

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

Eugene M. Lupoli
Embalmer License No. 002365

Petition No. 2007-1231-030-005

MEMORANDUM OF DECISION

Procedural Background

On July 7, 2009, the Department of Public Health (“the Department”) presented the Connecticut Board of Examiners for Embalmers and Funeral Directors (“the Board”) with a Statement of Charges (“the Charges”) brought against license number 002365 of Eugene M. Lupoli (“respondent”). Bd. Exh. 7. The Charges and Notice of Hearing were sent to respondent by certified mail, return receipt requested, and first class mail, on July 7, 2009. Bd. Exhs. 1, 2, and 3; Tr. pp. 5-11.

On August 21, 2009, the Department filed a Motion to Deem Allegations Admitted (“the Motion”). Bd. Exh. 6.

On September 1, 2009, a hearing was held regarding the allegations contained in the Charges. Respondent did not appear. Attorney Diane Wilan represented the Department. On September 1, 2009, the Board granted the Motion. Bd. Exh. 6; Tr. pp. 17-18.

The Board conducted the hearing in accordance with Conn. Gen. Stat. (“the Statutes”) Chapter 54 and the Regulations of Connecticut State Agencies (“the Regulations”) §19a-9a-1 *et seq.* All Board members involved in this decision received copies of the entire record and attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 002365, and the embalmer/manager of Lupoli Brothers Funeral Home of New Haven. Respondent’s embalmer license number 002365 expired on April 30, 2008.
2. In paragraph 2 of the Charges, the Department alleges that on various occasions prior to August 30, 2007, respondent entered into pre-need funeral service contracts but failed to appoint the required escrow agent for each contract.

3. In paragraph 3 of the Charges, the Department alleges that on various occasions prior to August 30, 2007, respondent entered into pre-need funeral service contracts but failed to deposit the funds received for the contracts into an escrow agent's account.
4. In paragraph 4 of the Charges, the Department alleges that on various occasions prior to August 30, 2007, respondent entered into pre-need funeral service contracts but failed to deposit the funds received for the contracts into an escrow agent's account within fifteen days.
5. In paragraph 5 of the Charges, the Department alleges that on various occasions prior to August 30, 2007, respondent entered into pre-need funeral service contracts but failed to provide the purchasers with information required for the sale of a funeral service contract, and/or had no pre-need file or other documentation regarding the funeral service contract.
6. In paragraph 6 of the Charges, the Department alleges that on various occasions prior to August 2007, respondent funded pre-need funeral contracts at the time the accounts were transferred to other funeral homes, even though funds had never been deposited into escrow accounts.
7. In paragraph 7 of the Charges, the Department alleges that on or about August 30, 2007, and during prior annual inspections, respondent represented to the Department that it had not established any funeral service contracts since the year 2000, although it had in fact entered into approximately 34 such contracts after the year 2000.
8. In paragraph 8 of the Charges, the Department alleges that on various occasions prior to August 30, 2007, respondent falsely represented to the Connecticut Department of Social Services ("DSS") that irrevocable pre-need funeral service contracts were funded and in effect for various DSS clients.
9. In paragraph 9 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the Statutes, including, but not limited to: (a) §20-230b; (b) §20-227(2); (c) §20-227(4); (d) §20-227(5); (e) §42-200; and/or, (f) §42-207.

Findings of Fact

1. Respondent received the Notice of the Hearing. Bd. Exh. 1, 2 and 3; Tr. pp. 5-11. The Board finds the testimony of Jeffrey Kardys regarding the notice issues to be reliable and credible.
2. Respondent did not file an Answer to the allegations contained in the Charges.
3. Pursuant to the Board's Ruling of September 1, 2009, granting the Department's Motion to Deem the Allegations Admitted, all of the foregoing allegations are deemed admitted and true. Bd. Exh. 6; *see also*, §19a-9-20 of the Regulations.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, No. CV970573367, Superior Court, J.D. Hartford/New Britain at Hartford, February 19, 1998.

Section 19a-10 of the Statutes provides in pertinent part: "Any board . . . may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with Chapter 54 and the regulations established by the Commissioner of Public Health."

Section 20-227 of the Statutes provides in relevant part:

The Department of Public Health may . . . take any of the actions set forth in section 19a-17 against a license, 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;

The Department alleges that respondent violated §§ 20-230b, 20-227(2), 20-227(4), 20-227(5), 42-200, and/or 42-207, of the Statutes when on August 30, 2007, respondent entered into pre-need service contracts and failed to (1) appoint the required escrow agent for each contract; (2) deposit the funds received for the contracts into an escrow agent's account; (3) deposit the funds received for the contracts into an escrow agent's account within fifteen days; (4) provide the purchasers with the information required for the sale of a funeral service contract, and/or have pre-need file or other documentation regarding the funeral service contracts; and, (5) deposit pre-need funds into escrow accounts until such accounts were transferred to other funeral homes. Additionally, during prior annual inspections, respondent falsely represented to the Department that it had not established any funeral service contracts since the year 2000, when it, in fact, had entered into approximately 34 such contracts after the year; and, respondent falsely represented to DSS that irrevocable pre-need funeral service contracts were funded and in effect for various DSS client.

As discussed above, the allegations are deemed admitted. §19a-9-20 of the Regulations, and the Board finds that these violations constitute statutory violations and provide sufficient grounds for disciplinary action. Accordingly, the Board concludes that there is sufficient basis upon which to issue the following order.

Order

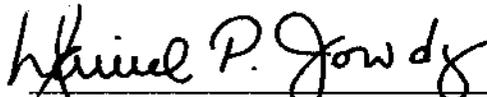
Pursuant to the authority vested in it by *Conn. Gen. Stat.* §§19a-17 and 20-227, the Board orders the following in the case of respondent's embalmer license number 002365:

1. The Board finds that the misconduct regarding the separate paragraphs of the Statement of Charges is severable and each specified paragraph and/or offense in paragraphs 2-8, inclusive, warrants the disciplinary action imposed herein.
2. As to each of the paragraphs, 2-8 inclusive, in the Statement of Charges, the respondent's license is hereby revoked.
3. Respondent is assessed a civil penalty of twenty thousand dollars (\$20,000) which must be payable by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check and shall be payable within thirty days of the effective date of this Decision.
4. All correspondence and the civil penalty payment shall be mailed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, CT 06134-0308
5. This decision does not dispose of any criminal liability unless respondent receives or has received a written agreement from the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau stating that this decision resolves any such liability.

Dated this 1st day of December, 2009.

Connecticut Board of Examiners for Embalmers,
Funeral Directors



Daniel Jowdy, Chairperson

CERTIFICATION

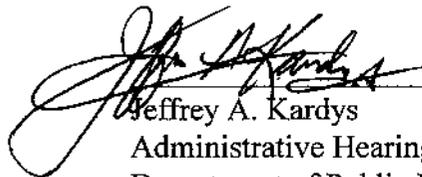
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 1st day of December 2009, by certified mail, return receipt requested, and first class mail to:

Eugene M. Lupoli
161 South Colony Street, 2-A
Wallingford, CT 06492

Certified Mail RRR #7004-1160-0000-8836-5483

and via email to:

Matthew Antonetti, Principal Attorney
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office