

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES 1/
BUREAU OF HEALTH SYSTEM REGULATION
DIVISION OF MEDICAL QUALITY ASSURANCE

B. Patrick Callahan, Embalmer
License No. 001702
1602 Main Street
East Hartford, CT 06108

Petition No. 920623-30-001

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND:

The Department of Health Services ("Department") presented the Connecticut Board of Examiners for Embalmers and Funeral Directors ("Board") with a Statement of Charges brought against B. Patrick Callahan, Embalmer ("Mr. Callahan" or "Respondent") dated February 1, 1993. (Department Exhibit 2). The Statement of Charges alleges in one count that the Respondent violated Connecticut General Statutes §20-227 in that during December 1991, the Respondent improperly delegated or failed to adequately supervise Geoffrey Callahan, an unlicensed employee, when Geoffrey Callahan made arrangements for the Modugno funeral and/or attempted to provide guidance to the deceased's family.

Prior to the initiation of the instant charges, the Department offered the Respondent the opportunity to attend a Compliance Conference scheduled on November 6, 1992 to demonstrate compliance with all lawful requirements for the retention of his license. (Department Exhibit 1).

1/ At the time of this hearing, this agency was known as the Department of Health Services. Effective July 1, 1993, the Department of Health Services merged with the Connecticut Alcohol and Drug Abuse Commission to form the new Department of Public Health and Addiction Services. Public Act No. 93-381.

The Department served the Notice of Hearing and Statement of Charges on the Respondent by certified mail, return receipt requested. (Department Exhibit 2). The Respondent filed a response to the Statement of Charges in an Answer dated April 22, 1993. (Respondent Exhibit A).

The Respondent requested a continuance of the original hearing date, which the Board denied. On May 26, 1993, the Board held an administrative hearing to adjudicate the Respondent's case. Both the Department and the Respondent presented evidence and conducted cross-examination of witnesses.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 and the Regulations of Connecticut State Agencies §19-2a-1, et seq. All Board members involved in this decision attest that they have either heard the case or read the record in its entirety. This decision is based entirely on the record, the statutes governing Embalming and Funeral Directing in this state, and the specialized professional knowledge of the Board.

FINDINGS OF FACT:

1. At all times referenced in the Statement of Charges, the Respondent was the holder of Connecticut Embalmer License No. 001702. (Respondent Exhibit A; Department Exhibit 2).

2. The Respondent is one of the owners of the Benjamin J. Callahan Funeral Home, Inc. ("Callahan Home"), East Hartford, Connecticut, which employed Geoffrey Callahan. Geoffrey Callahan holds neither an embalmer nor a funeral director license. (Respondent Exhibit A; Department Exhibit 2).

3. On December 24, 1991, the Callahan Home contracted with Mrs. Carol Modugno, the widow of Michael Modugno (Department Exhibit 3) to perform the funeral of Michael Modugno. Michael Modugno died on December 23, 1991. (Respondent Exhibit A; Department Exhibit 2).

With Regard to the First Count:

4. The Respondent improperly delegated his duties under the contract with Mrs. Modugno to Geoffrey Callahan in that he directed Geoffrey Callahan to complete the arrangements for Michael Modugno's funeral. (Department Exhibit 3, Transcript 5/26/93 pp. 101, 132-133, 144). The Respondent improperly delegated, among other duties, meeting with and discussing funeral arrangements with Mrs. Modugno on December 24, 1991, (Transcript 5/26/93 pp. 12, 26, 56) the showing of caskets, (Transcripts 5/26/93 pp. 12-15) explaining of vaults, (Transcript 5/26/93 pp. 12-15) writing of the obituary, (Transcript 5/26/93 pp. 12-15) selling of merchandise, arranging for Mrs. Modugno to pick out a grave site, completing the Statement of Funeral Goods

and Services Selected, (Respondent's Post Hearing Brief p. 3, Department Exhibit 3) and calling up people to pay their last respects to Michael Modugno on the morning of the burial.

5. The Respondent's conduct in delegating his duties to Geoffrey Callahan contributed to Mrs. Modugno believing that Geoffrey Callahan was a licensed funeral director. (Transcript 5/26/93 p. 58).

6. After the funeral, Mrs. Modugno submitted a written list of complaints to the Callahan Home regarding the manner in which the funeral was conducted. (Department Exhibit 5). Geoffrey Callahan with the knowledge and approval of the Respondent met with Mrs. Modugno to discuss her concerns. (Transcript 5/26/93 pp. 21-24, 115-116, 149-150).

7. The Respondent improperly delegated or failed to supervise adequately Geoffrey Callahan, when Geoffrey Callahan attempted to provide guidance to the deceased's family in that the Respondent failed to see to it that Geoffrey Callahan satisfactorily provided guidance to Mrs. Modugno and performed the duties delegated to him in the conduct of Michael Modugno's funeral. For example, Geoffrey Callahan failed to insure that a cross and the flowers Mrs. Modugno ordered were on the casket as Mrs. Modugno wanted. (Transcript 5/26/93 pp. 19-21). Also, the Respondent failed

to talk to Mrs. Modugno about the arrangements for the funeral, how the wake was going, or whether she was satisfied. (Transcript 5/26/93 p. 138). Mrs. Modugno and the Respondent both testified that they never had any contact with each other. (Transcript 5/26/93 pp. 12, 26, 56, 136-137).

