

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES ADAMS,

Petitioner,

vs.

Case No. 15-5592

DEPARTMENT OF FINANCIAL  
SERVICES, BOARD OF FUNERAL,  
CEMETERY AND CONSUMER SERVICES,

Respondent.

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RECOMMENDED ORDER

D.R. Alexander, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a hearing in this matter on May 9, 2016, by video teleconferencing at sites in Tampa and Tallahassee, Florida.

APPEARANCES

For Petitioner: Charles Adams, pro se  
Post Office Box 82345  
Tampa, Florida 33612-2345

For Respondent: Thomas L. Barnhart, Esquire  
Robert A. Milne, Esquire  
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STATEMENT OF THE ISSUE

The issue is whether Petitioner's application to renew his embalmer's license number F042986 should be approved.

PRELIMINARY STATEMENT

In a Notice of Intent to Deny issued on August 28, 2015, the Board of Funeral, Cemetery and Consumer Services (Board) informed Petitioner that his application to renew an embalmer's license had been denied because he had a criminal record and failed to demonstrate that renewal of his embalmer's license would not create a danger to the public, as required by section 497.142(10), Florida Statutes. Petitioner timely requested a hearing, and the matter was referred by Respondent to DOAH to conduct a formal hearing.

At the hearing, Petitioner testified on his own behalf. By agreement of the Board, late-filed Petitioner's Exhibits 1 through 4, letters of reference, were accepted in evidence. Respondent's Exhibits 1 through 5 were accepted in evidence. Exhibit 5 is Petitioner's deposition taken on April 26, 2016.

A one-volume Transcript of the hearing was prepared. Proposed findings of fact and conclusions of law were filed by Respondent, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner currently holds embalmer's license number FO42986, first issued on September 27, 1982. Petitioner says he is currently "semi-homeless" with no permanent residential address and receives all mail at a post office box in Tampa. In

May 2003, he retired from the United States Postal Service, and except for "flipping real estate intermittently," and "hustl[ing] a little bit on the side right now," he is unemployed.

2. The Board has licensing authority over the practice of embalming.<sup>1/</sup>

3. Under section 497.142(10)(c)1.-3., an applicant for renewal of an embalming license must disclose on the application three categories of crimes: (i) any felony or misdemeanor that is directly related to the practice of embalming; (ii) "[a]ny other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter"; and (iii) "[a]ny other misdemeanor not already disclosed under subparagraph 1. that was committed within the 5 years immediately preceding the application under this chapter." This requirement is clearly stated not only in the License Renewal Application itself, but also in the License Renewal Notice sent to a licensee. A requirement to disclose this information is also found in Florida Administrative Code Rule 69K-1.007. In this case, only the criminal convictions described in subparagraphs 2. and 3. are in issue.

4. A criminal conviction by itself does not automatically disqualify an applicant. Under the Board's licensing protocol,

if an applicant has a criminal conviction for an offense listed in the statute, he "shall complete and submit with the application a form DFS-N1-1716, 'Criminal History Form' (Oct. 2006), which is incorporated by reference in Rule 69K-1.001, F.A.C. Applicant shall also make a written presentation to the Board, in the form of a letter to the Board, dated and signed by the applicant and attached to the application, addressing therein the [13] factors listed [in the rule]." Fla. Admin. Code R. 69K-1.008. The Board then reviews and considers this information before acting on the application.

5. On July 7, 2013, and again in 2015, Petitioner submitted License Renewal Applications to the Board. Question 1 requires the applicant to state, yes or no, whether "the licensee [has] been convicted of, pled no contest to, or pled guilty to, any crime required to be reported pursuant to s. 497.142(10), which crime has not previously been reported to the [Board]." Petitioner checked the "No" box on each application and did not submit the required letter demonstrating that approval of his application would not create a danger to the public.

6. The evidence shows, and Petitioner acknowledges, that he was found guilty of the following felonies in Hillsborough County within the 20 years immediately preceding the filing of the applications:

9/26/07 Threatening to throw, project, place or discharge any destructive device § 790.162, Fla. Stat. (He was sentenced to 24 months of incarceration for this offense, with credit for time already served)

5/2/13 Stalking, aggravated (repeated after injunction) § 784.048(4), Fla. Stat. (He was sentenced to 30 months of incarceration for this offense, with credit for time already served)

Petitioner says he was incarcerated in Hillsborough County for each offense, but he was released on probation before serving the full sentences.

