Arkansas Insurance Department

Asa Hutchinson
Governor

Alan McClain
Commissioner

BEFORE THE STATE BOARD OF EMBALMERS, FUNERAL DIRECTORS, CEMETERIES, AND BURIAL SERVICES

IN THE MATTER OF
Juan Fernandez, Applicant for Apprentice
Funeral Director and Apprentice Embalmer, Respondent

Case No. 22-03

Via Certified Mail Return Receipt No. 7021 2720 0001 5102 1490 and First-Class Mail

March 16, 2022

Mr. Juan Fernandez
[redacted]

Dear Mr. Fernandez:

Please find the following Notice of Public Hearing on the applications submitted by you:

NOTICE OF PUBLIC HEARING

Please be advised that an administrative hearing will take place on April 19, 2022 at 9:00 a.m. at an official meeting of the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services, in the Diamond Mine Room, 2nd Floor, located in the Department of Commerce building at 1 Commerce Way, Little Rock, AR 72202. The hearing will be held before the Board concerning the following matters. The Hearing is your opportunity to defend yourself against the following allegations, and to make a determination with regard to your application for registration as an embalmer apprentice.

ALLEGATIONS

1. Respondent is or will be employed at Smith North Little Rock Funeral Home.

2. On January 10, 2022, Respondent submitted applications for registration as an apprentice embalmer and apprentice funeral director.

3. On October 16, 2017, Respondent pled guilty in Pulaski County Circuit court, Case No. 60CR-17-2976 to possession of a controlled substance schedule I, II excluding meth/cocaine, a class D Felony. For this offense, Respondent received a sentence of five years probation.

4. On December 13, 2018, Respondent pled guilty in Pulaski County Circuit court, Case No. 60CR-18-594 to possession of a controlled substance schedule I, II excluding meth/cocaine, a class D Felony. For this offense, Respondent received a sentence of thirty-six months probation.

5. On January 27, 2022, Respondent pled guilty in Pulaski County Circuit court, Case No. 60CR-19-3766 to terroristic threatening in the first degree, a class D felony.

6. Also on January 27, 2022, Respondent pled guilty in Pulaski County Circuit court, Case No. 60CR-19-3766 to aggravated assault on a family or household member, a class D Felony.

7. For these offenses, Respondent was given a sentence of five years probation, a fine, the requirement to complete courses on anger management and domestic violence, and random drug screens.

APPLICABLE LAWS

1. Pursuant to Ark. Code Ann. § 23-61-1103(a)(11)(A), the Board has jurisdiction to "conduct hearings and subpoena witnesses, books, and records in connection with alleged violations of this subchapter, relevant laws, and the rules or orders of the board."

2. Pursuant to Ark. Code Ann. § 17-29-301(a)(8)(A), "a person who desires to practice in the science of embalming in this state shall: ... undergo and pass a criminal background check conducted by the Department of Arkansas State Police."

3. Pursuant to Ark. Code Ann. § 17-29-302(a)(6)(A), "a person who desires to engage in the business of funeral directing in this state shall:...undergo and pass a criminal background check conducted by the Division of Arkansas State Police."

4. Ark. Code Ann. § 17-29-311(a) authorizes the Board to "issue letters of reprimand or caution, refuse to issue or renew a license, suspend or revoke any license for the practice of embalming or funeral directing, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of the license to be guilty of acts of commission or omission, including the following: (1) Conviction of a felony listed under § 17-3-102."

5. Ark. Code Ann. § 17-3-102(a) provides, "An individual is not eligible to receive or hold a license issued by a licensing entity if that individual has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court, unless the conviction was lawfully sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., or otherwise previously sealed, pardoned or expunged under prior law:...(14) Terroristic threatening in the first degree as prohibited in § 5-13-301...(20) Offenses against the family as prohibited in §§ 5-26-303—5-26-306."

6. Ark. Code Ann. § 17-3-102(b)(1) permits the Board to waive disqualification of the prior conviction when the request for the waiver is made by an applicant for licensure. Subsection (b)(2) provides the criteria upon which the Board may grant a waiver: "(A) The age at which the offense was committed; (B) The circumstances surrounding the offense; (C) The length of time since the

offense was committed; (D) Subsequent work history since the offense was committed; (E) Employment references since the offense was committed; (F) Character references since the offense was committed; (G) Relevance of the offense to the occupational license; and (H) Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public."

7. Ark. Code Ann. § 17-1-103(a) provides, "(1) It is the policy of the State of Arkansas to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. (2) The public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful trade, occupation, or profession."

8. However, Ark. Code Ann. § 17-1-103(d) provides, "For the purposes of this section, *completion* of the following shall be deemed prima facie evidence of sufficient rehabilitation: (1) Probation or parole supervision; and (2) A period of five (5) years after final discharge or release from any term of imprisonment in the state penitentiary without any subsequent conviction." (emphasis added).

CHARGES

1. Respondent's actions, as set forth in Allegations 3 through 7, above, constitute a violation of Ark. Code Ann. § 17-29-301(a)(8)(A) in that Respondent cannot pass the State Police criminal background check required of embalmers because of his felony convictions.

2. Respondent's actions, as set forth in Allegations 3 through 7, above, constitute a violation of Ark. Code Ann. § 17-29-302(a)(6)(A), in that Respondent cannot pass the State Police criminal background check required of funeral directors because of his felony convictions.

TIME AND PLACE OF HEARING

Respondent is hereby notified that the Board will hold a hearing on the allegations set out above on April 19, 2022 at 9:00 a.m. in the Diamond Mine Room, 2nd Floor, located in the Department of Commerce building at 1 Commerce Way, Little Rock, AR 72202.

The hearing will be conducted pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et seq.* You may appear in person, be represented by counsel, and offer witnesses, affidavits, or documentary evidence in response to the allegations contained herein.

You are notified that all evidence, including any documents, and any oral testimony which the Board determines to be relevant, shall be introduced on the day of the hearing. No additions will be permitted, nor will the record be allowed to be supplemented after the hearing is concluded. Therefore, if you have any documentary evidence you wish to submit to the Board, you must bring it to the hearing. Likewise, any oral testimony must be presented at the hearing by way of any witnesses you wish to testify on your behalf.

Sincerely,

Amy Goode

Executive Secretary
State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services