



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2016-25A

Chris Ferguson, Executive Director  
Oklahoma Funeral Board  
3700 N. Classen Blvd., Ste. 175  
Oklahoma City, Oklahoma 73118

January 7, 2016

Dear Executive Director Ferguson:

This office has received your request for a written Attorney General Opinion regarding agency action that the Oklahoma Funeral Board intends to take with respect to funeral director licensee 2605 FD. Licensee had been the funeral director in charge of two funeral homes that licensee also owned through limited liability companies. During the investigation, licensee sold or transferred ownership of the funeral homes to entities owned by a relative while licensee continued to work in those facilities.

The complaint alleged that licensee knowingly allowed the unlicensed practice of funeral directing and embalming numerous times. The complaint also alleged that, under licensee's supervision, the funeral homes failed to make legally required disclosures in over half of the funerals performed over relevant time periods. The complaint added that, under licensee's supervision, the funeral home failed to keep legally required embalming logs over relevant time periods.

In October 2014, Licensee and the Board attempted to resolve the allegations with a consent order that suspended licensee's embalming license for two years and placed licensee's funeral director license on probation. The terms of probation included monthly reporting of all funerals performed at facilities for which licensee was funeral director in charge. The consent order also required completion of educational courses and monthly payments toward administrative fines and costs totaling \$17,000. Since entry of the consent order, licensee has failed to make timely payments and did not, until two days before hearing and even then incompletely, submit any of the reports required under the probation terms. The proposed action is to suspend licensee's funeral director license for one year with a year of probation afterwards. The proposed action also requires acceleration of the unpaid portion of the fines and costs and imposes new costs of \$2,771.55.

The Funeral Services Licensing Act, 59 O.S.2011 & Supp.2015, §§ 395.1–396.33, authorizes the Board to discipline licensees who violate the Act's substantive provisions and licensees who violate federal funeral regulations, 59 O.S.Supp.2015, § 396.12c(5), (14). The Act requires that only licensed embalmers be able to "place any chemical substance, fluid or gas on or in dead

human remains,” 59 O.S.2011, § 396.12a. Further, federal regulations require funeral homes to make certain disclosures about certain sources of profit such as marked-up death certificates, 16 C.F.R. § 453.3(f)(2), and to provide an itemized list of charges, 16 C.F.R. § 453.2(b)(5)(i)(A). The Board has already imposed discipline on these grounds; the action seeks to enforce that agreed disciplinary order after licensee failed to make payments or provide required reports. Particularly in light of licensee’s failure to provide required reports on funeral and embalming services provided under licensee’s supervision, the Board may reasonably believe that the temporary suspension of the license is necessary to adequately protect the public and deter future violations.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Funeral Board has adequate support for the conclusion that this action advances the State of Oklahoma’s policy to protect the public health and welfare.

A handwritten signature in black ink, appearing to read "Scott Pruitt". The signature is stylized with a large, sweeping initial "S" and a long horizontal line extending from the top of the "P".

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA