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STATE OF CONNECTICUT

BOARD OF EXAMINERS OF EMBALMERS AND FUNERAL DIRECTORS

IN RE: Leo P. Gallagher, Jr.
License No. 1603
20 Suburban Avenue
Stamford, CT 06902

DA
3/3/94
JB

MEMORANDUM OF DECISION

INTRODUCTION

The Board was presented by the Department of Health Services with a Statement of Charges, dated January 25, 1985, alleging in two counts violation of provisions of § 20-227 of the Connecticut General Statutes by Leo P. Gallagher, Jr. (Respondent.)

Pursuant to Conn. Gen. Stat. § 4-182(c), the Respondent was given an opportunity prior to the institution of agency proceedings to show compliance with all lawful requirements for the retention of his license. The hearing on the Statement of Charges was conducted before the Board on April 3, 1985. The Respondent was present and represented by counsel at the hearing.

Each member of the Board involved in this decision attests that he/she has reviewed the record, and that the decision is based entirely on the record.

FACTS

Based on the testimony received and the exhibits offered into evidence at the above hearing, the Board makes the following

findings of fact:

Telophase Memorial Cremation Services (Telophase) is a business conducted in the State of Connecticut by a partnership comprised of Telophase of Connecticut, Inc., a California corporation, and LPG, Inc., a Connecticut corporation. The business has been in operation since early in 1983. Inter alia, Telophase offers to the general public services for the handling and preparation of dead human bodies for disposal, transportation of dead human bodies, and cremation services.

Although Telophase contracts with private licensed funeral directors and embalmers for the actual provision of these services, it has held itself out to the public as providing these services directly. Telophase directly provides funeral services in that it makes the arrangements with and for its clients for the transportation, handling, preparation and disposition of a deceased.

Neither of the partners that operate Telophase (i.e. Telophase of Connecticut, Inc. and LPG, Inc.) is licensed as a funeral director or embalmer in the state. Nor is the partnership itself so licensed, nor the business, nor the employees through whom the partnership conducts the business.

Further, no inspection certificate has been issued by the

state for Telophase's place of business in Stamford.

Leo P. Gallagher, Jr. (Respondent) is a Connecticut licensed funeral embalmer, operating out of a funeral home with locations in Stamford and Greenwich (Leo P. Gallagher and Son, Incorporated). Prior to 1983, the Respondent entered into discussions with Telophase Inc. of California. As a result of these discussions, both the Respondent and Telophase, Inc. formed new corporations, LPG, Inc. and Telophase of Connecticut, Inc., respectively. The Respondent is the president, the director and the major stockholder of LPG, Inc. The two corporations then entered into a general partnership agreement for the purpose of conducting in Connecticut the business known as Telophase Memorial Cremation Services. Under the terms of the agreement, LPG, Inc. put up all of the capital required to start the business, and Telophase of Connecticut, Inc. assumed the responsibility for the day to day operation of the business. The corporations share in the profits of the business. Although not involved in the day to day operation of Telophase Memorial Cremation Services, the Respondent regularly provides handling, preparation and cremation services to the business as an independent contractor.

CONCLUSIONS OF LAW

Conn. Gen. Stat. § 20-12 provides in relevant part:

... no person, firm or corporation shall enter, engage in, carry on or manage for another the business of caring for, preserving or disposing of dead human bodies until each person, firm or corporation so engaged has obtained from the department of health services and holds a license as provided in this chapter ...

Conn. Gen. Stat. § 20-222(1) provides:

No person, firm, partnership or corporation or other organization shall enter into, engage in, carry on or manage for another a funeral service business unless an inspection certificate has been issued by the board for each place of business, nor unless the principal or principals in such firm, partnership, corporation or other organization have obtained an embalmer's or funeral director's license in accordance with the provisions of this chapter. Any person, firm, partnership or corporation or other organization desiring to engage in the funeral service business shall submit, in writing, to said board an application upon blanks furnished by the board for an inspection certificate for a funeral service business for each place of business, and each such application shall be accompanied by a fee of one hundred dollars. Each holder of an inspection certificate shall, annually, on or before July first, submit in writing to the department of health services an application for renewal of such certificate together with a fee of fifty dollars. If the department of health services issues to such applicant such an inspection certificate, the same shall be valid until July first next following, unless revoked or suspended.

