

BEFORE THE
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS AND)	
FUNERAL DIRECTORS,)	
)	
Petitioner,)	
)	
v.)	No. 03-0229 EM
)	
FOSTER & SONS, INC.,)	
D/B/A TED FOSTER AND SONS)	
FUNERAL HOME,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

Statement of the Case

The Missouri State Board of Embalmers and Funeral Directors (the "Board") hereby issues this **ORDER DISCIPLINING** the funeral establishment license of Foster & Sons, Inc., doing business as Ted Foster and Sons Funeral Home ("Foster & Sons") Should Respondent Foster & Sons appeal this Order, the terms and conditions of this Order shall remain in force and effect unless and/or until such time as a court of competent jurisdiction enters an Order to the contrary.

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the foregoing the Board hereby states:

1. The Board is an agency of the state of Missouri and is responsible for executing and enforcing the provisions of Chapter 333, RSMo (as amended), relating to the practice of funeral directing and funeral establishments.

2. Respondent Foster & Sons, Inc., is a licensed Missouri funeral establishment (license #002397) and is authorized to operate a funeral establishment at 3737 Olive Street, St. Louis, Missouri. At all times mentioned herein, Respondent's license was current and active.

3. On or about January 4, 2005, the Board issued its "Findings of Fact, Conclusions of law and Disciplinary Order." Pursuant to the Order, the Board placed Foster & Sons' funeral establishment license on probation for a period of two years commencing January 4, 2005.

4. As part of Respondent's probationary terms, paragraph 12H of the January 4, 2005, Order provided:

Foster & Sons 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.

5 The January 4 2005, Order further provided that "in the event the Board determines that Licensees have violated any term or condition of this Agreement, 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 Licensees."

6. Respondent Foster & Sons failed to timely provide compliance reports to the Board as required by paragraph 12H of the January 4, 2005, Order.

7. As a result of the foregoing, Assistant Attorney General Michael Bushmann filed a complaint with the Board on January 2, 2007, requesting that a probation violation hearing be held by the Board to determine whether further disciplinary action was warranted.

8. Pursuant to § 620.153, RSMo 2000, the Board set this matter for a probation violation hearing on March 28, 2007, at 3:00 p.m., and served notice of said hearing upon Respondent Foster & Sons in a proper and timely fashion.

9. Pursuant to § 620.153, RSMo 2000, the Board held a probation violation hearing on March 28, 2007, at approximately 3:00 p.m. The Board was represented by Assistant Attorney General Rex Fennessey.

II.

CONCLUSIONS OF LAW

10. Pursuant to § 620.153, RSMo, 2000, the Board has authority to impose additional discipline against Respondent Foster & Sons for violating any disciplinary terms previously imposed or agreed to pursuant to settlement against a licensee.

11. Section 620.153, RSMo 2000, provides:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

12. Section 333.121.3, RSMo 2000, provides the Board may discipline a funeral establishment's license after an initial disciplinary hearing by revoking, probating or suspending said license.

13. The Board finds Respondent Foster & Sons has violated the terms and conditions of the probationary Order issued by the Board on January 4, 2005, by failing to file written compliance reports with the Board by January 1 and July 1 during each year of the Disciplinary Period.

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

III.

ORDER

15. Based on the foregoing, and after having fully considered all the evidence, it is the **ORDER** of the Board that Respondent's funeral establishment shall be placed on probation for an additional period of **ONE (1) YEAR**, beginning upon the effective date of this Order. During the period of probation, Respondent Foster & Sons shall be entitled to operate as a funeral establishment as defined in Chapter 333, RSMo, subject to the following terms and conditions:

- A. During the probationary period, Respondent Foster & Sons shall comply with all applicable provisions of Chapter 333 and Chapter 436, RSMo, as amended, all applicable Board regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. Respondent Foster & Sons shall meet in person with the Board or its representative at any such time and place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the probationary period.
- C. Foster & Sons 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.
- D. In addition to the required compliance reports, Respondent Foster & Sons shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.
- E. If Respondent Foster & Sons fails to comply with the terms of this order during the probationary period, in any respect, the Board may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose disciplinary action under § 620.153, RSMo. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.
- F. In the event the Board determines that Foster & Sons has violated any term or condition of this Order, the Board may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the Board, including revocation of the license.

- G. Respondent Foster & Sons shall keep the Board apprised at all times of its current address, telephone number and funeral-director-in-charge. Respondent Foster & Sons shall immediately inform the Board in writing within two (2) days of any change in this information.
- H. During the probationary period, Respondent Foster & Sons shall timely renew its license, timely pay all fees required for licensure and comply with all other requirements necessary to maintain its license current and active.
- I. During the probationary period, Respondent Foster & Sons shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- J. This Order does not bind the Board or restrict the remedies available to the Board for any violation of Chapter 333 or Chapter 436, RSMo, as amended, not specifically mentioned in this document.
- K. Upon the expiration of the probationary period, Respondent Foster & Son's funeral establishment license shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that Respondent Foster & Sons has violated any term or condition of this Order, the Board may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the Board shall deem appropriate, including, revocation of said certification. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board in accordance with Chapter 536, RSMo, as amended.
- L. If the Board determines that Respondent Foster & Sons 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 that violation.
- M. Any failure by Respondent Foster & Sons to comply with any condition of discipline set forth herein constitutes a violation of this Order.
- N. If, at any time during the probationary period, Respondent Foster & Sons changes its business address from the state of Missouri, or ceases to be currently licensed under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of its current places of business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- O. Unless otherwise specified by the Board, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board shall be forwarded to: State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102.

16. The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

17. The Board will maintain this Order as an open record of the Board as provided in Chapters 333, 610 and 620, RSMo.

SO ORDERED EFFECTIVE THIS 17 day of April, 2007.



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