

BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

In the matter of the application of:

DRIVER FUNERAL SERVICE, LLC

**ORDER OF THE MISSOURI STATE BOARD
OF EMBALMERS AND FUNERAL DIRECTORS
ISSUING A PROBATED FUNERAL ESTABLISHMENT LICENSE
TO DRIVER FUNERAL SERVICE, LLC**

Comes now the Missouri State Board of Embalmers and Funeral Directors (the "Board") and hereby issues its ORDER granting a PROBATED funeral establishment license for a Function C and D establishment to Driver Funeral Service, LLC ("Driver Funeral Service") located at 102 South Interstate Drive #23, Miner, Missouri 63801 pursuant to the provisions of Section 324.038, RSMo (2000).¹ As set forth in Section 324.038, RSMo, Driver Funeral Service may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated funeral establishment license. Such written request must be filed with the Administrative Hearing Commission within 30 days of issuance of this order of the Board. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Such request shall set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession.

If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The

hearing will be on the record and recorded by a court reporter. At the hearing, Driver Funeral Service shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board. Following the hearing, the Administrative Hearing Commission shall issue findings of fact, conclusions of law and a decision based on all evidence admitted at the hearing. A copy of the findings of fact, conclusions of law and decision shall be delivered to the parties. Review of the decision of the Administrative Hearing Commission shall be pursuant to Chapter 536, RSMo.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should Driver Funeral Service file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

I.

Accordingly, the Board hereby states:

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, for the purpose of executing and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.
2. Thelma Driver is a licensed funeral director and a licensed embalmer in the State of Missouri.
3. Prior to this Order, Driver Funeral Service, LLC in Miner was not a Missouri licensed funeral establishment.

¹Unless otherwise specified, all statutory references are to the Revised Statutes of

4. On or about April 3, 2010, Driver Funeral Service, LLC made application to the Board for a new funeral establishment license for a funeral establishment located at 102 South Interstate Drive #23, Miner, Missouri, 63801.

5. Driver Funeral Service, LLC has filed its articles of organization with the Missouri Office of the Secretary of State in conformance with the Missouri Limited Liability Company Act. Driver Funeral Service, LLC was created on July 6, 2007 and Thelma J. Driver is the registered owner.

6. Thelma J. Driver is the funeral director in charge of the Driver Funeral Service.

7. On or about August 25, 2009, the Board received information regarding an obituary that indicated Driver Funeral Service was in charge of arrangements following the death of Essie Lyvette Dudley. Driver Funeral Service was unlicensed at that time. The Board initiated an investigation.

8. Ms. Essie L. Dudley died on August 18, 2009.

9. Shortly thereafter, Essie B. Dudley, mother of Essie L. Dudley, met with Thelma Driver, discussed funeral plans for Essie L. Dudley, and gave Thelma Driver a \$2,000 down payment to cover the costs of Essie L. Dudley's funeral. Thelma Driver provided a general price list to Essie B. Dudley but never provided a formal written contract. Thelma Driver and Essie B. Dudley both signed an authorization to embalm the body of Essie L. Dudley.

10. Later, Essie B. Dudley went with Thelma Driver to the Fowler-Sullivan Funeral Home and picked out a casket for Essie L. Dudley's funeral.

11. On or about August 18, 2009, Thelma Driver telephoned Donald Weaver, owner and operator of Professional Director Services in St. Louis, Missouri and requested assistance

with the body of Essie L. Dudley. In response to this request, on August 20, 2009, Mr. Weaver, picked up the body of Essie L. Dudley from Barnes-Jewish Hospital and embalmed the body.

12. Thelma Driver purchased a casket from Fowler-Sullivan Funeral Home for \$375 and loaded it onto Driver's van on August 21, 2009.

13. Also on August 21, 2009, Thelma Driver called Angie Poole, manager of the Poplar Bluff Municipal Cemetery regarding the purchase of a grave for Essie L. Dudley. Ms. Poole provided Thelma Driver an interment permit for burial in this cemetery. On the permit, "Thelma" is identified as the person ordering the permit. Thelma Driver paid Ms. Poole for Essie L. Dudley's cemetery plot.

