

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES WILLIAMS,

Petitioner,

vs.

Case No. 19-1639

BOARD OF FUNERAL, CEMETERY AND
CONSUMER SERVICES,

Respondent.
_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on July 19, 2019, in Palatka, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles Williams, pro se
265 Harbor Drive
Palatka, Florida 32177

For Respondent: Tom Barnhart, Esquire
Robert Antoine Milne, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue is whether Petitioner's application for licensure as a funeral director and embalmer should be denied on the

grounds set forth in the Board of Funeral, Cemetery and Consumer Services' March 1, 2019, Notice of Intent to Deny.

PRELIMINARY STATEMENT

By issuance of a Notice of Intent to Deny, issued on March 1, 2019, the Board of Funeral, Cemetery and Consumer Services ("Board") advised Petitioner, Charles Williams, that his application for licensure as a funeral director and embalmer was denied. The Notice of Intent to Deny provided as follows, in relevant part:

3. On March 6, 2006, Applicant pled nolo contendere to LEWD and LASCIVIOUS MOLESTATION, a first-degree felony pursuant to Section 800.04(5)(b), F.S. The Applicant was adjudged guilty of this crime and sentenced to 12 years of imprisonment and 13 years of sex offender probation.

4. Applicant has approximately nine (9) years remaining on his sex offender probation.

5. Section 497.142(10), F.S., provides in part:

(10)(a) When applying for any license under this chapter, every applicant must disclose the applicant's criminal records in accordance with this subsection. When applying for renewal of any license under this chapter, every licensee must disclose only those criminal offenses required to be disclosed under this subsection since the most recent renewal of her or his license or, if the license has not been renewed,

since the licensee's initial application.

(b) The criminal record required to be disclosed shall be any crime listed in paragraph (c) for which the person or entity required to make disclosure has been convicted or to which that person or entity entered a plea of guilty or nolo contendere. Disclosure is required regardless of whether adjudication is entered or withheld by the court.

(c) Crimes to be disclosed are:

1. Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation.

2. Any other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter.

3. Any other misdemeanor not already disclosed under subparagraph 1. that was committed within the 5 years immediately preceding the application under this chapter.

6. Section 497.141(5)(a), provides in part:

(5)(a) The licensing authority may not issue, and effective July 1, 2011, may not renew, a

license under this chapter to an applicant that has a criminal record required to be disclosed under s. 497.142(10) unless the applicant demonstrates that issuance of the license, according to rules adopted by the licensing authority, does not create a danger to the public.

7. Section 497.152(2), F.S., provides that grounds for denial of any application includes CRIMINAL ACTIVITY that relates to the practice of, or the ability to practice, a licensee's profession or occupation under this chapter.

8. Pursuant to Section 497.368(1)(c), F.S., (embalmers) and Section 497.373(1)(c), F.S., (funeral directors), applicants may not be licensed unless the Board determines the applicant is of good character and had no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

9. The Board concludes that the Applicant did not demonstrate that issuance of the license did not create a danger to the public and that the Applicant did not establish good character. Applicant did not satisfy the requirements set forth in Section 497.141(5)(a), 497.152(2), 497.368(1)(c) and 497.373(1)(c), Florida Statutes. The Board also finds that applicant's criminal activity relates to the practice of, or the ability to practice, the professions or occupations for which the applicant seeks licensure.

Mr. Williams timely requested a formal hearing on the denial of his application, and on March 27, 2019, the Board referred the matter to the Division of Administrative Hearings ("DOAH") for

the assignment of an Administrative Law Judge to conduct a formal administrative hearing.

The final hearing was originally scheduled for May 30, 2019. One continuance was granted and the hearing was rescheduled for July 19, 2019, on which date it was convened and completed.

At the hearing, Mr. Williams presented the testimony of Tiffany Desjardins, a friend and co-worker at KeHE Distributors; Kale Cooper, Petitioner's immediate supervisor at KeHE Distributors; Paul Roach, a co-worker at KeHE Distributors; Jennifer Brown, the mother of Petitioner's lifelong friend, Angie Knighten, who also testified on Petitioner's behalf; Quincey Masters, owner and funeral director of Masters Funeral Home; and Teresa Perez, a therapist with ITM Group in Gainesville, who has treated Petitioner for the past two years. The Board presented no witnesses at the hearing.

The parties agreed to the admission of the Board's Exhibit 1, which is Mr. Williams's licensure application and accompanying documents. The parties also agreed to the admission of the following deposition transcripts: Charles Williams; Charles Miller, a co-worker of Petitioner's at KhHE Distributors; Ruth Ann Miller, the wife of Charles Miller; Eric Altman, a long-time acquaintance of Petitioner's who became friendly with him as they both progressed in the funeral business; Tony Sweat, a friend who met Petitioner when they both worked at Kirkland

Enterprises, a landscaping company in Green Cove Springs; and Summer Sweat, the wife of Tony Sweat.

The one-volume Transcript of the final hearing was filed with DOAH on August 2, 2019. Both parties timely filed Proposed Recommended Orders, which have been duly considered in the writing of this Recommended Order.

