

Senate Bill 26 eliminates *continuing education requirements for insurance agents selling prefinanced funeral agreements*. This bill was merged into **House Bill 2339** in Conference Committee.

Senate Bill 77 makes amendments to the statutes of the *Child Death Review Board* that would expand access to information and records for research and public health purposes. Remains in Senate Committee on Judiciary.

Senate Bill 95 involves *stillbirth certificates* and would require a certificate of birth to be filed within three (3) days after such stillbirth and prior to the removal of a stillbirth child from the State. Remains in the Senate Committee on Public Health and Welfare.

Senate Bill 161 & Senate Bill 185 would establish an unborn child death certificate and would expand reporting of unborn child deaths to included death at any stage of pregnancy. Both bills remain in the Senate Committee on Public Health and Welfare.

Senate Bill 221 would allow an individual to sign their own cremation authorization prior to death. A hearing was held with the Kansas Funeral Directors Association (KFDA) testifying against the bill in the Senate Committee on Federal and State Affairs—where the bill remains at this time.

House Bill 2078 enacts new law and amends current law. Would require licensing bodies to accept military education/training/service for certification or licensure if substantially equivalent and documentation is appropriately related. Includes a provision for temporary permits to be issued. Licensing bodies can adopt rules and regulations. The Conference Committee (CC) added the contents of **House Bill 2077** which is about licensing bodies and licensure of military service members. The CC Report was adopted by both the Senate and House and will be presented to Governor Brownback for his consideration.

Senate Substitute for House Bill 2143 and **House Bill 2231** both contain the KSBMA budgets for FY 2014 and FY 2015 and remain in Conference Committee (CC) at this time. The Senate has KSBMA budgets at \$286,893 in FY 2014 and \$288,647 in FY 2015. The House Budget has \$288,158 (with a \$199,517 salary maximum) in FY 2014 and \$289,912 (with a salary cap of \$200,966) in FY 2015. The CC will attempt to reach an agreement for the Legislature and Governor to consider when the Legislature reconvenes on Wednesday, May 8, 2013. The end result will probably include the budget for all State of Kansas Agencies.

House Bill 2166 concerns the *State's Medical Assistance Recovery Program* with provisions for *reasonable funeral expenses* and would transfer the program from the former Department of Social and Rehabilitation Services (SRS) to the Kansas Department of Health and Environment (KDHE) with some changes to the process. Remains in the Senate Committee on Public Health and Welfare but has been recommended for passage.

House Bill 2172 would make technical changes to the current law regarding *cemetery trust funds*. Passed the House and is in the Senate Committee on Commerce.

House Bill 2181 would authorize licensing bodies to accept certain *online distance education courses toward licensure for military service member applicants*. The bill has been approved by the House and Senate and was signed by Governor Brownback. Becomes law upon publication in the Statute Book effective July 1, 2013.

House Bill 2322 would change the name of the Kansas Department of Health and Environment to the Division of Health and Environment–Division of Public Health. The bill has passed the House and Senate and is being considered by Governor Bownback.

House Bill 2339 includes information from **Senate Bill 26** with a Conference Committee (CC) merge that has passed both the Senate and House. The bill will be considered by Governor Brownback.

Assistant Attorney General Lisa Mendoza entered the meeting.

VI. Board Business:

- 1) (Melby-Schwartz) To approve the **quarterly lists of continuing education (CE.)** Carried. Three lists containing *on-site programs, correspondence/home study programs* and *programs pertaining to cremation for crematory operators*. These lists are regularly updated and are available on the board's web site. The board discussed the process and regulations involved with the approval of continuing education programs.
- 2) (Schwartz-Melby) To approve the list of **lapsed licenses**. Carried. These lists contain the names of individuals whose license renewals are past due for longer than six months, who have requested that their licenses be dropped, who have died or in the case of assistant funeral directors, who are no longer employed at a funeral home under the supervision of a funeral director. The current list reviewed and approved by the Board includes two (2) assistant funeral director licenses, five (5) crematory operator licenses, ten (10) embalmer licenses and ten (10) funeral director licenses. This information is provided for a number of reasons, including