14. On August 23, 2009, Thelma Driver picked up the body of Essie L. Dudley from Mr. Weaver in a gray van. Thelma Driver transported the body to Driver Funeral Service in Parma, Missouri where the body was dressed and placed in the casket.

15. On August 24, 2009, an obituary for Essie L. Dudley appeared in the Daily American Republic newspaper that indicated, in pertinent part, that "Driver Funeral Services of Parma is in charge of the arrangements."

16. Subsequently, Essie B. Dudley went to Driver Funeral Service in Parma, Missouri and viewed the body of Essie L. Dudley. The body was then taken from Parma to a church in Poplar Bluff and finally for burial at the Poplar Bluff Municipal Cemetery.

17. The body of Essie L. Dudley was brought to the cemetery in a coach with the name of "Driver" on it.

18. Thelma Driver was present at the services for Essie L. Dudley.

19. On September 3, 2009, Jim Akers, Butler County Coroner, met with Thelma Driver regarding the death of Ms. Dudley. At that time, Jim Akers signed the death certificate

for Ms. Dudley, provided the certificate to Ms. Driver and requested that Ms. Driver provide him a copy of the death certificate.

20. Essie B. Dudley, during her interactions with Thelma Driver, was unaware that Thelma Driver was not affiliated with a licensed funeral establishment.

21. Section 333.061 provides that no funeral establishment shall be operated in Missouri unless it has been licensed by the Board.

22. Section 333.330.1 provides:

The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

23. Cause exists for the Board to refuse to issue the application of Driver Funeral Service for a funeral establishment license pursuant to § 333.330.2 (4), (5), (7), (11) and (14), which provide:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

...

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

...

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

...

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

...

(14) Violation of any professional trust or confidence[.]

24. Section 324.038.1 provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

25. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues a probated funeral establishment license to Driver Funeral Service, LLC, located at 102 South Interstate Drive #23, Miner, Missouri, 63801. Such license is issued subject to the terms and conditions set forth below.

26. The Board issues this Order in lieu of denial of Driver Funeral Service, LLC's application for a funeral establishment license.

27. The Board has determined that this Order is necessary to ensure the protection of the public.

II.

Based on the foregoing, it is the Board's ORDER that Driver Funeral Service, LLC is issued a funeral establishment license and that license is placed on **PROBATION** for a period of **TWO (2) YEARS** (the "Disciplinary Period"), commencing on the date of this Order. During the Disciplinary Period, the funeral establishment shall be authorized to function as a licensed funeral establishment provided that it complies with all terms and conditions of the Disciplinary Period listed below.

Terms and Conditions of the Disciplinary Period

Terms and conditions of the Disciplinary Period are as follows:

- A. Driver Funeral Service, LLC shall keep the Board apprised at all times in writing of its current address and telephone number at each place of residence and business.
- B. Driver Funeral Service, LLC shall timely renew all funeral establishment licenses and timely pay all fees required for license and registration renewal and comply with all other requirements necessary to maintain these licenses and registrations in a current and active state.
- C. If, at any time within the Disciplinary Period, Driver Funeral Service, LLC changes its place of business or residence from the State of Missouri, ceases to be currently licensed as a funeral establishment under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.
- D. Driver Funeral Service, LLC shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws,

rules and regulations related to the funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

E. Driver Funeral Service, LLC shall appear before the Board or its representatives for a personal interview upon the Board's request.

F. Driver Funeral Service, LLC shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor its compliance with these terms and conditions.

G. Driver Funeral Service, LLC shall submit written reports to the Board by no later than **January 1** and **July 1** during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Order.

Upon the expiration and successful completion of the Disciplinary Period, Driver Funeral Service, LLC's funeral establishment license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Driver Funeral Service, LLC has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Driver Funeral Service, LLC's funeral establishment license.

No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

If the Board determines that Driver Funeral Service, LLC has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative

Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: May 17, 2010
Becky Dunn

Becky Dunn
Executive Director
Missouri State Board of Embalmers
and Funeral Directors