

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH PUBLIC HEALTH HEARING OFFICE

May 9, 2012

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VIA EMAIL

RE: David Buckmiller - Petition No. 2009-20091556

Dear Attorney Rado, 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 Hearings specialist/Board Liaison
Public Health Hearing Section

c: Wendy Furniss, Branch Chief, Healthcare Systems
Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations
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**STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS
FOR EMBALMERS AND FUNERAL DIRECTORS**

David Buckmiller, Embalmer
License No. 2399

Petition No. 2009-20091556

MEMORANDUM OF DECISION
Procedural Background

On July 13, 2011, 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 2399 of David Buckmiller (“respondent”). Rec. Exh. 1.

On September 13, 2011, the Charges, along with the Notice of Hearing, were sent to respondent by certified mail, return receipt requested, and first class mail. Rec. Exh. 2.

On October 12, 2011, the Department filed a Motion to Deem Allegations Admitted (“the Motion”). Rec. Exh. 3.

On October 18, 2011, respondent filed an Answer to the Charges (Rec. Exh. 4) and filed an Objection to the Motion. Rec. Exh. 5. Also, on October 18, 2011, respondent filed a Motion to Extend [the] Time [to file an Answer]. Rec. Exh. 6.

The hearing was held on December 8, 2011. At the hearing, respondent was present and was represented by Attorney Danielle Rado; Attorney Ellen Shanley represented the Department. At the beginning of the hearing, Attorney Shanley withdrew the Department’s Motion, after which the Board accepted respondent’s filed Answer to the Charges. Tr. p. 5.

The Board conducted the hearing in accordance with Chapter 54 of the General Statutes (“the Statutes”) and § 19a-9a-1 *et seq.* of the Regulations of Connecticut State Agencies (“the Regulations”). 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 David Buckmiller of Naugatuck, is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 2399.
2. In paragraph 2 of the Charges, the Department alleges that during 2009, respondent was employed by Buckmiller Brothers Funeral Home, Inc. of Prospect, Connecticut ("funeral home").
3. In paragraph 3 of the Charges, the Department alleges that during December 2009, an agent of the funeral home incorrectly identified two female bodies in its care and custody, S.H. and A.G.T.
4. In paragraph 4 of the Charges, the Department alleges that on or about December 29, 2009, respondent conducted the viewing and visitation that had been arranged for decedent A.G.T.
5. In paragraph 5 of the Charges, the Department alleges that at the viewing and visitation for A.G.T., one or more family members expressed concern to respondent that the human remains displayed were not those of A.G.T.
6. In paragraph 6 of the Charges, the Department alleges that respondent failed to respond appropriately to the family's concern.
7. In paragraph 7 of the Charges, the Department alleges that subsequently it was established that the remains displayed to the mourners at the viewing and visitation for A.G.T. were not the remains of A.G.T. The funeral home had displayed the remains of decedent S. H. at the wake for A.G.T.
8. In paragraph 8 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to § 20-227 of the Statutes, including but not limited to § 20-227 (4).

Findings of Fact

1. David Buckmiller of Naugatuck, is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 2399. Rec. Exh. 4; Tr. pp. 95-96.
2. During 2009, respondent was employed by the funeral home. Rec. Exh. 4; Dept. Exh. 1; Tr. pp. 59-65, 67-69, 71-74, 84-96.
3. During December 2009, an agent of the funeral home incorrectly identified two female bodies in its care and custody, S.H. and A.G.T. Rec. Exh. 4; Tr. pp. 64-65, 66-69, 71-72.

4. On or about December 29, 2009, respondent conducted the viewing and visitation that had been arranged for decedent A.G.T. Rec. Exh. 4; Dept. Exh. 1; Tr. pp. 84-85.
5. At the viewing and visitation for A.G.T., one or more family members expressed concern to respondent that the human remains displayed were not those of A.G.T. Rec. Exh. 4; Dept. Exh. 1; Tr. pp. 12-20, 44-48, 51, 56, 87-90, 92.
6. Respondent failed to respond appropriately to the family's concern. Tr. pp. 12-20, 44-48, 51, 56, 64-65, 101-103.
7. Subsequently, it was established that the remains displayed to the mourners at the viewing and visitation for A.G.T. were not the remains of A.G.T. The funeral home had displayed the remains of decedent S.H. at the wake for A.G.T. Tr. pp. 66-69, 71-72, 93-95.

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); *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008); *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 Connecticut General 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, that:

The ... Board 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: . . . (4) incompetency, negligence or misconduct in the carrying on of such business or profession; . . .

The Department met its burden of proof with regard to all of the allegations contained in the Charges.

Respondent admits all of the allegations contained in the Charges, except the allegations in paragraph 6. Specifically, respondent admits he was a licensed embalmer employed by the funeral home at all relevant times referenced in the Charges; that an agent of the funeral home incorrectly identified the bodies of S.H. and A.G.T.; that he conducted the viewing and

visitation for decedent A.G.T.; and that one or more of decedent A.G.T.'s family members expressed concern to him that the human remains displayed were not A.G.T.'s remains; and, that subsequently, it was established that at the wake for A.G.T., the mourners had viewed the remains of decedent S. H., and not A.G.T. Rec. Exh. 4; Tr. pp. 66-69, 71-72, 93-95.