- use by the Office of Vital Statistics (OVS) for purposes of licensure verification used on death certificates.
- 3) The board reviewed the list of **automatically suspended licenses**. This list contains the names of individuals who have not paid their license renewal fees by the appropriate due date and have not requested that their licenses be dropped. Once a license is six months in arrears, it is then automatically placed on the lapsed license list for purposes of being dropped. This list includes four (4) embalmer licenses and four (4) funeral director license renewals due through March 31, 2013. Two funeral establishments have closed during the past quarter.
 - 4) (Duncan-Melby) To approve the **FY 2013 third quarter** (January 1-March 31, 2013) **Report** for KSBMA Funeral Home-Crematory Inspector Francis F. Mills. Carried. 143 inspections were conducted during the third quarter of FY 2013 with two (2) preparation room violations noted. 7,196 miles was traveled involving fifty-two (52) counties during this time frame.
 - 5) Reviewed the **current roster of apprentice embalmers and funeral directors**. A total of thirty-two (32) apprentices are currently registered with the board, including: twenty-five (25) embalmer-funeral directors, and seven (7) funeral directors.
 - 6) Discussion of **news articles** relating to the funeral profession that has been provided to board members and legal counsel for their review, including an article from a CNBC story on cremation, unidentified remains discovered at an airport, the Kansas Veterans' Cemeteries receiving an "Excellence of Appearance Award," a question/answer from a financial consultant on prepaid funerals and a story on West Point Cemetery.
 - 7) A reminder of the remaining **2013 Board meeting dates**: July 18 and October 10.
 - 8) The board **signed travel vouchers**.
 - 9) The Board was reminded that **Statements of Substantial Interest (SSI)** are due to be filed between April 15-30, 2013 and can be done electronically.

VII. Executive Secretary's Report:

- 1) **Budget Information–**
 - a) The **FY 2013** (July 1, 2012–June 30, 2013) **budget** was approved by the 2013 Kansas Legislature and remains at \$281,294.
 - b) **FY 2014** (July 1, 2013 through June 30, 2014) **budget** is under consideration by the 2013 Kansas Legislature and is in Conference Committee at this time (Senate Substitute for House Bill 2143 and House Bill 2231.) It is currently funded at \$286,893 (down \$1,482 from 288,375) and \$288,647 (down \$1,482 from \$290,129) for FY 2015 (July 1, 2014–June 30, 2015). There are no salary increases included in any of the budgets. Budgets for these two fiscal years will not be finalized until the Conference Committee makes recommendations that are approved by both the Senate and House, then by the Governor.
 - c) A copy of a memorandum addressing *salary maximums* in **Substitute for House Bill 2231**, signed by ten (10) State Agency Administrative Heads, including the KSBMA, was discussed.
- 2) Updated information regarding the **International Conference of Funeral Service Examining Boards (ICFSEB)**.
 - a) Executive Secretary Smith represented the KSBMA at the *2013 109th*

Annual Meeting in late February and provided a written report of all events held in conjunction with the meeting.

b) The Board reviewed results from the National Board Examination (NBE) for 2012 and the first quarter of 2013. The pass rate in 2012 for the NBE Arts Examination was 74% and 78% for the Science Examination.

- 3) Updated information on the **Council on Licensure, Enforcement and Regulation (CLEAR)** was discussed.
 - 4) Updated information regarding the **Federation of Associations of Regulatory Boards (FARB.)**
 - 5) Updated information on the **Kansas Funeral Directors and Embalmers Association (KFDA)**
 - a) Executive Secretary Smith and Inspector Mills represented the KSBMA at the Embalming Seminar held on January 16, 2013. Melissa Johnson Williams presented and did an excellent job.
 - b) **2013 KFDA Spring Regional Meetings**—Executive Secretary Smith presented a Board Update with information provided at these meetings including his *KSBMA Update*.
 - c) Staff will attend the upcoming **Tri-State Convention** as schedules permit.
 - 6) Information relating to the **board's web site**, <http://www.kansas.gov/ksbma/>, was discussed.
 - 7) The board discussed information pertaining to the **National Funeral Directors Association (NFDA)**.
 - 8) Updated information from the **Federal Trade Commission (FTC)** regarding the **Funeral Rule** was discussed.
 - a) Updated FTC Funeral Rule Staff Opinions were discussed.
 - 9) Updated information from the **American Board of Funeral Service Education (ABFSE)** was discussed.
 - 10) Updated information from the **Cremation Society of North America (CANA)** was discussed.
 - 11) Updated information from the **Funeral Ethics Association (FEA)** was discussed.
 - 12) Updated information from the **Funeral Consumer Alliance (FCA)** was discussed.
 - 13) Updated information from the **Funeral Consumer's Alliance of Greater Kansas City** was discussed.
 - 14) Updated information from the **Funeral Ethics Organization (FEO)** was discussed.
 - 15) Updated information from the **American Society of Embalmers (ASE)** was discussed.
 - 16) Updated information from the **Kansas Department of Health and Environment (KDHE), Office of Vital Statistics (OVS)** was discussed.
 - 17) Updated information from the **Kansas City Kansas Community College (KCKCC) Mortuary Science Program** was discussed.
 - 18) Updated information from the **Kansas Mass Fatality Planning Task Force** was discussed.
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- VIII. The board met with *Applicants for Licensure* to discuss their applications and apprentices:

