

EXHIBIT D2

ALC – Occupational Licensing Review Subcommittee Occupational Entity Questionnaire

Responses to the following questions are due via email to Subcommittee staff no later than the 15th of the month immediately preceding the month the occupational authorization is scheduled for review by the Subcommittee.

1. Would consumers be at risk of substantial harm if Arkansas did not have this occupational authorization?

Yes, because funeral directing and embalming are special skills which are required in order to make funeral arrangements, to direct funerals, and to perform embalming. Applicants for funeral directors, are required to complete an apprenticeship consisting of 50 cases, in addition to passing an examination, before they can apply for full licensure. Applicants for embalmers are required to attend mortuary school, which is an associate's degree, and they are required to complete an apprenticeship consisting of 50 cases, in addition to passing examinations, before they can apply for full licensure. Further, funeral directors must be knowledgeable about the Federal Trade Commission's Funeral Rule in order avoid running afoul of the federal FTC statutes pertaining to funeral providers. Regulation is also needed to mitigate the risks of financial harm to consumers who may be taken advantage of by a funeral establishment who disregards the FTC statutes. Those statutes, importantly, provide consumer protection by regulating the price lists of funeral providers and other pricing factors that are involved in the business of running a funeral establishment. In addition to funeral directing, those funeral establishments which contain an embalming preparation room must also ensure that they adhere to Arkansas Department of Health and OSHA regulations. The health and safety regulation is needed to mitigate the risks of consumer harm if an embalming is not performed correctly, or if the sanitary requirements of the preparation room and other areas of the establishment are inadequate. In addition to embalming preparation rooms, those establishments which operate a crematory must first meet all of the requirements of the Arkansas Department of Environmental Quality in order to construct the crematory. After the crematory is constructed, there is ongoing review and inspections that are conducted by the Arkansas Department of Environmental Quality and the Board. Additionally, Act 1095 of 2015 required the Board to create a new license type for crematory retort operators, such that the individual who operates the crematory retort is licensed by the Board.

- a. What instances of specific and substantial harm have been documented in the past year?

Instances of harm in the last year:

- (1) Funeral establishment was paid approximately \$16,000 for services not performed and ignored multiple requests from the establishment who DID perform the services for reimbursement.

(2) Funeral establishment allowed unlicensed embalming and overcharged for a casket that was not used.

(3) Funeral establishment allowed unlicensed funeral directing, and the general price list was not given to the consumer (violation of federal FTC statute)

(4) Inspection revealed extremely unsanitary conditions in the embalming preparation room, public areas which were cluttered and presented trip hazards for consumers, a blocked exit, and an FTC violation.

(5) Funeral establishment allowed 69 unlicensed embalmings.

- 2. How many complaints were made to the occupational entity by consumers being harmed by unauthorized practitioners?**

In the last year, there were three complaints about harm by unlicensed activity (and actions taken):

(1) Funeral establishment allowed unlicensed embalming and overcharged for a casket that was not used. (The unlicensed embalmer is also a funeral director- his funeral director license was placed on probation for 1 year; the owner of the establishment is licensed as a funeral director and an embalmer, and his embalmer's license was placed on probation for 1 year; letters of reprimand were issued; and the establishment is required for 1 year to send in documentation for every embalming performed, proving that each embalming is performed by a licensed embalmer.)

(2) Funeral establishment allowed unlicensed funeral directing, and the general price list was not given to the consumer (violation of federal FTC statute). (Establishment placed on probation for 1 year; a monetary penalty of \$2500 for unlicensed activity; and the manager of the establishment was ordered to obtain additional continuing education on the topic of the FTC Funeral Rule.)

(3) Funeral establishment allowed 69 unlicensed embalmings. (Settlement pending via consent agreement- Establishment and unlicensed embalmer agreed to be jointly liable for a \$6900 fine, licenses involved placed on 6-month probation and respondents shall each obtain 2 additional hours of continuing education on the topic of ethics. Of note is the fact that the person who performed the unlicensed embalmings is licensed as an embalmer in another state (in good standing), she passed the exam in AR, and was eventually given a full embalmer's license in Arkansas. These embalmings occurred after her temporary working number expired and before she applied for full licensure. The settlement is expected to be approved by the Board on April 19.)

There were two complaints about harm by licensed activity (and actions taken):

(1) Funeral establishment was paid approximately \$16,000 for services not performed and ignored multiple requests from the establishment who DID perform the services for

reimbursement. (Offending funeral establishment was ordered to reimburse the establishment that performed the services, and the licenses of the offenders were suspended until reimbursement was made.)

(2) Inspection revealed extremely unsanitary conditions in the embalming preparation room, public areas which were cluttered and presented trip hazards for consumers, a blocked exit, and an FTC violation. A Consent Agreement ordered the establishment to correct all violations within 90 days, but the establishment did not comply. (Disposition is pending- set for hearing).

3. Were any applicants who otherwise met authorization requirements denied an authorization in the past year? **No**
 - a. If so, why?
4. How much does the occupational entity collect annually in fees, and what are annual expenses? Fiscal Year 2021

4041002000 Application Fees	\$600.00 – application fees for new establishments.
4041007000 Renewal Fee	\$117,650.00 of this total \$58,440 was the total collected by individual license renewals. The remaining fees were collected by establishments
4041028000 Out of State Fees / MISC FEES	4,202.28 – out state fees are application fees for Temporary license applicants and CE fees
4041031000 Inspection Fees	\$3,050.00 New Establishment or reinspection requests
4041041000 Reinstatement	\$270.00
4043002000 Licenses and Permits	\$5,800.00 All new licenses issued, including establishments
4047099300 Apprentice Fees	\$9,400.00
Totals	\$140,972.28
Salary Expense	\$75,697.40
Operating Expense	\$4,415.59
Total	\$80,382.99

The board needs more administrative staff to maintain the level of care the public needs, which if successful the board would have less revenue at the end of each fiscal year. They would break even.

- a. How much money does the occupational entity have in reserves? **Not applicable, the Board does not have a reserve fund.**
5. If the occupational entity has a positive amount in reserves, when was the last time reserve funds were used? **Not applicable.**

- a. For what purpose?
6. Does the occupational entity have any other sources of revenue? **No**
7. Could occupational authorization fees be reduced without causing the occupational entity to be underfunded?

No, the fees have not increased since 1991, compared to other states surrounding us, we have the lowest fees and do not charge fees that other states charge. (i.e., would be to send a certification of license to another state, most states charge for that service. Arkansas does not.) The board being consolidated under the Arkansas Insurance Department helped delay any requests for fee increases. We should be able to maintain and hold steady at the current fee structure.

 - a. How many applicants for the occupational authorization fail each year? **2018 – 70 applicants failed the AR Laws Rules and Regulations (ARLRR) Exam and 41 passed. 2019 – 61 failed and 67 passed. 2020 – 64 failed and 51 passed. 2021 – 76 failed and 59 passed.**
8. Does the occupational entity track how many applicants that do not progress are veterans, women, or minorities? **No**
9. Can applicants complete the training requirements for this occupational authorization with vocational or non-traditional education (e.g., apprenticeships)?
 - a. **Yes, to become a licensed Funeral Director requires the following: high school graduate or equivalent, completion of a funeral director apprenticeship (18 months and 50 case reports), and passing of Arkansas Laws, Rules, and Regulations Exam (ARLRR).**
 - b. **To become a licensed embalmer, a person does have to graduate from an accredited school of mortuary science. Arkansas requires the minimum of an associate's degree in this field, completion of 12 months of an apprenticeship, assist on embalming 50 cases, pass the ARLRR, and pass both parts of the National Board Exam.**
 - c. What percentage of applicants complete apprenticeships?

Apprentices have three (3) years to complete an apprenticeship. Since July 1, 2018, to present, we have had 35% of the applicants complete the apprenticeship.

The only way an individual does not have to complete an apprenticeship, would be because they are already hold a license to practice as the same in another state. They can apply for a temporary license in Arkansas, based on

them having a license that is equivalent, current, and in good standing with the state they are licensed, prior to applying to Arkansas.

10. In what ways would removal of the occupational authorization or reduction of occupational authorization requirements be harmful to current authorization holders?

It is our position that reducing and/or eliminating the occupational licensing requirements related to embalmers and/or funeral directors would have an immediate detrimental effect on the funeral services industry in Arkansas, both from the standpoint of consumers and of the operational units (funeral homes, mortuaries, crematoriums, and body transport services).

Having regulatory control over an individual's occupational license(s) is effectively the only leverage we have to ensure that the individual adheres to the laws/regulations/rules that govern the orderly functioning of the funeral services industry . . . even with the prospect of having an individual license suspended or revoked, there are those individuals in the industry who "push the boundaries" from time to time. If those individuals engaging in embalming and/or funeral directing were not required to be professionally licensed by the State Board of Embalmers, Funeral Directors, Cemeteries, or Burial Services, then there would be an increase in those persons who have no functional knowledge and experience and little to no regard for the laws and rules that govern the funeral service industry jumping in and "wreaking havoc" upon the industry. Consumer complaints would skyrocket, as non-licensed, non-experienced persons provided sub-standard care to body preparation and presentation.

Specifically, not requiring funeral directors, embalmers, and funeral establishments to be licensed would harm those current license holders in the form of lost business/income. Because there is a rule that prohibits funeral directors and embalmers from engaging in the act of solicitation (meaning the individual contacts the next of kin around the time of death when the next of kin did not initiate the contact, either while death is impending or after death), if funeral directors and embalmers were not required to be licensed, they would not be knowledgeable about this provision, and it would cause financial harm to those licensed establishments in the form of lost business/income. More importantly, not requiring a license further puts consumers at the risk of financial harm—particularly if the unlicensed individuals charged monetary amounts for their goods and services, either without having a General Price List in place, or if unlicensed persons/establishments charged amounts above the published prices of the establishment's GPL. This type of misconduct also violates the federal FTC statutes.