7. The evidence shows, and Petitioner admits, that he was found guilty of the following misdemeanors in Hillsborough County within the five years immediately preceding the filing of the applications:

9/2/10 Willful violation of an injunction for protection against repeat violence, sexual or dating violence - § 784.047, Fla. Stat.

9/2/10 Willful violation of an injunction for protection against repeat violence, sexual or dating violence - § 784.047, Fla. Stat.

9/2/10 Criminal mischief (two counts) - § 806.13, Fla. Stat.

5/2/13 Battery - § 784.031, Fla. Stat.

5/2/13 Willful violation of an injunction for protection against repeat violence, sexual or dating violence - § 784.047, Fla. Stat.

8. The Board did not have access to the state criminal database until after the 2013 application was filed and approved. However, a background check in April 2015, or before his renewal application was filed, revealed Petitioner's criminal record. By letter dated May 8, 2015, the Board requested that Petitioner file a written response regarding his criminal record so that it could decide whether to take action "against [his] license." See Resp. Ex. 1, p. 11. No response was filed. On July 10, 2016, the Board informed Petitioner that in light of his criminal record, it would consider whether his license could be renewed at its meeting on August 6, 2016, and invited him to attend. Id. at 8. He did not attend the meeting. On August 28, 2016, the Board issued its Notice of Intent to Deny the 2015 application.<sup>2/</sup> The application was denied on one ground only -- that Petitioner failed to demonstrate that renewal of the license would not create a danger to the public. Petitioner timely requested a hearing.

9. Petitioner gave no clear explanation as to why he did not disclose the criminal convictions. He noted the offenses did not relate to the practice of embalming, he is not "a good reader," and perhaps he misunderstood the clear and unambiguous language in the application and License Renewal Notice.

10. Also, Petitioner's testimony regarding the nature of the crimes is somewhat confusing and lacking in details.<sup>3/</sup> While

characterizing them as "animal related," Petitioner blamed them on disputes with "adversarial neighbors," drinking too much alcohol, using poor judgment, and taking "the law into [his] own hands." He now agrees this was "totally improper" conduct on his part. He testified that he no longer drinks alcoholic beverages, he regularly attends Alcoholic Anonymous meetings, and he has a better philosophy on life. To the extent they corroborate Petitioner's testimony that he has turned a new page in his life, the four character reference letters, all hearsay in nature, have been considered. See Fla. Admin. Code R. 69K-1.008(3) ("an applicant subject to this rule should submit any letters of reference they can obtain in support of their assertion that if licensed they would not be a danger to the public").

11. As to the first felony conviction in 2007, Petitioner explained that cars were speeding through his neighborhood and he feared that his cat might be hit by one of them. To force cars to slow down, he parked his car in the two-lane street in front of his house, blocking traffic in one lane, and told two complaining neighbors, "Touch that car and it will blow." Although he says there was no explosive device on the car, he was arrested and later convicted of threatening to discharge an explosive device. Petitioner admits he was drinking at the time of the incident.

12. The second felony conviction in 2013 arose out of a dispute with another neighbor who had an autistic child in his late teens. It was not "animal related." Petitioner says he observed the teenager dumping "street garbage" over his back fence. One thing led to another, and the mother, who Petitioner characterized as the real "instigator, motivator, and provocateur," later obtained an injunction against him. One evening Petitioner drove to a convenience store for gasoline and says by pure accident he ended up at a gasoline pump adjacent to the mother, who was also refueling her vehicle. He was later arrested and convicted of repeated and aggravated stalking. Petitioner admits he was drinking at the time of the incident.

13. No explanation was given for the five misdemeanor convictions except a contention that the violations of the injunction obtained by the mother were not willful. Petitioner could not recall the facts surrounding the criminal mischief or battery charges.<sup>4/</sup>

14. Petitioner testified that while he has not actively practiced embalming since the mid-1980s, or some 30 years ago, he has performed around 5,000 "hands-on embalming" cases without a problem, and he is not a danger to the public. He desires to maintain his license in the event he ever goes "back in [the business] part-time or whatever." If the license is renewed, he agrees he would come into contact with the deceased's relatives,



other members of the public, such as doctors and medical examiners, and other employees at the funeral home. No evidence was produced regarding his ability to perform embalming services after being inactive in the profession for so many years.