Except where otherwise indicated, all references to the Florida Statutes in this Recommended Order are to the 2018 edition.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. Petitioner, Charles Williams, born on February 12, 1976, attended Gumpton-Jones College of Funeral Service in Atlanta, Georgia, graduating in February 1998. Mr. Williams received his embalmer license in March 1999 and became a licensed funeral director on April 12, 1999.

2. Mr. Williams was working as a licensed funeral director and embalmer at George H. Hewell and Son Funeral Home in Jacksonville when he was arrested in 2004 and charged with sexual battery under section 794.011(2)(a), Florida Statutes (2004), which makes a capital felony of an adult's committing sexual battery upon, or in an attempt to commit sexual battery injuring the sexual organs of, a person less than 12 years of age. The

facts alleged in the charging affidavit were that Mr. Williams committed the violation by putting his mouth on the penis of a person less than 12 years of age. Mr. Williams stipulated that his victim was an 11-year-old boy.

3. On March 6, 2006, Mr. Williams entered a plea of nolo contendere to a charge of lewd and lascivious molestation against a victim less than 12 years of age, a life felony under section 800.04(5)(b), Florida Statutes (2006). The court adjudicated him guilty and sentenced him to 12 years in prison followed by 13 years of probation/community control upon release. His conviction under section 800.04 means that Mr. Williams is designated a sexual predator under section 775.21(4)(a), Florida Statutes.

4. Mr. Williams testified on his own behalf via deposition. He described going to work part-time for Masters Funeral Home in Palatka in 1993, while he was still in high school. He washed cars, dug graves, and removed bodies for Masters Funeral Home while learning about the funeral business. He graduated high school in 1994, the same year he served a one-year apprenticeship at Masters Funeral Home. In 1995, Mr. Williams obtained an intern license for embalming. He served a one-year internship at Masters Funeral Home and then began his studies at Gupton-Jones College of Funeral Service in September 1996. He graduated with an associate of science degree on February 27, 1998.

5. Mr. Williams returned to Palatka and applied for his funeral director intern license. In his deposition, Mr. Williams explained that the internship lasts one year. He performed the bulk of his internship at Masters Funeral Home. Mr. Williams also spent about one month at Hardage-Giddens Funeral Home in Jacksonville, part of the Service Corporation International chain of funeral homes. Mr. Williams described Hardage-Gibbons as an "assembly line." He quit the job because he did not wish to employ his training working in a "factory." He came back to Masters Funeral Home to complete his internship.

6. Mr. Williams obtained his embalmer license in March 1999 and his funeral director license on April 12, 1999. For a time after receiving his funeral director license, Mr. Williams left the profession to work as a uniformed security guard at the Clay County Courthouse.

7. In October 1999, Mr. Williams decided to join the United States Air Force because jobs were scarce in the funeral industry at that time. His initial enlistment was for four years but he lasted only six months. Mr. Williams testified that he did not disclose his homosexuality when he enlisted, but that word eventually got around that he was gay. Because this was during the period of the military's "don't ask, don't tell" policy, Mr. Williams was granted an entry level separation from the Air Force after completing basic and security forces training.

8. From 2000 until late 2003, Mr. Williams worked at Moring Funeral Home in Melrose. He described it as a small, family-run funeral home at which he performed every conceivable service that a licensee could, including meeting with families, embalming, digging graves, and transporting bodies. He did whatever needed doing.

9. In December 2003, Mr. Williams went to work for George H. Hewell and Son Funeral Home in Jacksonville, another family-owned funeral home. They had two funeral homes and were very busy, going out on over 400 calls per year. Mr. Williams worked there until November 2004, when he was arrested.

10. Mr. Williams testified that he was sentenced in 2006 and served 10 years and three months of his 12-year sentence. Mr. Williams credibly testified that he was a model prisoner. He was released on November 15, 2015.

11. Since his release, Mr. Williams has been on sex offender probation, and will remain so until November 15, 2028. The terms of sex offender probation are fully described at section 948.30, Florida Statutes. Mr. Williams wears a monitoring bracelet on his ankle, is required to participate in a sex offender treatment program, reports regularly to his probation officer, and is restricted in terms of his proximity to children and places where children regularly congregate. Mr. Williams is required to disclose his status to prospective

employers. The evidence established that Mr. Williams has abided by all terms of his sex offender probation.

12. Mr. Williams testified that his first job upon release was at Gator Communications Service in Gainesville, where he worked answering phones for several months. He next went to work for Kirkland Enterprises, a landscape company in Green Cove Springs. Mr. Williams worked for about 10 months at Kirkland Enterprises, then took a job with Roller Die + Forming, a metal fabrication plant in Green Cove Springs. Since mid-2016, Mr. Williams has worked as a receiver and forklift operator at KeHE Distributors, a distributor of organic foods.

13. While he was incarcerated, Mr. Williams allowed his funeral director and embalmer licenses to lapse. On May 31, 2018, Mr. Williams submitted to the Board his application for a "Combination Funeral Director and Embalmer License by Florida Internship and Examination." The Board deemed his application complete on June 27, 2018. On March 1, 2019, the Board denied the application for the reasons set forth in the extended quotation in the Preliminary Statement, supra.