Funeral Director Applicant: Ms. Tricia K. Goebel-Jones

(Schwartz-Duncan) To grant a funeral director license upon completion of apprenticeship, passing the written funeral directors' examination, which will be administered later today, and payment of an initial license fee of \$34.00. Carried. With continuous employment, Ms. Goebel-Jones is scheduled to complete her funeral directing apprenticeship on May 31, 2013 at Campbell Funeral Home in Yates Center, Kansas. Once issued, the renewal date for the license will be October 31, 2014. She attended Allen County Community College in Iola, Kansas, the University of Saint Mary in Leavenworth, Kansas, Kansas City Kansas Community College in Kansas City, Kansas and Neosho County Community College in Chanute, Kansas.

Funeral Director Applicant: Mr. Daniel C. "Dan" Welch

(Duncan-Schwartz) To grant a funeral director license upon passing the written funeral directors' examination, which will be administered later today, and payment of an initial license fee of \$16.00. Carried. Mr. Welch was granted a Kansas reciprocal (from Texas) embalmer license in April 2012 and completed his funeral directing apprenticeship on April 4, 2013 at Broadway Mortuary in Wichita, Kansas. Once issued, the renewal date for the funeral director license would be November 30, 2013. Mr. Welch attended Central Bible College in Springfield, Missouri and earned an Associate in Applied Science Degree in Funeral Service at the Dallas Institute of Funeral Service in Dallas, Texas.

Reciprocal (Oklahoma) Embalmer-Funeral Director Applicant: Mr. Louis J. "Jay" Crabaugh

(Melby-Duncan) To grant a reciprocal embalmer license upon payment of a \$84.00 initial license fee and to grant a funeral director license upon passing the written funeral directors' examination, which will be administered later today, and payment of an initial license fee of \$24.00. Carried. The renewal date for the licenses would be March 31, 2014. Mr. Crabaugh was granted Oklahoma embalmer-funeral director licenses in 1997. He attended Tulsa Community College in Tulsa, Oklahoma, and earned a Bachelor of Science Degree in Funeral Science at the University of Central Oklahoma in Edmond, Oklahoma. Mr. Crabaugh has passed the National Board Examination (NBE) administered by International Conference of Funeral Service Examining Boards (ICFSEB.) He is a Kansas assistant funeral director and is employed at Penwell-Gabel Funeral Home and Crematory, Gibson Chapel in Chanute, Kansas.

Reciprocal (Texas) Embalmer Applicant: Mr. Adam T. Knebler

(Schwartz-Duncan) To grant a reciprocal embalmer license upon payment of a \$140.00 initial license fee. Carried. The renewal date for the license would be November 30, 2014. Mr. Knebler was granted a Texas embalmer license on February 1, 2013. He attended Wichita State University in Wichita, Kansas, Butler County Community College in El Dorado, Kansas, and earned an Associate in Applied Science Degree in Funeral Service at the Dallas Institute of Funeral Service in Dallas, Texas. He has passed the National Board Examination (NBE) administered by International Conference of Funeral Service Examining Boards (ICFSEB) and is employed at Broadway Mortuary in Wichita, Kansas, where he intends on serving a funeral director apprenticeship.

IX. New/Old/Remaining Business/Adjournment

(Melby-Duncan) To adjourn—subject to recall by the president, vice president or executive secretary. Carried. The date of the next regularly scheduled board meeting is Thursday, July 18, 2013.

At approximately 1:30 p.m. Executive Secretary Smith read instructions to the funeral directors' examinee applicants prior to the administration of the funeral directors' examination which was proctored by Inspector Francis Mills in the Senate Room of the Jayhawk Tower. The results of that examination are a part of these minutes.

Respectfully submitted:

Fred Holroyd, President
Thursday, July 18, 2013
(Date)

Mack Smith, Executive Secretary
Thursday, July 18, 2013
(Date)