

EMBALMING: Board may consider application of an individual for  
BOARD : re-examination, where his license has been revoked  
for cause.  
Signing in blank certificates of death and leaving  
them with undertaker who is not licensed embalmer,  
to be used by him, is cause for revocation of license.

January 6, 1943

Hon. Allen V. Hays, Secretary  
The State Board of Embalming  
Nevada, Missouri



Honorable Sir:

We acknowledge your letter of December 6, 1942,  
requesting opinions, the pertinent part of said letter  
being as follows:

"At the direction of the State Board of Embalming I am writing to request of you an opinion as to the status of an individual having had his Missouri Embalmers license revoked, under procedure as outlined under rule 4 of the "Standard of Proficiency". The Board wishes to know specifically whether or not such an individual may be considered eligible to make application for re-examination for a new embalmers license, or if the fact of his original license having been revoked, after citation and hearing as outlined under rule 4, renders him subject to all the rules and requirements as set forth in the Standard of Proficiency, relative to eligibility of applicants (Sec. 10103-Qualification of Applicants).

"Also I am directed to request of the Attorney General an opinion as to the status of a licensed embalmer who signs in blank the form printed on the back of Standard Missouri Certificates of Death, leaving one or a number of such "signed" certificates in the hands of an undertaker who is not a licensed embalmer to be used by him as the need may arise."

Section 10102 of R. S. Mo., 1939, delegates to the State Board of Embalming powers and authority

"to adopt rules and regulations and by-laws, from time to time, not inconsistent with the laws of this state or of the United States, whereby the performance of the duties of said board and the practice of embalming of dead human bodies shall be regulated."

Under the authority given the Board by Section 10102, it appears that the Board has adopted Rule 4, Section 1, which is as follows:

"When written complaint shall be made to the Board against any licensed embalmer in the State of Missouri, charging any misconduct in his professional capacity or for violation of any law or the Standard of Proficiency herein required, the same shall be made under oath. The Board shall investigate the same in a summary manner and shall determine at the earliest possible time whether the complaint is meritorious. If a majority of the Board finds the complaint meritorious and supported by substantial evidence it shall notify the accused by giving him twenty (20) days notice of the filing of such complaint; such notice shall contain an exact statement of the charges and date and place set for a hearing before the Board. If the embalmer thus notified fails to appear, either in person or by counsel, at the time and place designated in said notice, the Board shall, after receiving legal evidence and proof of said charges, revoke or not renew his license."

From an examination of the booklet entitled "Standard of Proficiency" adopted September 16, 1941 by the Board of Embalming of Missouri, we find no rule has been adopted relating to the consideration of an application of an individual for an embalming license who previously held an embalming license, which license was revoked for cause. In the absence of such a rule, and there being no statute on the question and it appearing that the particular proposi-

tion has not heretofore been submitted to the courts for determination, we must consider what would be a fair and reasonable course to pursue.

From your letter, we assume that you refer to an individual whose license has been revoked, because he has violated some of the specific qualification requirements contained in Section 10103 of R. S. Mo., 1939, which reads in part as follows:

"From and after the first day of September, eighteen hundred and ninety-five, every person now engaged or desiring to engage in the practice of embalming dead human bodies within the state of Missouri shall make a written application to the state board of embalming for a license, accompanying the same with the license fee of ten dollars, whereupon the applicant, as aforesaid, shall present himself or herself before said board, at a time and place to be fixed by said board; and if the board shall find, upon due examination, that the applicant is of good moral character, possessed of a knowledge of the venous and arterial system \* \* \* \*"

Ordinarily, revocation of a license would not be for lack of knowledge of some of the matters set out in the section above quoted, but because of some act or conduct on the part of the licensee that would convince the Board that he is no longer of good moral character, and it is a matter of common knowledge that one's moral character may become better or worse in the course of time, and there is always the possibility of improvement.

Applicant must always furnish the Board with satisfactory proof of his good moral character.

"The legislature has the same power to require, as a condition of the right to practice the profession, that applicant shall be possessed of the qualifications of honor and a good moral character, as it has to require that he shall be learned in the profession; and when so required by statute, satisfactory proof of his good moral character must be produced by an applicant to

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entitle him to a license or certificate.  
\* \* \* \* 48 Corpus Juris, p. 1090, Section  
55.

CONCLUSION TO THE QUESTION PRESENTED IN PARAGRAPH 1. OF YOUR LETTER.

