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Representative Caddy McKeown
900 Court St NE
H-476
Salem, OR 97301

RE: Proposed Amendments To House Bill 2585

Dear Representative McKeown,

I am aware that you have proposed, through House Bill 2585, an amendment to ORS 146.045 that addresses the required actions of the Oregon Chief Medical Examiner when a person is missing in the wilderness and presumed dead. This amendment broadens the scope of the CME's abilities to address presumptive death situations beyond just "missing at sea". I applaud your efforts and strongly support passage of your Proposed Amendments To House Bill 2585. The current statutory scheme in Oregon related to presumptive death when no body has been found, and the required response of the CME, is in need of clarification and change. I speak from experience.

My office has, over the past two years, represented Coos County resident Stephanie Higgins in what has been a painful and drawn out process to secure from the CME a report of death after Stephanie's husband, Shawn Higgins, went missing in the forest of Curry County on October 14, 2016 on a hunting trip with his son Trevor Higgins and his brother-in-law Will Chandler, in an area called High Ridge. After arriving at the designated area, the three split up, for what was to be just a few hours of hunting. Mr. Chandler returned to the vehicle as planned, but Mr. Higgins and his son did not. After waiting for a few hours, and in consultation with another hunter that came upon the vehicle, Mr. Chandler contacted the Curry County Sheriff's Office with a missing persons report. That report initiated a massive search of the area by Curry County Sheriffs personnel, state wide search and rescue personnel that responded to the incident and many friends and family. Six days later, Trevor Higgins was found barely alive, but his father was not found. No body of Shawn Higgins has ever been found.

Shawn Higgins was a member of the International Union Of Operating Engineers Local 701. The Union had in place significant death benefits for the surviving spouse and children of its members. But to qualify for the benefits, a death certificate must be presented to the Union.

In December, 2016, Stephanie Higgins contacted the CME's office requesting the CME issue a presumptive death certificate for her husband Shawn. Mrs. Higgins received in response to her request a letter dated December 19, 2016 from State Medical Examiner Karen Gunson in which Dr. Gunson briefly described her authority to issue presumptive death certificates. She cited ORS 146.045(g) (sic) noting that it applied just to situations such as a boat sinking at sea or a person washed into the ocean by a wave. Dr. Gunson stated that she is generally unwilling to certify deaths of persons disappearing under unknown or suspicious circumstances unless there is evidence that the victim was clearly involved in a documented incident in which the person would not reasonably be expected to survive. Dr. Gunson ended the letter with,

“You may want to contact the appropriate county court for direction in how to proceed further in this matter. If I am provided the court documents declaring a missing person deceased, I am generally willing to provide a death certificate stating this declaration.”

Mrs. Higgins also received from the CME office a document entitled Follow-up Information, also dated December 19, 2016, authored by Forencis Administrator Eugene S. Gray which stated,

“Unfortunately this incident only describes a missing person. There is no witnessed incident that is known. This (sic) the information provided, it does not appear we have enough information to meet the presumptive death certicate criteria.”

Mrs. Higgins was then referred to our office. We determined that the proper procedure to initiate, in order to secure a court order directed at the CME to issue a presumptive death certificate, was a petition pursuant to ORS 432.133(8). This statute provides that when a death, that is not then the subject of a presumptive death proceeding in a court of this state or another state, is presumed to have occurred in this state, but no remains have been found, a report of death may be prepared by the CME upon receiving an order from a court of competent jurisdiction that contains findings of fact necessary to complete the report of death. No other presumptive death proceeding was pending in any other court concerning Shawn Higgins. We then filed a Petition For Order Of Presumption Of Death in Coos County Circuit Court and included as exhibits an Affidavit of Curry County Deputy Sheriff Ted Heath and Curry County Sheriff's Office Incident Reports that detailed the length and scope of the search effort for Shawn Higgins.

Copies of the Petition were served on Mr. Higgins Union and the applicable insurance company.

Months went by, and no response was received from the Court. No Order was issued. We then contacted the Court in February, 2018, asking for the entry of the requested Order, or scheduling of a hearing if the Petition and exhibits were not deemed sufficient to support the requested Order.

We then received a letter from a Coos County Circuit Judge informing us that the Judge did not believe ORS 432.133(8) authorized the Court to schedule a hearing on the matter. The Judge believed that the only way to proceed was to file a petition pursuant to ORS 117.005, which provides for the administration of the estate of an absentee. This process requires an allegation that the absentee's whereabouts is unknown and has been so for at least one year, and that the death of the absentee, its time, location and circumstances is probable. A hearing must be scheduled and evidence presented. Upon receipt of evidence, the Court can make a finding that the absentee has died and state the date of death. The Court will then appoint a personal representative of the absentee's estate.

In this case, eventually the Court scheduled a hearing, which occurred on October 3, 2018. Following that hearing, a Coos County Circuit Court Judge on October 11, 2018 signed a Limited Judgment Of Finding Of Death, Admitting Estate To Administration And Appointing Personal Representative.

After receipt of the Limited Judgment finding that Shawn Higgins had died on October 14, 2016 I called the CME office to inform the CME that the finding of death had been obtained in a court order and I would submit a certified copy to the CME, with the request of issuance of a report of death. In response to my call, I received a letter from the staff member with whom I had spoken, dated November 9, 2018, nearly identical to the December 19, 2016 letter Mrs. Higgins had received from CME Dr. Gunson, referencing ORS 146.045(g). The letter also instructed that if the incident meets the three criteria outlined in the letter (same as December 19, 2016 correspondence) additional information must be submitted. The additional information would be the same documents and statements presented to the Coos County Circuit Court during the October 3, 2018 hearing.

It occurred to me that ORS 432.138(8) was still applicable, even after having filed for, and obtaining, a court order declaring Shawn Higgins deceased pursuant to ORS 117.005 et seq.. So, since the order had been received, and the presumptive death proceeding was then no longer pending, I submitted to the same Judge that issued the October 11, 2018 Limited Judgment an Order For Record Of Death contemplated by ORS 432.133(8). The Judge signed it and I submitted a copy of that Order to the CME. A death certificate was then issued by the CME.

Mrs. Higgins can now apply for, and receive, the death benefits available through her deceased husband's Union.

This saga is a result of a disjointed statutory scheme, involving ORS 117.005 et seq., ORS 146.045 and ORS 432.133(8) and 432.138. Your proposed amendment to ORS 146.045 expanding the CME's duties when persons are missing in the wilderness, not just the sea, will hopefully prevent other family survivors from enduring pain, sorrow, delays, and financial hardship, which follows the loss of a loved one.

Very truly yours,

A handwritten signature in cursive script that reads "Roger Gould". The signature is written in black ink and is positioned below the text "Very truly yours,".