"Funeral service business" is defined as "the business, practice or profession of funeral directing." Conn. Gen. Stat. § 20-207(5). "Funeral directing" is defined as:

"... the business, practice or profession, as commonly practiced, of (A) directing or supervising funerals, or providing funeral services; (B) handling or encasing or providing services for handling and encasing dead human bodies; otherwise than by embalming, for burial or disposal; (C) providing embalming services; (D) providing transportation, interment and disinterment of dead human bodies; (E) maintaining an establishment so located, constructed and equipped as to permit the decent and sanitary handling of dead human bodies, with suitable equipment in such establishment for such handling, and (F) conducting an establishment from which funerals may be held."

Conn. Gen. Stat. § 20-207(3).

A "Funeral director" is defined as "any person engaged or holding himself out as engaged in funeral directing ..." Conn. Gen. Stat. § 20-207(4).

Based on the evidence presented at hearing and applicable statutes, it is the conclusion of the Board that Telophase is an illegal funeral service business in that it is engaging in the practice of funeral directing without the appropriate funeral director's or embalmer's license or a certificate of inspection from the Department of Health Services.

In pertinent part, Conn. Gen. Stat. § 20-227 provides that this Board may take disciplinary action against a licensed embalmer for his "(7) aiding or abetting the practice of ... funeral directing by an unlicensed person."

Based on the evidence presented at hearing, the Board concludes that the Respondent has aided and abetted the unlicensed practice of funeral directing by Telophase Memorial Cremation Services, and he is therefore guilty of the offense charged in the second count of the Statement of Charges.

As to the first count of the Statement of Charges, the Board finds that it is without jurisdiction to enter a ruling, as that charge involves a business practice which falls within the exclusive jurisdiction of the Department of Consumer Protection. See Conn. Gen. Stat. § 19a-19.

ORDER

It is the unanimous decision of the participating members of the Board that pursuant to Conn. Gen. Stat. § 19a-17 the embalmer's license of the Respondent be suspended for a period of sixty days, that execution of said period of suspension itself be suspended and that the Respondent be placed on probationary status for a period of ninety days commencing June 21st, 1985.

It shall be a condition of probation that within the first thirty days of the probationary period, the Respondent completely disassociate himself from the business variously known as "Telophase Memorial Cremation Services", "Telophase Society", "Telophase Memorial Cremation Society" and "Telophase Pre-Planned Memorial Cremation Services" unless the business has secured a license and the certificate of inspection required under Chapter 385 of the Connecticut General Statutes. It shall be a further condition that within the first thirty days of the probationary period, the Respondent submit an affidavit to the Board stating that he has so completely disassociated himself, detailing the manner in which he has accomplished such disassociation, or alternatively submit copies of a license and certificate required of the business under Chapter 385, Conn. Gen. Stat. If the Respondent violates any condition of probation, the period of suspension above referenced will be placed into effect.

The Board additionally orders pursuant to Conn. Gen. Stat. § 19a-11 that effective July 20th Respondent cease and desist from any continuance of the violation of Conn. Gen. Stat. § 20-227(7) found herein.

Dated at Hartford, Connecticut, this 14 day of June,

1985.

BOARD OF EXAMINERS OF EMBALMERS
AND FUNERAL DIRECTORS

BY: Paul E. Driscoll
Paul E. Driscoll
Chairman

BY: Robert Rigney
Robert Rigney

BY: Edward B. Neilan
Edward B. Neilan

BY: Louise Hull
Louise Hull