It is our opinion that, if an individual whose license has been revoked for cause makes another application for examination for a license, the application must be considered by the Board, and accepted or rejected. It is within the sound discretion of the Board as to how soon after revocation of license they should accord such individual an opportunity to be again examined by the Board, the time to be determined by the gravity of the misconduct for which the individual's license was revoked. If such individual is allowed to take an examination, the burden would be upon him to show that he is now of good moral character, and in all other respects eligible for the license.

The second paragraph of your letter submits a question involving the official act of a licensee which violates the spirit, as well as the letter, of the law relating to the disposal of dead human bodies. It amounts to a delegation by a licensed embalmer of all of the authority he has to an unlicensed person. It would unquestionably be a fraud, and, therefore, a degradation of character.

"It is a mistaken conception of the nature of any calling, professional, commercial, or industrial, that it is invested with such sanctity as to exempt it from reasonable legal regulations. The ever-expanding exercise of the police power manifested in the enactment of regulatory statutes, embracing every possible vocation, demonstrates the fallacy of this conception. The purpose of such statutes is in some instances to encourage efficiency and in others to promote sanitation, whereby in the first incompetency may be eliminated, and in the second the public health preserved . . . A re-examination of one who has permitted his license to expire is not an oppressive requirement or an invasion of an inherent right. It affords the board an opportunity

to determine whether, under that feeling of security afforded by a license renewable upon a mere application, the applicant has not become inefficient through mental inertia. The fee required of a first applicant or of one seeking a license after forfeiture is not unreasonable. It is necessary in the economical administration of public affairs that each department created by law should, so far as reasonably possible, be authorized to charge such fees for services rendered as will enable the department to be self-sustaining." State ex rel. Bigham v. State Bd. of Embalmers, 297 Mo. 607, 250 S. W. 44.

The individual, so using death certificates, would be guilty of conspiracy in violation of Section 10106 of R. S. Mo., 1939, which is as follows:

"On and after the first day of September, 1895, it shall be unlawful for any person not a registered embalmer to practice or pretend to practice the science of embalming, unless said person is a registered embalmer within the meaning of this chapter."

"The revocation of a physician's registration for 'having professional connection with, or lending one's name to, an illegal practitioner,' which was defined as unprofessional and dishonest conduct, was upheld in Re Van Hying (1932) 257 Mich. 146, 241 N. W. 207.

" \* \* \* \* \*

"Aiding and abetting an unlicensed person to practise a system and mode of treating the sick and afflicted was the ground upon which a physician's license was revoked, in Anderson v. Medical Examiners (1931) 117 Cal. App. 113, 3 Pac. (2d) 344,--where the sufficiency of the accusation and the proceeding in general was upheld, without disclosing the precise nature of the acts upon which the accusation was based,

"But a single episode which happened during the absence of a chiroprapist, and without his knowledge or consent, was held not to justify the revocation of his license for aiding and abetting his unlicensed employer in practicing chiropraxy unlawfully in *Renwick v. Phillips* (1928) 204 Cal. 349, 268 Pac. 368." 82 A. L. R. 1187.

In a case involving the issuance by a physician of 778 blank prescriptions for whiskey, in a local option town, to be used as a beverage, when there was a statute declaring such issuance of prescriptions to be a crime (the conduct involved in the question at hand also is declared to be a misdemeanor by Section 10108) the Supreme Court in holding such acts to be unprofessional and dishonorable conduct stated:

"It needs no citation of authorities to demonstrate that appellant's conduct aforesaid, as disclosed by the undisputed facts in the record, was both unprofessional and dishonorable. In addition to the foregoing, every prescription of above character which appellant signed as physician and delivered, and upon which whiskey was obtained as a beverage, constituted a crime against this State." *State ex rel. A. M. Conway v. F. B. Hillier et al., Constituting State Board of Health*, 266 Mo. 246, l. c. 269.

CONCLUSION TO THE QUESTION PRESENTED IN PARAGRAPH 2. OF YOUR LETTER.

We are of the opinion that a licensed embalmer who repeatedly signs in blank the form printed on the back of standard Missouri certificates of death, leaving one or a number of such signed certificates in the hands of an undertaker who is not a licensed embalmer to be used by him as need may arise in the absence of such licensed embalmer would constitute a violation of the law of this state, and would constitute unprofessional and dishonorable conduct, which if proven according to the statutes and Standard of

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Proficiency Rules would justify the board in revoking the license of such practitioner, but we believe that it would take more than a single such act to constitute such professional misconduct as would justify revocation of his license.

Respectfully submitted

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APPROVED:

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Attorney General

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