With respect to the allegation contained in paragraph 6 of the Charges, the Department sustained its burden of proof that respondent failed to respond appropriately to the family's concerns. The Department relied on the following witnesses to prove its case: Daniel Tuccillo, one of the decedent's sons; Margaret Tuccillo, one of the decedent's daughters-in-law; and, Edward Bergin, the Department's investigator and inspector for funeral homes. The defense introduced the testimony of respondent, and his father, Wayne Buckmiller, who is the co-owner and funeral director of the funeral home.

Mr. Daniel Tuccillo testified that he was the first family member to express concern to respondent about the identity of the decedent before the wake began. He testified that he questioned respondent at least three or four times about the identity of the body in the casket because that person's features were so different from his mother's. Despite his and some of his family members' misgivings, Mr. Tuccillo initially deferred to respondent's assurances that he was mistaken because respondent was so adamant that this person was his mother. However, after he became more certain that the decedent was not his mother and that a mistake must have been made, Mr. Tuccillo testified that respondent did not take his concerns seriously and did not show him the compassion he expected. Tr. pp. 14-20.

Ms. Margaret Tuccillo also testified that her initial reaction when she viewed the body at the decedent's wake was that this person was not her mother-in-law. Because the person in the visitation room bore no resemblance to her mother-in-law, she assumed that she was in the wrong room. When she realized that she was in the right room, she also confronted respondent about the identity of the person in the room. Respondent told her that a person's features change after embalming. Since she was convinced that this was not the case and that respondent was wrong about the identity of the decedent, she confronted respondent again about her concerns, but to no avail. Ms. Tuccillo further testified that her husband, daughter and niece also approached respondent about their concerns. She expressed dismay that respondent never asked her why she was so certain that a mistake had been made and that respondent did not give the family members the benefit of the doubt. She testified that she and her family members were put

on the defensive because they had to prove to respondent that the decedent at her mother-in-law's wake was not her mother-in-law. Tr. pp. 45-47, 51-52.

In respondent's defense, his father, Wayne Buckmiller, testified that it was he who mistakenly got the names of the two decedents mixed-up and, as a result, he misidentified the decedents S.H. and A.G.T. and gave respondent the wrong information and written instructions concerning their remains. Tr. pp. 60-63. Mr. Buckmiller testified that when respondent first called him about the family's concerns, he initially told respondent "listen, it's Mrs. T" (Tr. p. 64), because he believed that it was. Thus, from his embalming the body to making the funeral arrangements, respondent believed that he had the correct decedent, A.G.T.

Respondent testified that based on his father's assurances that the decedents had been correctly identified, it did not occur to him that his father had made a mistake. Therefore, when some of the family members expressed concerns about the identity of the body, he repeatedly attempted to convince them that the decedent was their mother because he believed at the time, he had no reason to believe otherwise. Respondent also testified that because the decedent's other son, Ralph Tuccillo, thought that the body they viewed was his mother, respondent "thought it was something between them" [and he] didn't think there was any problem with that being the wrong person." Tr. p. 90. When he realized that other family members were not convinced, and they wanted more than his assurances that this was the right person, he called his father a second time and asked him to intervene. It was not until the family members suggested definitive ways to identify the decedent, and respondent and his father complied with their requests, that he realized that a terrible mistake had been made.

The Department met its burden of proof by a preponderance of the evidence that respondent failed to respond appropriately to the family's concerns that the decedent they had viewed at the wake was not their mother. While misidentification of a decedent is rare, Mr. Bergin, the Department's expert witness and funeral home investigator, testified that because of the unique circumstances of several of the family members' questioning the identity of the decedent, respondent should have made efforts to positively identify the decedent. Moreover, since respondent was aware that the funeral home had no established procedures at that time to identify decedents and he had never encountered this situation before, he should have taken affirmative steps to confirm the identity of the decedent after receiving repeated inquiries from the family members. Tr. pp. 30-32. As Mr. Bergin further testified, "it wouldn't have changed

the circumstances if they [had] identified [the decedent] upfront, but it certainly would have minimized the effect on the family.” Tr. p. 32.

Based on the record in this case, the Board finds that respondent’s conduct rose to the level of “incompetency, negligence or misconduct in the carrying on of such business or profession” in violation of § 20-227(4) of the Statutes, in that respondent should have addressed the decedent’s family’s concerns about the identity of their mother more effectively, and bases this order on such violation.

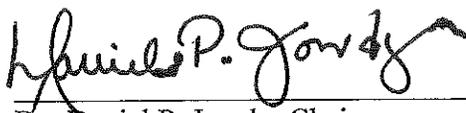
Order

Pursuant to the authority vested in it by §§ 19a-17 and 20-227 of the Statutes, the Board orders the following in the case of David Buckmiller, embalmer, the holder of Connecticut embalmer license number 2399, Petition No. 2009-20091556:

1. Respondent shall pay a civil penalty of two-thousand five-hundred dollars (\$2,500) 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.
2. Respondent’s license to practice as an embalmer in the State of Connecticut is hereby reprimanded.
3. This Order shall become effective upon the signature of the Board Chairperson.

Connecticut Board of Examiners for Embalmers,
and Funeral Directors

MAY 8, 2012
Date


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 9th day of May 2012, by certified mail, return receipt requested and via email to:

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Waterbury, CT 06702

Certified Mail RRR #91 7108 2133 3936 6420 2686

and via email to:

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