

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

STATE BOARD OF EMBALMERS,)	
AND FUNERAL DIRECTORS)	
)	
)	Petitioner,
)	
v.)	Case No.: EMB 11-003-PV
)	
DUANE HARVEY)	
)	
)	Respondent.

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

At its regularly schedule meeting on June 2, 2011, at approximately 1:30 p.m. and pursuant to notice described in the Findings of Fact, the State Board of Embalmers and Funeral Directors (Board) took up the probation violation complaint alleging that Duane Harvey (Harvey) had failed to comply with the terms of his probation. The Board convened the hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

The board appeared through Division of Professional Registration Legal Counsel Sharon Euler. Harvey appeared in person but was not represented by counsel. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the board's legal advisor at the June 2, 2011 hearing, during deliberations and in the preparation of this order.

Findings of Fact

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo¹, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.
2. Harvey is an individual who registered his address with the Board as 9100 Blue Ridge Boulevard, Kansas City, Missouri 64138.
3. Harvey holds funeral director license number 005131. The license is current and active.
4. 9100 Group, LLC, doing business as Duane E. Harvey Funeral Directors, has registered Harvey with the Board as its funeral director in charge of the funeral establishment pursuant to § 333.061.2, RSMo and 20 CSR 2120-1.030(20).
5. As funeral director in charge, Harvey is responsible for the general management and supervision of Duane E. Harvey Funeral Directors' funeral establishment.
6. By Order issued by the Administrative Hearing Commission (AHC) on December 9, 2009, the AHC found cause for the Board to discipline Harvey's funeral director's license pursuant to § 333.121.2(5), (13) and (15), RSMo, for issuing nine death certificates with forged signatures, for refusing to pay life

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

insurance proceeds to the company entitled to keep them and for refusing to pay life insurance proceeds he had no right to obtain or keep.

7. On March 31, 2010, the Board held a disciplinary hearing to determine the appropriate level of discipline to impose on Harvey's funeral director's license.

8. By Order dated May 4, 2010, the Board issued its "Findings of Fact, Conclusions of Law and Disciplinary Order" (Order).

9. The Board's Order placed Harvey's funeral director license on probation, subject to certain terms and conditions, for a period of two years from the date of the Board's Order.

10. The terms and conditions of probation set forth in the Board's Order, section III include the following paragraphs:

A. During the probationary period, Respondent shall comply with all applicable provisions of Chapter 333 and §§ 436.400 – 436.525, 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.

C. Respondent 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. A copy of the required report may be obtained from the Board.

F. During the probationary period, Respondent shall timely renew his license(s), timely pay all fees required for licensure and comply with all other requirements necessary to maintain his license(s) current and active.

(emphasis in original)

Conduct Supporting Probation Violations

11. On October 12, 2010, Harvey's funeral director license was suspended by operation of law due to his failure to pay taxes pursuant to § 324.010, RSMo (HB600 suspension).

12. Harvey's funeral director license was reinstated on November 1, 2010.

13. According to the records of the Board, Harvey had not submitted a written compliance report on or before July 1, 2010. At the June 2, 2011 hearing, Harvey offered and the Board accepted Exhibit A which purported to be a facsimile cover sheet and his July 1, 2010 written compliance report. As stated below in paragraph 23, the facsimile cover sheet states that the Board received the facsimile on June 29, 2010. The Board's records did not reveal receipt of the written compliance report. See paragraph 22 below.

14. Harvey submitted no written compliance report on or before January 1, 2011. However, Harvey did submit the required written compliance report to the Board on January 4, 2011.

15. Joseph Prince McIsaac died on July 2, 2004.

16. The filed death certificate shows final disposition of Mr. McIsaac's body on July 6, 2004 in Kansas City, Missouri.

17. Harvey was funeral director in charge of the establishment that provided for the disposition of Mr. McIsaac's body.

18. On or about December 22, 2010, the Board received notice from the 9100 Group, LLC that the death certificate for Mr. McIsaac was filed on December 7, 2010.

19. On April 27, 2011 the Board notified Harvey of the June 2, 2011 probation violation. The Board sent notice of the hearing, including the time, date and location of the hearing, as well as a copy of the Probation Violation Complaint to Harvey at his last known address on file with the Board. The Board sent the notice by certified mail. On May 2, 2011, the Board received the "green card" back from Harvey signed by Lewis Bond on April 29, 2011 indicating receipt of the Notice of Hearing.

20. During the June 2, 2011 hearing, counsel for the Board offered and the Board admitted the following exhibits:

- a. Exhibit 1: PROMO Licensing screen showing licenses
- b. Exhibit 2: Order
- c. Exhibit 3: License suspension records
- d. Exhibit 4: Lager Investigation Report February 2011
- e. Exhibit 5: Complaint re: McIsaac death certificate
- f. Exhibit 6: Compliance report filed January 4, 2011
- g. Exhibit 7: Notice of Hearing

21. During the June 2, 2011 hearing, the Board heard testimony from the following witnesses on behalf of the Board: Sandy Sebastian, Executive Director

and Kevan Lager, Division of Professional Registration, Central Investigative Unit Investigator.

22. During the June 2, 2011 hearing, Harvey offered and the Board admitted Respondent's Exhibit A. Exhibit A contained a facsimile cover sheet and the June 2010 compliance report which Harvey testified he sent to the Board. The facsimile cover sheet indicated the document was received by the Board's facsimile machine. On rebuttal, Executive Director Sandy Sebastian testified she was unable to locate the June 2010 compliance report in the Board's records.

