

EMBALMING BOARD: Licensing nonresidents.

July 1 - 1943



Mr. Allen V. Hays, Secretary
The State Board of Embalming
300 W. Cherry Street
Nevada, Missouri

Dear Mr. Hays:

We acknowledge receipt of your letter of June 15, requesting an opinion, which letter is as follows:

"At the May meeting of the Missouri State Board of Embalming the Secretary was instructed to request of the Attorney General an opinion as to whether or not the Embalming Board could enter into an arrangement or agreement with embalming boards of adjoining states with reference to the acceptance of applications of embalmers duly licensed in said state, to take the examinations for embalmers license in Missouri, provided that the educational and other requirements in said states are equivalent to the requirements in Missouri.

"Thanking you on behalf of the Embalming Board for such an opinion at your earliest convenience, I am * * *"

Section 10103, R. S. Mo. 1939, setting out the qualifications of applicants for embalmers' licenses, is 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, the location of heart, lungs, stomach, bladder, womb and other organs in the human body; the location of abdominal, pleural and thoracic cavities; the location of the carotid, brachial, radial, ulnar, femoral and tibial arteries; a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons, and the apartment, clothing and bedding, in case of death from infectious or contagious disease, the board shall issue to said applicant a license to practice said science of embalming and the care and disposition of the dead, and shall register such applicant as a duly licensed embalmer: Provided, that before any license is issued to the applicant, it must appear that he has personally embalmed at least ten dead human bodies, under the direction of a legally licensed embalmer. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving a license under the provisions of this chapter shall have said license registered in the probate judge's office of the county in the jurisdiction of which it is proposed to carry on said practice, and shall display said license in a conspicuous place in the office of such person so licensed."

Rule 6, Section 1 of the Standard of Proficiency provides for the admission to practice in Missouri of embalmers licensed in other states, and is as follows:

"Any embalmer admitted to practice the science and profession of embalming of another state in which the standard of admission is substantially equivalent to the standard of this state, and who can furnish the Missouri State Board of Embalming satisfactory and sufficient evidence complying with the educational requirements and standards governing applicants for Missouri license as set forth in the laws and rules governing the State Board of Embalming, particularly paragraph (d) Rule III; said applicant must also furnish a certificate executed and verified to by the secretary of the State Board of Embalming in the State in which he has been admitted to practice certifying that the applicant holds a valid license in said State, and the date said license was issued. The applicant complying with the foregoing provisions and furnishing said certificate to the State Board of Embalming shall serve as the applicant's apprenticeship in Missouri, providing further that said applicant furnish additional evidence that he or she has been actively engaged in the science and profession of embalming in the state in which said applicant has been licensed for a period of five (5) years and has embalmed at least ten (10) human bodies; that whenever a holder of an embalmer's license of another state fails to comply with the terms and provisions as set forth in this rule, and desires to take the State Board Examination, said applicant must comply with all the provisions as set forth in Rule III."

(Reference to Rule III in the section above quoted is erroneous, which error is due to the fact that in carrying over this particular section from the Standard of Proficiency as it

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was when adopted, the number of the rule was not changed, and it should now refer to Rule 1, Section 1.) Rule 1, Section 1 of the Standard of Proficiency elaborates on the qualifications required by Section 10103 abovequoted and requires that the applicant must be a bona fide resident of this state, and provides certain educational requirements and fees. It is obvious that Rule 6, Section 1 supercedes Rule 1 with reference to nonresidents. The statutes of this state do not require that the applicant must be a resident of this state.

The question of reciprocity is not involved because your inquiry does not involve a question of allowing one licensed in another state to practice in this state without requiring such person to become licensed in this state. There is no statute providing for reciprocal agreements between the Embalming Board of this state and the Embalming Boards of other state. In the absence of a statute, reciprocal agreements are not authorized, although comity may be recognized between states. A general discussion of comity is found in 50 A. L. R., page 30, as follows:

"In considering the question of comity it should always be borne in mind that the recognition of foreign laws cannot be claimed as a right, but only as a favor or courtesy. It is permitted and accepted by all civilized communities from mutual interest and convenience and a sense of the inconvenience which would otherwise result, and from moral necessity to do justice in order that justice may be done in return. When viewed in this light the exceptions and limitations of the doctrine may be more readily understood. Comity, being voluntary and not obligatory, rests in the discretion of the tribunals of the forum, governed by certain more or less widely recognized rules."

CONCLUSION

It is, therefore, the opinion of this department that reciprocal agreements with other states as to requirements for

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licenses are not authorized by law, but non-residents may be licensed in this state upon furnishing the information and proofs required in Rule 6, Section 1 of the Standard of Proficiency now in force. Formal and binding agreements are not authorized and probably would be without legal effect. However, there is no law forbidding the Embalming Board of this State to enter into informal agreements with other states, with equal requirements for the licensing of embalmers, to the effect that embalmers residing in such state will be licensed in this state upon complying with Rule 6, and without a formal examination, if such state will give equal recognition and opportunity to embalmers holding the license in this state.

Respectfully submitted,

LEO A. POLITTE
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

LAP:NH