14. At the hearing and by deposition, several witnesses testified on behalf of Mr. Williams, attesting to his abilities as a funeral director, and more generally, as to his good character.

15. Charles Miller is a receiving lead at KeHE Distributors, supervising about a dozen stockers. He has known Mr. Williams since May 2018. Mr. Miller is not Mr. Williams's direct supervisor, but does oversee his work from time to time. Mr. Miller testified that Mr. Williams is conscientious, punctual, helpful, efficient, and diligent. He takes his job seriously and takes direction well. He is a good communicator, a "people person." Mr. Miller stated that Mr. Williams has a clean work record and is one of the most popular members of the workforce at KeHE Distributors.

16. Mr. Miller testified that he knows Mr. Williams wears an ankle bracelet. Mr. Williams told Mr. Miller that he had been incarcerated for a lewd and lascivious act, but did not say with whom or whether the victim was a minor. Mr. Miller did not press Mr. Williams for details.

17. Mr. Miller's wife, Ruth Ann Miller, also testified on behalf of Mr. Williams. Ms. Miller met Mr. Williams at the funeral of a person who had worked with her husband and Mr. Williams at KeHE Distributors. She also saw Mr. Williams at the funeral of his sister. On both occasions, she was impressed by his demeanor and helpfulness to the mourners, even at his own sister's service. Ms. Miller stated that she does not know Mr. Williams well but that she could be his friend. She

testified that Mr. Williams is attentive and "bubbly," and has a way of putting people at their ease.

18. Ms. Miller knew little about Mr. Williams's criminal past. She knew he had been in prison and wore an ankle bracelet, but she did not know why.

19. Eric Altman is a funeral director at Johnson Overturf Funeral Home in Palatka. He is a few years older than Mr. Williams and has known Mr. Williams since they were both children in the same small town, Bostwick. Mr. Altman did not interact much with Mr. Williams until the latter showed an interest in the funeral business as a teenager.

20. Mr. Williams went to work for the "competition," Masters Funeral Home in Palatka. They would run into each other and talk about the business. In 2001, Mr. Altman was working at a small funeral home in Green Cove Springs that he was hoping to buy. The home was shorthanded and Mr. Altman arranged for Mr. Williams to come to work there. Mr. Altman and Mr. Williams worked together for a few months. After this stint as a co-worker, Mr. Altman did not see Mr. Williams regularly.

21. Mr. Altman testified that everything Mr. Williams did as a funeral director was appropriate. Mr. Williams showed initiative and ensured that things ran smoothly. Mr. Altman pointed out that a funeral is a bad place to make mistakes because people never forget them. A funeral director must pay

close attention to detail, and Mr. Williams did that.

Mr. Williams always made a good public appearance and was very compassionate, professional, and respectful. Mr. Altman noted that even now when he sees Mr. Williams in the public eye, he is always wearing a coat and tie, making the proper appearance.

22. Mr. Altman testified that he had been aware that Mr. Williams went to prison for 10 years but did not have any firsthand knowledge of the facts of his case. Mr. Altman stated that he would hire Mr. Williams and would have no problems working with him. Mr. Altman stated that he could see from the beginning that Mr. Williams wanted to succeed in the funeral business. "It's kind of in our blood It's just not for everybody It has to be in you. You have to have the heart for it. And you want to succeed and do well and be well thought of in the community and the people you serve. And he has that."

23. Tony Sweat is a self-employed truck driver who met Mr. Williams when they both worked for Kirkland Enterprises in 2015 and 2016. Mr. Sweat was the lead foreman when Mr. Williams was hired as a driver and laborer. Mr. Sweat joked that as landscapers, he and Mr. Williams spent more time with each other than with their families. They became friends.

24. After both men left Kirkland Enterprises, they stayed in touch by telephone but did not see much of each other, which

Mr. Sweat attributed to their living in different towns.

Mr. Sweat stated that he has only seen Mr. Williams two or three times in the last six months.

25. Mr. Sweat testified that in January 2019, his mother-in-law died. He and his wife Summer had no clue how to even begin arranging for a funeral. Mr. Sweat knew that Mr. Williams had been in the funeral business and called him for advice. Mr. Williams recommended Masters Funeral Home in Palatka and accompanied the Sweats to the funeral home to assist them with the paperwork. He came to the funeral and was a support and comfort to Ms. Sweat.

26. Summer Sweat testified that Mr. Williams was helpful, professional, supportive, and possessed a lot of technical knowledge regarding the funeral industry. He helped select the urn for her mother's remains, set up a website for friends and family to make gifts in honor of the deceased, and did most of the speaking on behalf of the family at the funeral. Ms. Sweat testified that this was her only real exposure to her husband's friend but that she was very happy with everything he did.

27. Mr. Sweat testified that he spoke with Mr. Williams about his criminal conviction. Mr. Williams told Mr. Sweat that he had been charged with molesting a little girl. Mr. Williams said that he pled guilty but did not actually commit the crime. Mr. Williams used his homosexuality as an alibi, stating that he

was a gay man and would never want to molest a little girl.

Mr. Sweat believed Mr. Williams's story.