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes §20-227 provides in pertinent part:

The department of health services may refuse to grant a license or inspection certificate or the board may take any of the actions set forth in section 19a-17 against a licensee, registrant or holder of an inspection certificate if it finds the existence of any of the following grounds: ... (2) violation of the statutes or regulations of said department relative to the business of embalming or funeral directing in this state; ... (4) incompetency, negligence or misconduct in the carrying on of such business or profession; (5) violation of or noncompliance with the provisions of this chapter or the rules established hereunder; ... (7) aiding or abetting the practice of embalming or funeral directing by an unlicensed person....

The Department sustained its burden of proof as to all paragraphs of the First Count. Both the Respondent and Geoffrey Callahan testified that Geoffrey Callahan made arrangements for the Modugno funeral with the Respondent's knowledge. The Respondent held Geoffrey Callahan out to Mrs. Modugno, a member of the public, as a licensed funeral director.

Connecticut General Statutes 20-207(4) defines "funeral director" as:

"Funeral director" means any person engaged or holding himself out as engaged in funeral directing whether or not he uses in connection with his name or business the words "funeral director", "undertaker" or "mortician" or any other word or title intended to designate him as a funeral director or mortician or as one so engaged.

Connecticut General Statutes §20-207(3) defines "funeral directing" as:

"Funeral directing" means 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 bodies, with suitable equipment in such establishment for such handling, and (F) conducting an establishment from which funerals may be held.

The Board concludes that the Respondent made an improper delegation of duties that are only to be performed by a licensed funeral director. As the Respondent himself admitted an unlicensed man may not legally assist in arranging funerals. (Transcripts 5/26/93 pp. 130-131).

In addition, after delegating these duties, the Respondent did

not provide Geoffrey Callahan with proper supervision. At no time did the Respondent, or any other licensed person, review Geoffrey Callahan's performance to make sure that Mrs. Modugno, as the responsible family member, was satisfied with the services and arrangements. When Mrs. Modugno appeared at the Callahan Home with complaints regarding the arrangements, the Respondent persisted in having Geoffrey Callahan represent the facility, and actually directed Geoffrey Callahan to undertake activities solely within the purview of a licensed funeral director. A number of arrangements (See Findings of Fact paragraph 7) were mishandled because Geoffrey Callahan received no supervision.

The Board concludes that the Respondent violated the Department's statutes and regulations relative to the business of funeral directing by permitting Geoffrey Callahan, an unlicensed employee of the Callahan Home, to participate in a licensed activity. The Respondent's conduct represented incompetency, negligence, misconduct, noncompliance with statutory provisions, and aiding or abetting the practice of funeral directing by an unlicensed person. Accordingly, the Board finds that the Respondent violated Connecticut General Statutes §20-227(2), §20-227(4), §20-227(5), and §20-227(7).

ORDER:

Pursuant to the authority vested in it by Connecticut General

Statutes §19a-17 and §20-227, and consistent with prior decisions of the Board, the Board orders the following in this case against B. Patrick Callahan, Embalmer, Petition No. 920623-30-001, Embalmer License No. 001702:

1. The Board suspends the Respondent's embalmer license for one (1) year. The suspension will be stayed after the initial four (4) month period and the Respondent placed on probation for the remaining eight (8) months. The stay will be contingent on the Respondent complying with all the terms of his probation as set forth below. If at any time the Board determines that the Respondent has failed to comply with any of the terms of his probation, the Board may reinstate its suspension of the Respondent's license for the full eight (8) month period.
2. The Department will return the Respondent's license after the initial four (4) month period of the suspension provided:
 - a. The Department has received all copies of Statements of Funeral Goods and Services Selected for all funerals contracted during this four (4) month period by the Callahan Home.

- b. The Department receives a check for the one thousand dollar (\$1,000.00) penalty assessed below.

3. The Board places the following conditions on the Respondent's probation:

- a. The Respondent must comply with all applicable state and federal statutes and regulations for licensed practice as a Connecticut embalmer or funeral director; and
- b. The Department will monitor the Respondent's practice as a Connecticut embalmer or funeral director.

4. The Board assesses the Respondent a civil penalty of one thousand dollars (\$1,000.00). The Respondent must pay the one thousand dollar (\$1,000.00) penalty by certified check, made payable to Treasurer, State of Connecticut, sent to the Public Health Hearing Office, State of Connecticut Department of Public Health and Addiction Services, 150 Washington Street, Hartford, CT 06106. The certified check shall include the Department petition number on its face for identification purposes.

5. This Order becomes effective upon the signature of the Board Chairperson.

Connecticut Board of Examiners for
Embalmers and Funeral Directors

2/16/94

Date

Morton L. Weinstein

by: Morton L. Weinstein, Chairperson

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