#### CONCLUSIONS OF LAW

15. The applicant has the burden of presenting evidence of his fitness for licensure as an embalmer. See Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). He must prove entitlement to licensure by a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

16. Section 497.141(5) provides that effective July 1, 2011, the Board may not renew a license held by an applicant who has a criminal record required to be disclosed under section 497.142(10) unless the applicant demonstrates that issuance of the license does not create a danger to the public. See also Fla. Admin. Code R. 69K-1.007. Also, a licensee must be "of good moral character" and with "no demonstrated history of lack of trustworthiness or integrity in business or professional dealings." § 497.368(1)(c), Fla. Stat.

17. Rule 69K-1.008(2), not directly addressed by either party, provides that in evaluating the application of a licensee who has a criminal record, the Board will consider factors (a) through (m) cited in the rule. This information is normally submitted to the Board in the form of a letter at the time the

application is filed. However, Petitioner did not file a letter with his applications.

18. Factor (a) requires "a detailed explanation of the facts and circumstances of the criminal conduct." Petitioner failed to provide a detailed explanation. Factors (b), (c), (d), (e), (f), (g), (k), and (l) require other details concerning various aspects of the crimes, such as whether restitution has been made, whether the licensee has performed any community service apart from any criminal sentencing requirements, whether physical violence was involved, and the damage, if any, suffered by the victim. Petitioner's vague and somewhat confusing explanation fails to fill in the blanks for any of these factors. Factor (h) provides that if an applicant fails to disclose the criminal record on the application, he must provide an "explanation for such denial or failure to disclose." Here, Petitioner's explanation that he did not understand the clear and unambiguous language in the application and License Renewal Notice is not credible. Factor (i) allows the Board to consider "any evidence that the applicant is remorseful concerning the crime." At hearing, Petitioner admitted that his actions were wrong and expressed regret for his conduct. Factor (j) takes into account whether the applicant had an alcohol abuse problem when the crime was committed, and if so, evidence that the applicant has been

successfully treated and is in remission. The record shows that alcohol abuse probably was a major contributing factor in the commission of the crimes. Petitioner says he no longer drinks alcohol and regularly attends Alcoholic Anonymous meetings. Finally, factor (m) allows an applicant to submit any other argument as to why he would not be a danger to the public if the license applied for is granted. Other than Petitioner's testimony that he was a competent embalmer when he was actively engaged in the profession and his belief that he would not be a danger to the public, no other evidence was submitted.

19. Rule 69K-1.008(3) allows the submission of letters of reference that support the assertion that if licensed the applicant would not be a danger to the public. Petitioner submitted four letters. See Pet'r Ex. 1-4. While describing Petitioner as courteous, respectful, and friendly, the writers of two letters have only known him for around a year. A third writer has known him for two years and says he knows Petitioner "has made mistakes in the past" but described him as "courteous, respectful and very friendly." A fourth writer was a co-worker at the Post Office, and while acknowledging that Petitioner "does have some demons," described him as a caring individual who would give his shirt off his back to help others.

20. Given the totality of the evidence, it is concluded that Petitioner has not demonstrated that if licensed, he would

not be a danger to the public. Accordingly, his application should be denied.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Board of Funeral, Cemetery and Consumer Services enter a final order denying Petitioner's application for renewal of his embalmer's license.

DONE AND ENTERED this 16th day of June, 2016, in Tallahassee, Leon County, Florida.

*D.R. Alexander*

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D. R. ALEXANDER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of June, 2016.

ENDNOTES

<sup>1/</sup> Chapter 497 creates both a Division of Funeral, Cemetery and Consumer Services (Division) and a Board of Funeral, Cemetery and Consumer Services. The headquarters and records of the Board are in the Division located in Tallahassee. See § 497.101(6), Fla. Stat. However, when an administrative law judge conducts a hearing with respect to the issuance or denial of a license under

chapter 497, he shall submit his recommended order to the Board.  
See § 497.141(6), Fla. Stat.

<sup>2/</sup> Although the Notice of Intent to Deny refers to Petitioner's pending application, the record shows Petitioner's renewal application was not date-stamped by the Division until September 24, 2015, or almost a month after the denial notice was sent. See Resp. Ex. 3. The undersigned assumes, however, it was timely received by the Board and later filed with the Division.

<sup>3/</sup> For example, on the one hand he testified he retired from the Postal Service in 2003, but he also testified that the offense underlying the 2007 felony conviction took place after he had been working overtime that night at the Post Office, followed by a Post Office party "at one of the watering holes."

<sup>4/</sup> During the hearing, reference was made to a third felony charge involving the unlawful recording of a telephone call with the Social Security Administration. However, this charge is not included in the Notice of Intent to Deny and has not been considered.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.