28. When counsel for the Board showed him the actual arrest affidavit, Mr. Sweat stated, "That's crazy." However, Mr. Sweat then defended Mr. Williams's lack of candor. Mr. Sweat reasoned that Mr. Williams is gay, had just been released from prison for child molestation, and was going to work with "a bunch of roughnecks" at Kirkland Enterprises. It made sense that Mr. Williams would choose to shade his story in order to avoid ostracism, or worse, from a group of co-workers who are likely homophobic. Mr. Williams was not required to give his employer the full details of his criminal activity and understandably did not volunteer the true gender of his victim.

29. Mr. Sweat concluded his testimony by stating, "I think y'all should give him a chance, maybe . . . I mean, the business side of it--like as far as handling funerals and stuff, I--he seems to thoroughly enjoy that and is pretty decent at comforting people."

30. Tiffany Desjardins is Mr. Williams's immediate supervisor at KeHE Distributors. She testified that Mr. Williams is diligent, punctual, attentive to detail, and a hard worker.

31. Ms. Desjardins attended the funeral of Mr. Williams's sister. Though he was not working in any official capacity, Mr. Williams assisted the funeral director, Quincey Masters, in

escorting and seating the family. Ms. Desjardins noted that Mr. Williams conducted himself in a professional manner.

32. Ms. Desjardins stated that she would not hesitate to have Mr. Williams make final arrangements for her loved ones, even in light of his criminal past. She was aware that he went to prison, that his offense involved an 11-year-old boy, and that Mr. Williams is not allowed around children.

33. Kale Cooper is the inbound supervisor at KeHE Distributors. He is Mr. Williams's ultimate supervisor. Mr. Cooper also was aware of the details of Mr. Williams's offense and also stated that he would not hesitate to have Mr. Williams assist in the burial or cremation of his loved one.

34. Paul Roach is the head of maintenance at KeHE Distributors. He attended the funeral of Mr. Williams's sister and was impressed by Mr. Williams's professional manner under such difficult circumstances. Mr. Roach knew that Mr. Williams had been imprisoned for the sexual molestation of an 11-year-old boy. He nonetheless stated that he would hire Mr. Williams to conduct the funeral services of his wife, son, or daughters.

35. Mr. Roach testified that he had already entrusted Mr. Williams with the remains of a loved one. When Mr. Roach's mother died about three years ago, everyone in his family was "too brokenhearted" to retrieve her cremated remains from the funeral home in St. Augustine. Mr. Roach asked Mr. Williams to

do it. Mr. Williams put on a suit, drove to St. Augustine, and made sure that the mother's remains were safely delivered to the family.

36. Jennifer Brown testified that in June 2016, her father died in a nursing home in Jacksonville. Ms. Brown's daughter, Angie Knighten, had known Mr. Williams since childhood.

Ms. Knighten immediately suggested to her mother that they call Mr. Williams for assistance in making the arrangements.

Mr. Williams rode to Jacksonville with someone from the Masters Funeral Home to remove the body. Ms. Brown was impressed that Mr. Williams arrived wearing a suit and also by his professional manner. Mr. Williams assisted the family through the entire cremation process. Ms. Brown stated that she lacked the words to say how much she appreciated everything Mr. Williams did for her family.

37. Ms. Brown did not know of Mr. Williams's criminal history at the time of her father's death. By the time of the hearing, she was aware of the details of Mr. Williams's offense. Ms. Brown testified that, even knowing what Mr. Williams had done, she would still not hesitate to call on Mr. Williams to handle the final arrangements for her loved one.

38. Angie Knighten, Ms. Brown's daughter, also testified on behalf of Mr. Williams. She had known Mr. Williams when they were children and they remained friendly through their teen

years. Mr. Williams went away for about ten years. Then, in 2016, Ms. Knighten met Mr. Williams while they were both working at Roller Die + Forming.

39. Ms. Knighten asked Mr. Williams about the ankle bracelet he was wearing and he told her where he had been for the past ten years. Mr. Williams told her that he had been convicted of lewd and lascivious assault on a child. Ms. Knighten did not pry into details, but she did ask Mr. Williams if he did it. Mr. Williams told her that he did not, but that he went to prison rather than put the child through the ordeal of a trial.

40. Ms. Knighten stated that this conversation occurred in about 2016 or 2017 and that she had not discussed the matter again with Mr. Williams. She conceded that she had no way of knowing whether Mr. Williams was continuing to deny culpability for his crime.

41. Quincey Masters III is the owner and operator of Masters Funeral Home in Palatka and Interlachen. Mr. Masters is a second-generation funeral director and has been in and around the funeral business for his entire life. Though not formally proffered or accepted as an expert, Mr. Masters is clearly knowledgeable about all aspects of the funeral business. His opinion regarding the appropriateness of Mr. Williams's re-entry into the profession is deserving of special consideration.

42. Mr. Masters testified that he first saw Mr. Williams when Mr. Williams was about six years old. Mr. Williams's grandmother had brought him to the Baptist church for a funeral in his little black suit. In about 1993, Mr. Williams approached Mr. Masters about coming to the funeral home to learn about the profession. Mr. Williams went to work for Masters Funeral Home while still in high school and was trained in the business there.

43. Mr. Masters testified that Mr. Williams worked for him for at least two years after graduating from high school and before getting his funeral director license. Mr. Williams was separately licensed as an embalmer and, according to Mr. Masters, was very good at it.

