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

ORDER ISSUING A PROBATED ESTABLISHMENT LICENSE TO FUNERAL DIRECTORS SERVICE, INC.

The State Board of Embalmers and Funeral Directors (the "Board"), pursuant to Section 324.038, RSMo[1], issues this order granting a **PROBATED ESTABLISHMENT LICENSE** to Funeral Directors Service, Inc. ("Funeral Directors Service" or "Licensee"), 1409 Illinois, Kansas City, Missouri 64127.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. 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. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee's 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, Licensee shall have the right to present testimony, call witnesses on

[1] All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

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. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

> 1. 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.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.061, RSMo, requires a license to operate as a funeral establishment in Missouri and states:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

(2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;

(3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have available in the preparation or embalming room a register book or log which shall be available at all times in full view for the board's inspector and the name of each body embalmed, place, if other than at the establishment, the date and time that the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

3. Section 333.071, RSMo, prohibits the practice of funeral directing and/or embalming at any location not licensed as a funeral establishment and states:

> The business or profession of an individual licensed to practice embalming or funeral directing shall be conducted and engaged in at a funeral establishment. This section does not prevent a licensed funeral director owning or employed by a licensed funeral establishment from conducting an individual funeral from another and different funeral establishment or at a church, a residence, public hall, or lodge room.

4. Regulation 20 CSR 2120-2.071 states, in relevant part:

> (10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.
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> (11) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

5. Section 333.330, RSMo, authorizes the Board to deny an application for a license and states, in relevant portion:

1. 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.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(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;

* * *

(14) Violation of any professional trust or confidence.

The Parties

6. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

7. Funeral Directors Service, Inc. is a Missouri corporation in good standing and has registered its address with the Board as 1409 Illinois, Kansas City, Missouri 64127.

8. Funeral Directors Service, Inc. is owned by Jason Hodgdon ("Hodgdon").

9. Funeral Directors Service submitted its "Application for Funeral Establishment License" to the Board that Hodgdon signed before a notary public on October 24, 2014 (the "Application").

10. The Application became final and deemed filed on or about January 10, 2015.

Grounds for Denial

11. On December 1, 2014, the Board's inspector contacted Funeral Directors Service to inquire if the funeral establishment was ready for final inspection. In that call, Hodgdon told the Board's inspector that Matthews Cremation would be on-site on December 18 to test the retort. In that same call, the Board's inspector told Hodgdon to contact him when the funeral establishment was ready for final inspection.

12. Funeral Directors Service never notified the Board it was ready for final inspection before it cremated a dead human body.

13. On December 19, 2014, Hodgdon and Funeral Directors Service cremated two bodies in the retort at its business location of 1409 Illinois, Kansas City, Missouri.

14. During the cremation, Hodgdon was present as well as representatives from the company that installed the retort and a licensed funeral director from another licensed establishment.

15. The funeral director that Funeral Directors Service seeks to register as its funeral director in charge was not present when the bodies were cremated on December 19, 2014.

16. Funeral Directors Service held no funeral establishment license when the bodies were cremated on December 19, 2014.

17. Funeral Directors Service received no payment for the cremation of the two bodies.

18. Funeral Directors Service represented that it had received proper authorization from the Board to the funeral establishments that provided the dead human bodies to cremate.

19. On January 8, 2015, the Board completed its final pre-licensure inspection, after Funeral Directors Service notified the Board that it was ready for its final pre-licensure inspection.

20. On January 29, 2015, Licensee appeared before the Board to discuss its conduct and its pending application.

21. The Board has cause to deny the Application pursuant to Section 333.330.2 (6), (7), and (14) RSMo.

22. The Board finds that issuance of a probated establishment license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues an establishment license to Funeral Directors Service, Inc. on **PROBATION** for a period of **ONE (1) YEAR** beginning on the effective date of this Order (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of the Disciplinary Period

23. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

a. Licensee shall keep the Board informed of Licensee's current telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with current and active e-mail address of its funeral director in charge;

b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry;

c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission as set forth in Section 333.330, RSMo;

d. Licensee shall meet with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;

e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately.

f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and

registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with any revenue laws; and

h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period.

24. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee's 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 Licensee 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 impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license.

25. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

26. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

27. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on Licensee's license. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

28. 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: 1.30.2015

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors