



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

## PUBLIC HEALTH HEARING OFFICE

May 16, 2013

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VIA EMAIL

RE: **James Sanders (Embalmer License Reinstatement)**

2013-15

Dear Attorney Kurs and Attorney Antonetti:

Enclosed please find a copy of the Memorandum of Decision issued by the **Board of Examiners of Embalmers and Funeral Directors** in the above-referenced matter.

Sincerely,

Jeffrey A. Kardys  
Administrative Hearing Specialist/Board Liaison  
Public Health Hearing Section

c: Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations



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**STATE OF CONNECTICUT  
CONNECTICUT BOARD OF EXAMINERS  
FOR EMBALMERS AND FUNERAL DIRECTORS**

James Sanders, Petitioner

2013-15

**MEMORANDUM OF DECISION**  
*Procedural Background*

On October 15, 2004, the Department of Public Health (“Department”) rescinded the embalmer’s license (“license”) of James Sanders (“Petitioner”) that was previously reinstated on July 5, 2001, pursuant to a Reinstatement Consent Order (“Consent Order”), Petition Number 2001-0530-030-005. Petitioner’s license was rescinded when the Department determined that Petitioner had violated the terms of the 2001 Consent Order and that such rescission was in accordance with paragraph number six of the Consent Order in which Petitioner waived any right to a hearing regarding any alleged violations of the Consent Order. Dept. Exh. 1, tab F.

On November 13, 2012, Petitioner filed an application with the Department for reinstatement of his license.

On January 25, 2013, the Board of Examiners for Embalmers and Funeral Directors (“Board”) issued a Notice of Hearing to Petitioner, informing him that the Board had granted his request for a hearing regarding reinstatement of his license. Bd. Exh. 1.

On March 21, 2013, the Board heard Petitioner’s request for reinstatement of his license. At the hearing, Petitioner was present and was represented by Attorney Michael Kurs. Attorney Ellen Shanley represented the Department. Before the hearing adjourned, the Board requested the Department to submit, as late-filed exhibits, copies of the reports from the embalmers who supervised Petitioner’s practice from 2001 through 2004. The record also was kept open to accept a late-filing of additional documents pertaining to Petitioner’s reinstatement application. After the Board received the Petitioner’s and the Department’s late-filed exhibits,<sup>1</sup> the record was closed on April 5, 2013.

Each member of the Board attests that he was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board’s specialized professional knowledge in evaluating the evidence. *Pet v. Department of Health Services*, 228 Conn. 651 (1994).

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<sup>1</sup> On March 26, 2013, Petitioner filed supplemental documents in support of his reinstatement application. The exhibit was marked for identification as Pet. Exh. 2, and was entered into the record. On April 4, 2013, the Department filed the requested documents. The Department’s exhibit was marked for identification as Dept. Exh. 2, and was entered into the record. On April 5, 2013, the record closed.

### *Findings of Fact*

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Petitioner previously held Connecticut embalmers license number 2055. Pet. Exh. 1.
2. Petitioner was initially licensed in 1975. Pet. Exh. 1.
3. On May 26, 1993, Petitioner's license was suspended with the suspension stayed after three months; and, on August 26, 1993, Petitioner's license was placed on probation for nine months for Petitioner's failure to prepare or maintain funeral goods and services contracts for funerals and for Petitioner's diversion and misappropriation of funds from his employer. Dept. Exh. 1, tab A.
4. On May 31, 1995, Petitioner's license lapsed due to his failure to renew it, and became void on August 31, 1995. Petitioner was aware that he could not practice as an embalmer until his license was reinstated. Dept. Exh. 1, tab C.
5. From approximately May 31, 1995 until approximately March 11, 1997, Petitioner provided funeral services, without a license, for 11 decedents as either an embalmer or a funeral director. Dept. Exh. 1, tab C, p. 3.
6. From approximately June 1996 until approximately March 11, 1997, Petitioner maintained and kept the corpse of a decedent in a garage. Dept. Exh. 1, tab C, p. 3.
7. On or about February 19, 1997, Petitioner filed an application for reinstatement of his license. The application was incomplete and unsigned, and contained false and/or misleading information regarding his licensure history. Dept. Exh. 1, tab D, p. 4.
8. On or about March 3, 1997, Petitioner filed a revised application for reinstatement of his license. The revised application contained the same false and/or misleading information regarding his licensure history that was contained in his February 19, 1997 application. Dept. Exh. 1, tab D, p. 3.
9. On November 12, 1998, the Board ordered Petitioner to cease and desist from the practice of embalming and funeral directing without a license. Dept. Exh. 1, tab C, p. 4.
10. On December 19, 2000, Petitioner's application for reinstatement was denied. Dept. Exh. 1, tab D, p. 1 and Dept. Exh. 1, tab E, p. 2.
11. On July 5, 2001, Petitioner's license was reinstated and placed on probation for three years, pursuant to a Reinstatement Consent Order. Dept. Exh. 1, tab E, p. 6.
12. On October 15, 2004, the Department rescinded Petitioner's license when the Department determined that Petitioner had violated the terms of the 2001 Reinstatement Consent Order. Such rescission was in accordance with paragraph number six of the

- Reinstatement Consent Order in which Petitioner waived any right to a hearing regarding any alleged violations of the same. Dept. Exh. 1, tab F.
13. A license rescission is legally the same as a revocation. Pet. Exh. 1, p. 1.
  14. Petitioner is a resident of Waterbury, CT, has been married for 38 years, and has two adult sons. Tr., p. 56.
  15. Petitioner has been a life-long member of the Grace Baptist Church in Waterbury where he has served on various committees, church choirs and held various offices, including service as a member of the Board of Trustees and as the chair of the Caring and Sharing Group. Pet. Exh. 1, pp. 33, 35, 41.
  16. Since 2004, Petitioner has worked at the Palace Theater in Waterbury, CT as an aisle co-captain. Tr., p. 56; Pet. Exh. 1, pp. 3, 40, 50, 54-56, 58.
  17. Petitioner submitted reference letters from several coworkers who attest to Petitioner's strong work ethic, commitment, honesty, compassion, friendly and patient demeanor, warmth, and charisma towards the patrons of the Palace Theater. Pet. Exh. 1, pp. 50, 54-56, 58.
  18. Petitioner submitted reference letters from members of the community who have known him for 20 [years] to 30 years or more. The letters are from a diverse section of the Waterbury community, including the Mayor of Waterbury and City of Waterbury aldermen, Connecticut state representatives, pastors, educators, other funeral directors, business owners, church parishioners, and childhood friends. All of these letters attest to various aspects of Petitioner's character: his commitment, caring and concern for his community, church, and family; his passion for his work as an embalmer and funeral director; his dedication and professionalism, selflessness, integrity, honesty, critical thinking; creativity, and generosity. Pet. Exh. 1, pp. 26-39, 41-49, 51-53.
  19. Petitioner submitted 32 pages of a petition containing the signatures of those who are supporting his request for reinstatement of his license. Pet. Exh. 1, pp. 59-91.

### *Discussion and Conclusions of Law*

Section 19a-17(d) of the Connecticut General Statutes ("Statutes") provides, in pertinent part, that the Board "may reinstate a license that has been suspended or revoked, if after a hearing, such board . . . is satisfied that the practitioner . . . is able to practice with reasonable skill and safety to patients, customers or the public in general. As a condition of reinstatement, the Board may impose disciplinary or corrective measures authorized under this section."

Petitioner has the burden of satisfying the Board that he is able to practice as an embalmer with reasonable skill and safety.

Petitioner has a well-documented and extensive licensure history of his inability or unwillingness to conform his conduct to the requirements of his profession. In a Memorandum

of Decision issued at the conclusion of an earlier hearing on Petitioner's license reinstatement request, the Hearing Officer wrote that "[e]mbalmers and funeral directors provide a critical public service. Their conduct can have a significant impact on the public health and safety as well as a profound effect on the individuals who engage their services. The profession is, therefore, highly regulated by the state." James Sanders, Memorandum of Decision, Petition Number 2000-0404-030-004, December 19, 2000. Dept. Exh. 1, tab D. While Petitioner's technical competence as an embalmer and his ability to conduct a funeral service with sensitivity and compassion have never been questioned or investigated by the Department, his failure to comply with the standards of practice of his profession undermined his good works and called into question his sincerity and commitment to practice appropriately and professionally. Dept. Exh. 1, tab D; Tr., pp. 66, 68-71, 75.

At the March 21, 2013 hearing, there was a standing room only crowd of well-wishers and supporters. The Board heard testimony from Mayor Neil O'Leary, a friend of Petitioner for 25 years, who commended Petitioner for his commitment and service to the Waterbury community and implored the Board to give Petitioner another chance to practice; and, from Acting Police Chief Vernon Riddick, Jr., who has known Petitioner all of his (Riddick's) life. Chief Riddick also endorsed Petitioner's license reinstatement request and testified about what a great asset and resource Petitioner is to the community; and, on a more personal note, testified about the recommendations and support Petitioner provided to his family when his brother, a Lieutenant in the Waterbury Police Department, died a few years ago. Dr. James Gatling, president of New Opportunities, a regional social services agency of 40 towns, and Petitioner's pastor, Reverend Larry Green, Grace Baptist Church, both endorsed Petitioner's license reinstatement request. They attested to Petitioner's excellent reputation in the community, his love, caring and commitment to his family, church, and community, his gift and calling to the profession and his integrity, unselfish generosity and stewardship. The Board also heard testimony from Ms. Derri Hamilton, a Waterbury resident and family friend, who testified about how Petitioner handled the funeral arrangements of her child whom she lost due to a miscarriage. The public's support, admiration, and positive perception of Petitioner were considered and were given their due weight.

Petitioner was sincerely contrite about the mistakes he made as an embalmer. He admitted that he falsified documents, misappropriated funds, failed to prepare and maintain funeral goods and services contracts for funerals, knowingly practiced without a license, and

failed to complete his supervised probations successfully. Tr., pp. 58-59, 61-62, 68-75. Thirteen years later, Petitioner professes to be a changed man. He claims that he is older, wiser, more stable, and understands his responsibilities and obligations to his family, church and his community. Tr., pp. 60, 62. Petitioner acknowledges his past mistakes, errors in judgment, and the many opportunities the Board and the Department have given him to correct his violations and comply with the standards of practice required of his profession. Tr., pp. 61-62. Petitioner expressed a strong desire to redeem himself with the community he let down and to serve them again. Tr., pp. 76-77.

Petitioner was also more forthcoming about the issues of his past, including a substance abuse problem he had in the late 1980's through the early 1990's. He claimed that he was too ashamed to acknowledge his use of illegal drugs and did not seek professional help to rehabilitate his conduct. Tr., pp. 58, 64-65. Although Petitioner did not use his substance abuse as an excuse for his professional misconduct, the difficulties Petitioner encountered with adhering to the standards of his profession occurred during the years he was using illegal drugs. Tr., p. 58.

Nonetheless, Petitioner reassured the Board that if its members decided to give him another chance to resume his practice, he would not take such an opportunity for granted. Tr. pp. 62-63. The Board made it very clear to Petitioner that this will be his last chance to get it right. Tr., pp. 75-76.

Based on Petitioner's assurances and the efforts he has made to be productive during his hiatus from the profession, the Board finds that Petitioner has satisfied his burden that he will be able to resume his practice as an embalmer with reasonable skill and safety, under the terms and conditions of the Order detailed below.

***Order***

Pursuant to §§ 19a-17 and 20-227 of the Statutes, the Board hereby orders the following:

1. Petitioner shall successfully complete the Connecticut state embalmers licensing examination.
2. Petitioner shall successfully complete a practical examination.
3. Upon notification by the Department that Petitioner has satisfied the terms set forth in paragraphs 1 and 2, Petitioner's license number 2055 to practice as an embalmer in the State of Connecticut shall be reinstated and immediately placed on probation for a period of five years under the following terms and conditions:
  - A. Petitioner shall successfully complete a minimum of six hours of mandatory continuing education courses during the first year of probation, including a course on sanitation and infection control, pursuant to the continuing education requirements specified in § 20-219a(b) of the Statutes. Documentation and certification of the successful completion of mandatory continuing education courses in the first year of probation, and annually thereafter, shall be submitted to the Department, directly from the educational institution where such courses were taken, within 30 days of their completion.
  - B. Petitioner shall obtain at his own expense, the services of an embalmer, pre-approved by the Department (hereinafter, "supervisor"), to supervise Petitioner's practice and to conduct a random review of Petitioner's business records.
  - C. The supervisor shall have the right to monitor Petitioner's practice by any other reasonable means, which he or she deems appropriate. Petitioner shall cooperate fully with the supervisor in providing such monitoring.
  - D. Petitioner shall be responsible for providing written supervisor reports directly to the Department in accordance with the schedule, as follows: **monthly** for the first, second and fifth years of the probationary period; and, **quarterly** for the third and fourth years of the probationary period. Such supervisor's reports shall include documentation of dates and duration of meetings with Petitioner, additional monitoring techniques utilized, and a statement that Petitioner is practicing with reasonable skill and safety.

- E. Petitioner shall not own or operate a funeral home for the duration of the probationary period.
- F. Petitioner shall notify the Department of any change(s) in his employment within 15 days of such change.
- G. The Department must be informed in writing prior to any change of address.
- H. All correspondence and reports are to be addressed to:

Olive Tronchin, Health Program Assistant 2  
Department of Public Health  
Division of Health Systems Regulation  
410 Capitol Avenue, MS #12HSR  
P. O. Box 340308  
Hartford CT 06134-0308

- 4. Any deviation from the terms of probation, without prior written approval by the Board shall constitute a violation of probation, which will be cause for an immediate hearing on charges of violating this Order. ~~Any finding that Petitioner has violated this Order will~~ subject Petitioner to sanctions under §19a-17(a) and (c) of the Statutes, including but not limited to, the revocation of his license. Any extension of time or grace period for reporting granted by the Board shall not be a waiver or preclude the Board's right to take subsequent action. The Board shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to Petitioner's address of record (most current address reported to the Practitioner Licensing and Investigations Section of the Healthcare Quality and Safety Branch of the Department).
- 5. This Memorandum of Decision becomes effective on the date signed by the Board.

The Board hereby informs Petitioner, James Sanders, and the Department of this decision.

Dated at Hartford, Connecticut this 16<sup>th</sup> day of May, 2013.

Connecticut Board of Examiners of Embalmers and  
Funeral Directors

by   
Daniel P. Jowdy, Chairperson

**CERTIFICATION**

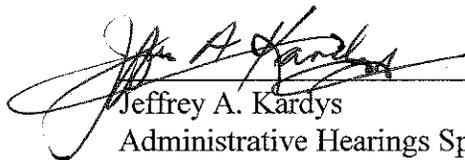
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 16<sup>th</sup> day of May 2013, by certified mail, return receipt requested to:

Michael Kurs, Esq.  
Pullman & Comley, LLC  
90 State House Square  
Hartford, CT 06103-3702

Certified Mail RRR #91 7199 9991 7032 2704 2135

and via email to:

Matthew Antonetti, Principal Attorney  
Legal Office  
Department of Public Health  
410 Capitol Avenue, MS #12LEG  
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Jeffrey A. Kardys  
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