44. Mr. Williams made funeral arrangements and helped conduct funerals. Even after he obtained his funeral director's license, Mr. Williams was willing to wash cars and answer the phone at the funeral home.

45. Mr. Masters testified that the public never sees the majority of the work done in his profession: the dressing, cosmeticizing, and placement of bodies in caskets. Mr. Masters observed Mr. Williams performing these tasks and testified that he did them well.

46. Mr. Masters stated that Mr. Williams excelled in the public aspects of the funeral director's job. He was always very professional when working with the public. He was caring and

well-dressed. Mr. Masters stated that family members are in a vulnerable state during a time of mourning. It is important that the funeral director show an appropriate degree of concern and understanding, and Mr. Williams never failed in that respect.

47. Mr. Masters testified that Mr. Williams did a lot of body removals when he worked for Masters Funeral Home, even before he was licensed. The removal person goes into the home, nursing home, hospice, or worksite, and assesses the layout. He must determine the best way to remove the body with the proper respect, compassion, and tenderness, whether or not the family is present to witness the removal. Mr. Masters usually sends two people to do the job, but on out-of-town removals he might send only one. He recalled sending Mr. Williams alone to Gainesville at least once. Mr. Williams always showed the proper respect and was always available to go out on removal jobs when called.

48. Mr. Masters was aware of Mr. Williams's crime and conviction. In fact, Mr. Masters visited Mr. Williams in prison. Mr. Masters testified that he would have no problem working with Mr. Williams in any aspect of the funeral business.

49. Mr. Masters testified as follows, addressing his words to Mr. Williams:

I believe, beyond shadow of a doubt, that you should have the opportunity to be a licensed funeral director and embalmer. I believe you have a lot to offer, to give back I don't believe the State would have to worry

one bit about you. The public would be safe. And, in all candor, and as sincere as I can say it, I believe you would be an asset to the profession once again.

50. Teresa Perez is a licensed mental health therapist with ITM Group in Gainesville. She is specifically trained in the treatment of sexual abusers. Ms. Perez has been Mr. Williams's therapist for sex-offender treatment for the past two years. She testified that he has made progress and is currently in the "maintenance" phase of treatment, which will be completed in March 2020. Ms. Perez stated that only a minority of her clients achieve the maintenance level of treatment.

51. Ms. Perez testified that Mr. Williams's risk assessments show him to be in the lowest risk category for recidivism for a sexual offense. Mr. Williams has been administered the Rapid Risk Assessment for Sexual Offense Recidivism ("RRASOR") static risk factor tool, the STATIC-99 test, and a dynamic risk factors test, all of which indicate a low potential for a repeated offense. Ms. Perez agreed with Board counsel's statement that the RRASOR tool suggests that Mr. Williams is part of a group having an expected recidivism rate of seven percent within five years, and a recidivism rate of 11 percent over 10 years.

52. Board counsel placed great emphasis on the risk posed by Mr. Williams as expressed by the 11-percent recidivism rate

in the RRASOR testing. The undersigned is less troubled by that statistic because of the great confidence Ms. Perez placed in Mr. Williams's progress in treatment. The undersigned reads the 11-percent recidivism rate not as an expression of Mr. Williams's personal risk, but as a general statistic about the subjects of the RRASOR testing. The number does not mean that every individual in the group of 100 subjects has an 11-percent risk of relapse. Rather, it indicates that the group includes 11 men who are virtually certain to be repeat offenders, and 89 who in all likelihood will not commit a repeat offense. Based upon her professional qualifications and experience, Ms. Perez seemed sure that Mr. Williams would be one of the 89. The undersigned credits her opinion.

53. Ms. Perez testified that Mr. Williams consistently engages meaningfully in treatment. He is self-disclosing and helpful to other members of his group therapy sessions. Ms. Perez stated that Mr. Williams has consistently acknowledged that he committed a sex offense in the past. She stated that the Association for the Treatment of Sexual Offenders has in recent years questioned the utility of requiring persons receiving treatment for sexual offenses to continue identifying themselves as "sex offenders." If polygraph tests and continued monitoring during probation prove that the client is not engaging in negative behaviors and if therapy shows the client is addressing

the roots of the issues influencing his choices, then it may be counter-therapeutic to insist that the client continue to identify himself as a sex offender. Ms. Perez believes that Mr. Williams meets these criteria.

54. Ms. Perez testified that, in her professional opinion, Mr. Williams would not pose a risk to the health and safety of the public if he were to receive a license to be a funeral director and embalmer.

55. Ms. Perez testified that Mr. Williams has taken full responsibility for his actions in molesting an 11-year-old boy in 2004. She was unaware that Mr. Williams had, outside of the therapeutic setting, denied committing the offense. Ms. Perez stated that she intended to discuss that issue with Mr. Williams and could adjust his course of treatment in light of their discussion.

56. On his own behalf, Mr. Williams testified that he knows a lot more about himself, after 10 years in prison and ongoing therapy, than he did at the time of his offense. He noted that a funeral director deals almost exclusively with adults and that there is almost nothing a funeral director does that is outside of the public eye. He would never be with an unaccompanied minor when performing his duties. He believed there are no triggers in the funeral service profession that might cause him to relapse. Mr. Williams testified that he poses no danger to the public.