23. During the June 2, 2011 hearing, Harvey testified on his own behalf as to the alleged violations contained in the probation violation report. Harvey admitted he may have made "a couple of infractions" but his "attempt was to follow the law." He also testified that though he was the funeral director-in-charge, he did not act as a funeral director for any funerals at the time his license was suspended pursuant to HB 600.

Conclusions of Law

24. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to Section III, paragraphs H, I and L of the Board's Order.

25. Section 193.145, RSMo states, in relevant part:

1. A certificate of death for each death which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within five days after death and shall be registered if such certificate has been completed and filed pursuant to this section.

...

4. The funeral director or person in charge of final disposition of the dead body shall file the certificate of death. The funeral director or person in charge of the final disposition of the dead body shall obtain or verify;

(1) The personal data from the next of kin or the best qualified person or source available; and

(2) The medical certification from the person responsible for such certification[.]

26. Section 324.010, RSMo states:

All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, sections 214.270 to 214.516, sections 256.010 to 256.453, section 375.014, sections 436.005 to 436.071, and chapter 317 and chapters 324 to 346 shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. The director of revenue shall, within ten business days of notification to the governmental entity issuing the professional license that the delinquency has been remedied or arrangements have been made to remedy such delinquency, send written notification to the licensee that the delinquency has been remedied. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.

27. Section 324.042, RSMo, states:

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.

28. Section 333.061, RSMo states, in relevant part:

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 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.

29. Section 333.330, RSMo states, in relevant part:

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;

...

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436[.]

30. Regulation 20 CSR 2120-1.040(14) states:

Funeral director-in-charge – an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

31. Regulation 20 CSR 2120-2.070(10) states, in relevant part:

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 of the Missouri licensed funeral director-in-charge[.]

Violations of Probation

32. In the following ways, as set out in paragraphs 3 through 23 above,

Harvey violated Section III, paragraph A, of the Order:

- a. Harvey failed to comply with state laws that required him to pay state taxes and/or to file state income tax returns.
- b. Harvey failed to comply with provisions of Chapter 333, RSMo and its regulations in that he continued to serve as the funeral director in charge of the funeral establishment during the time he lacked the

qualifications to serve as such because he was not a Missouri licensed funeral director because his license was suspended. This conduct violates § 333.061, RSMo and 20 CSR 2120-2.070(10).

- c. Harvey violated the provisions of § 193.145, RSMo because Mr. McIsaac's death certificate was filed on December 7, 2010; 7 years, 6 months and 5 days after death rather than within 5 days of death as required by statute.

33. As set out in paragraphs 3 through 23 above, Harvey violated Section III, paragraph C of the Order in that he failed to timely submit a written compliance report on or before January 1, 2011.

34. As set out in paragraphs 3 through 23 above, Harvey violated Section III, paragraph F of the Order in that by allowing his license to be suspended for non-compliance with Missouri tax laws, Harvey failed "to comply with all other requirements necessary to maintain his license current and active".

35. The conduct alleged in paragraphs 3 through 23 above also provides cause to discipline Harvey's funeral director license pursuant to § 333.330.2(6) and (19), RSMo.

Decision and Order

It is the decision of the State Board of Embalmers and Funeral Directors that Duane Harvey violated the terms of the May 4, 2010 Order, and Harvey's funeral director license is, therefore, subject to further disciplinary action.

The State Board of Embalmers and Funeral Directors orders that the funeral director license (license number 005131) of Duane Harvey is hereby **CENSURED**. Additionally, it is the Order of the Board that Harvey's funeral director license be placed on **THREE (3) YEARS PROBATION** to begin the effective date of this order. Harvey's probation will be subject to the following terms and conditions:

- A. During the Disciplinary period, Harvey shall comply with all applicable provisions of Chapter 333 and §§ 436.400 – 436.525, 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. Harvey 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 Disciplinary period.
- C. Harvey 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. A copy of the required report may be obtained from the Board.
- D. In addition to the required compliance reports, Harvey shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.
- E. Harvey shall keep the Board apprised at all times of his current address, telephone number and the address and telephone number of the funeral establishment at which he is employed. Harvey shall immediately inform the Board in writing within two (2) days of any change in this information.
- F. During the Disciplinary period, Harvey shall timely renew his license(s), timely pay all fees required for licensure and comply with all other requirements necessary to maintain his license(s) current and active.
- G. During the Disciplinary period, Harvey shall accept and comply with unannounced visits from the Board's representatives to monitor compliance

with the terms and conditions of this Order.

- H. If Harvey 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 Disciplinary 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 § 324.042, RSMo. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.
- I. In the event the Board determines that Harvey 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.
- J. This Order does not bind the Board or restrict the remedies available to the Board for any violation of Chapter 333 or §§ 436.400 – 436.525, RSMo, as amended, not specifically mentioned in this document.
- K. Upon the expiration of the Disciplinary period, Harvey's funeral director license shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that Harvey 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 registration. 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 Harvey 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 Harvey to comply with any condition of discipline set forth herein constitutes a violation of this Order.
- N. If, at any time during the Disciplinary period, Harvey changes his 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 his

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 Disciplinary 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.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 333, 436, 610, and 324, RSMo.

Entered this 24th day of June, 2011.

Missouri State Board of Embalmers and Funeral Directors

Sandy Sebastian
Sandy Sebastian, Executive Director