57. Counsel for the Board points out that funeral directors meet with families to make funeral arrangements and in the course of performing their services come into contact with family members of all ages during times of extreme vulnerability. Though this point is valid, it does not undermine Mr. Williams's contention that he would never be alone with a vulnerable child in the course of his duties. Counsel also notes that funeral directors may make contact with family and friends in the removal and transport of the deceased, although the evidence at the hearing established that no license is required to remove and transport a body.

58. In summary, the Board has stipulated that Mr. Williams possesses the skills, knowledge, and technical qualifications for licensure as a funeral director and embalmer. Therefore, the only issues in this proceeding are Mr. Williams's good character and whether granting him the license he seeks would create a danger to the public.

59. Mr. Williams presented the testimony of friends, acquaintances, co-workers, current and former employers, fellow funeral directors, and his mental health therapist, who all recommended that Mr. Williams be granted licensure as a funeral director and embalmer. Mr. Williams's entire criminal record consists of one crime, of an especially heinous nature, for which

he faultlessly served his sentence and continues to comply with all terms of his probation.

60. Mr. Williams's personal demeanor at the hearing and his deposition testimony bespeak a man who has acknowledged his transgression, accepted his guilt, and seeks to continue repaying his debt. Twice after his release from prison, out of understandable shame and fear, Mr. Williams did not tell the full truth about his crime, once to an employer and once to an old friend. However, the evidence supports a finding that Mr. Williams has consistently acknowledged his guilt during therapy. Ms. Perez testified that it is not uncommon for an offender's ability to relate the truth to persons outside the therapeutic setting to evolve over time. At the time of the hearing, Mr. Williams was forthright in stating that he had committed the act of lewd and lascivious molestation of an 11-year-old boy.

61. Mr. Masters was a particularly impressive witness. His time in the industry and his lifelong knowledge of Mr. Williams combined to make his plea on behalf of Mr. Williams's licensure moving and convincing.

62. However, it was not just Mr. Masters but every testifying character witness who expressed complete confidence in Mr. Williams's reformation and his ability to skillfully perform the duties of a funeral director. Even knowing that Mr. Williams

had committed a terrible crime, witness after witness stated that they would, without hesitation, employ Mr. Williams to make the final arrangements for their loved ones.

63. The undersigned noted how often witnesses told of Mr. Williams dropping whatever he was doing to help a friend with some funeral-related need--helping to arrange and host the service, picking up the body of a recently deceased relative, assuming responsibility for the safe transport of a loved one's ashes--without thought of remuneration.

64. Mr. Masters and Mr. Altman spoke in terms of the funeral business having to be in one's blood. It is a calling, a vocation that is not for everyone. The evidence presented at the hearing made clear that Mr. Williams felt this calling from an early age, pursued it with diligence and vigor, and now seeks to resume his career in the funeral industry. Mr. Williams has demonstrated his reformed good character and that his licensure would not create a danger to the public. The undersigned finds that the Board should give him the opportunity to return to his profession.

CONCLUSIONS OF LAW

65. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to chapter 120, Florida Statutes. See also § 497.141(6), Fla. Stat.

66. Petitioner has applied to become licensed as a funeral director and embalmer in Florida pursuant to section 497.141, Florida Statutes.

67. The Board is the licensing authority to approve or deny applications for initial licensure of all types under chapter 497. § 497.103(1)(j), Fla. Stat.

68. Petitioner has the burden to prove by a preponderance of the evidence that he satisfies the requirements for licensure as a funeral director and embalmer. See Dep't of Banking & Fin. v. Osborne, Stern & Co., 670 So. 2d 932, 934 (Fla. 1996); Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981).

69. Section 497.141(5)(a) provides in pertinent part:

(5)(a) The licensing authority may not issue, and effective July 1, 2011, may not renew, a license under this chapter to an applicant that has a criminal record required to be disclosed under s. 497.142(10)^[1/] unless the applicant demonstrates that issuance of the license, according to rules adopted by the licensing authority, does not create a danger to the public

70. Section 497.142(10) provides in pertinent part:

(10)(a) When applying for any license under this chapter, every applicant must disclose the applicant's criminal records in accordance with this subsection

(b) The criminal record required to be disclosed shall be any crime listed in paragraph (c) for which the person or entity

required to make disclosure has been convicted or to which that person or entity entered a plea of guilty or nolo contendere. Disclosure is required regardless of whether adjudication is entered or withheld by the court.

(c) Crimes to be disclosed are:

1. Any felony or misdemeanor, no matter when committed, that was that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation.

2. Any other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter

71. Mr. Williams has consistently taken the position that his crime was unrelated to any aspect of the practice or business of funeral directing or embalming and thus not required to be disclosed under section 497.142(10)(c)1. In his application, Mr. Williams purported to disclose his crime pursuant to section 497.142(10)(c)2., because it was a felony committed within the 20 years preceding his application.

72. The Board's Notice of Intent to Deny does not assert that Mr. Williams's application is being denied because the felony in question was "directly or indirectly related to or involving any aspect of the practice or business of funeral directing [or] embalming" under section 497.142(10)(c)1.

Rather, the Board specifically cites sections 497.152(2), 497.141(5)(a), 497.368(1)(c), and 497.373(1)(c) as the statutory bases for its denial decision.

73. Section 497.152(2) provides in pertinent part:

Disciplinary grounds.— This section sets forth conduct that is prohibited and that shall constitute grounds for denial of any application, imposition of discipline, or other enforcement action against the licensee or other person committing such conduct. For purposes of this section, the requirements of this chapter include the requirements of rules adopted under authority of this chapter. No subsection heading in this section shall be interpreted as limiting the applicability of any paragraph within the subsection.

* * *

(2) CRIMINAL ACTIVITY.— Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction that relates to the practice of, or the ability to practice, a licensee's profession or occupation under this chapter.

74. Section 497.368(1)(c) provides:

(1) Any person desiring to be licensed as an embalmer shall apply to the licensing authority to take the licensure examination. The licensing authority shall examine each applicant who has remitted an examination fee set by rule of the licensing authority not to exceed \$200 plus the actual per applicant cost to the licensing authority for portions of the examination and who has:

* * *

(c) Made disclosure of the applicant's criminal records, if any, as required by s. 497.142. The applicant shall submit fingerprints in accordance with s. 497.142. The applicant may not be licensed under this section unless the licensing authority determines the applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

75. Section 497.373(1)(c) is identical to section 497.368(1)(c) except that it references licensure as a "funeral director" rather than as an "embalmer."

76. Thus, the grounds for the Board's initial decision to deny licensure to Mr. Williams are that his offense, lewd and lascivious molestation of a child under 12 years of age, relates to the practice of, or the ability to practice, the profession of funeral director and embalmer under section 497.152(2); that issuance of the license to Mr. Williams would create a danger to the public under section 497.141(5)(a); and that Mr. Williams is not of good character under sections 497.368(1)(c) and 497.373(1)(c).^{2/}

77. Mr. Williams contends that his offense does not directly relate to the practice of funeral directing or embalming, or the ability to practice either profession. In answer, the Board correctly states that in license revocation cases, the courts have not limited the reach of similar statutes to crimes that are committed during the

practice of a licensed profession or that are related to the technical ability to practice such a profession.

78. In the oft-cited case Doll v. Department of Health, 969 So. 2d 1103, 1106 (Fla. 1st DCA 2007), the court stated:

Several cases demonstrate that, although the statutory definition of a particular profession does not specifically refer to acts involved in the crime committed, the crime may nevertheless relate to the profession. In Greenwald v. Department of Professional Regulation, the court affirmed the revocation of a medical doctor's license after the doctor was convicted of solicitation to commit first-degree murder. 501 So. 2d 740 (Fla. 3d DCA 1987). The Fifth District Court of Appeal has held that although an accountant's fraudulent acts involving gambling did not relate to his technical ability to practice public accounting, the acts did justify revocation of the accountant's license for being convicted of a crime that directly relates to the practice of public accounting. Ashe v. Dep't of Prof'l Regulation, Bd. of Accountancy, 467 So. 2d 814 (Fla. 5th DCA 1985). We held in Rush v. Department of Professional Regulation, Board of Podiatry, that a conviction for conspiracy to import marijuana is directly related to the practice or ability to practice podiatry. 448 So. 2d 26 (Fla. 1st DCA 1984). These cases demonstrate, in our view, that appellee did not err by concluding Doll's conviction was "related to" the practice of chiropractic medicine or the ability to practice chiropractic medicine.

79. Of particular relevance to this case, the Board cites Rothar v. Florida Real Estate Commission, Case No. 17-1855 (Fla.

DOAH July 26, 2017),^{3/} in which Administrative Law Judge Yolanda Y. Green found that aggravated sexual abuse of a child was related to the practice of real estate for the purpose of considering whether to grant a license application. ALJ Green reasoned as follows:

28. Respondent's behavior in engaging in aggravated sexual abuse of a child shows total disregard for one of the most vulnerable members of our population. It is the lack of respect for and exploitation of another, for personal pleasure, that demonstrates impaired judgment. Petitioner's crime directly relates to the practice of real estate.

80. This conclusion would appear to end the inquiry. However, the real estate licensing statutory scheme at issue in Rothar made provision for the offending applicant to gain approval when "because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the commission that the interest of the public and investors will not likely be endangered by the granting of registration." § 475.17(1)(a), Fla. Stat. ALJ Green concluded as follows:

33. Here, Petitioner has offered letters from business partners and customers attesting to his good moral character and his reputation for fair and honest dealings in real estate transactions. Further, he has been gainfully employed in the real estate arena for 14 years with access to the homes of customers without any complaints. Petitioner has met all conditions of his

sentence and has been released from his requirement to register as a sex offender. Furthermore, there has been a substantial passage of time since his criminal offense, nearly 25 years ago. The greater weight of evidence establishes that the criminal offense was an isolated incident rather than part of a pattern of similar conduct, which is a relevant factor when considering whether he would be a danger to the public. Respondent did not offer evidence of misconduct or lack of good moral character since the incident in 1993 to rebut Petitioner's evidence that he will not pose a threat to the public and investors. Thus, his application should be approved.

81. It is concluded that in the instant case it would be grossly unfair, and possibly a violation of Mr. Williams's due process rights, to ignore the voluminous evidence of his good character, generally law abiding nature, ample professional qualifications, and ongoing rehabilitation, merely because section 497.152 lacks express language allowing an applicant to demonstrate fitness for licensure in spite of his criminal history. The statute itself is not mandatory: it does not state that the Board must reject an applicant whose conduct meets the criteria of subsection (2); it merely states that such conduct shall "constitute grounds for denial of any application." The Board should be free to judge those grounds in accordance with all the facts and circumstances presented by the applicant.^{4/}

82. Counsel for the Board has argued, not unreasonably, that sections 497.152(2) and 497.141(5)(a) provide separate and independent grounds for denying Mr. Williams's application. However, the undersigned would urge that, consistent with due process principles, the statutes should be read in tandem. Section 497.141(5)(a) provides that the Board may issue a license to an applicant with a criminal record that requires disclosure "if the applicant demonstrates that issuance of the license . . . does not create a danger to the public." This provision should be read as the complimentary "rehabilitation" provision to section 497.152(2), allowing the Board to consider the applicant's post-conviction history in making its ultimate determination.

83. The chief purpose of regulating licensure as a funeral director or embalmer is the protection of the public health and safety. § 497.002(3), Fla. Stat. Reading sections 497.152(2) and 497.141(5)(a) separately could lead the Board to conclude that an applicant presents absolutely no danger to the public but still must be denied because of his criminal past. Such a conclusion would have less to do with protecting the public than with continuing to punish an individual who has done everything society has asked of him to rehabilitate himself. If the Board concludes that

issuing a license to Mr. Williams would not create a danger to the public, the undersigned would urge that the governing statutes give the Board the discretion to further conclude that Mr. Williams should receive a license.

84. Board counsel urges that Mr. Williams has not met the requirement of "good character" set forth in sections 497.368(1)(c) and 497.373(1)(c). Obviously, Mr. Williams could not be said to have had "good character" when he committed the crime that stands as the only reason to consider denying licensure. Based on the Findings of Fact above, however, it is concluded that Mr. Williams has so rehabilitated himself as to meet the "good character" requirement of the cited statutes.

85. A professional license is not a right, but a privilege granted by the State. Borrego v. Ag. for Health Care Admin., 675 So. 2d 666, 668 (Fla. 1st DCA 1996). An administrative agency, such as the Board, has "particularly broad discretion in determining the fitness of applicants who seek to engage in an occupation in the conduct of which is a privilege rather than a right." Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d at 934 (quoting Osborne Stern & Co. v. Dep't of Banking and Fin., 647 So. 2d 245 (Fla. 1st DCA 1994))(Booth, J., concurring and dissenting). Administrative agencies possess discretion when determining whether an applicant should receive a

license, especially when the agency is regulating an occupation which is deemed to privilege rather than a right. Astral Liquors, Inc. v. Dep't of Bus. Reg., 463 So. 2d 1130, 1132 (Fla. 1985).

86. Based on all the evidence, it is concluded that the Board should exercise its discretion in favor of granting a combined funeral director and embalmer license to Charles Williams.

RECOMMENDATION

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

RECOMMENDED that:

The Board Funeral, Cemetery and Consumer Services enter a final order granting Petitioner's application for licensure as a funeral director and embalmer.

DONE AND ENTERED this 9th day of September, 2019, in Tallahassee, Leon County, Florida.



LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of September, 2019.

ENDNOTES

^{1/} It is undisputed that Mr. Williams's crime was reportable under section 497.142(10).

^{2/} The Board did not suggest that Mr. Williams has ever shown lack of trustworthiness or integrity as those qualities relate to business matters.

^{3/} The undersigned has also considered Department of Business & Professional Regulation, Construction Industry Licensing Board v. Walk, Case No. 18-3505PL (Fla. DOAH Oct. 18, 2018), and Raines v. Department of Business & Professional Regulation, Construction Industry Licensing Board, Case No. 08-2718 (Fla. DOAH Dec. 15, 2008), cited in the Board's Proposed Recommended Order. Both cases discuss the relationship between a contractor's license and sex offenses of a similar nature to that under consideration in the instant case. The undersigned finds these cases inapposite because of their emphasis on the free access that a licensed residential contractor may have to the home of a client, and the client's expectation that the contractor will be on the premises frequently to oversee his employees.

Any access that Mr. Williams might have to a client's home would be under very narrow constraints, such as a call to retrieve a body, which in any event is an unlicensed activity. In his capacity as a funeral director and embalmer, Mr. Williams would never be free to roam a client's house at will.

^{4/} If the statute does not give the Board discretion to take into account the subsequent history of a criminal offender, then it comes uncomfortably close to creating an irrebuttable presumption that a person who has committed a crime relating to the practice of a profession may never obtain a license. The Board's discretion to consider rehabilitation is of particular concern given that, under the governing case law approvingly catalogued in Doll, virtually any crime may be said to "relate" to virtually any profession by establishing the offender's bad character and/or poor judgment.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.