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

Leonard Holtz
Embalmer License No. 002433

Petition No. 2006-0119-030-001

MEMORANDUM OF DECISION

Procedural Background

On December 4, 2008, 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 002433 of Leonard Holtz ("respondent"). Bd. Exh. 2. The Charges and Notice of Hearing were sent to respondent by certified mail, return receipt requested, and first class mail, on December 17, 2008. Bd. Exhs. 1, 2.

On April 23, 2009, a hearing was held regarding the allegations contained in the Charges. Respondent appeared with his attorney Robert F. Ludgin. Diane Wilan, Esq., represented the Department.

The Board conducted the hearing in accordance with the Connecticut General Statutes ("the Statutes") Chapter 54 and the Regulations of Connecticut State Agencies ("the Regulations") § 19a-9a-1 *et seq.*

During the hearing respondent orally admitted to all of the allegations in the charges. Tr., p. 5.

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 002433.

2. In paragraph 2 of the Charges, the Department alleges that respondent buried P.A. on November 27, 2005, prior to filing the death certificate ("the Certificate') and/or prior to obtaining a Burial, Removal and Transit Permit ('the Permit").

3. In paragraph 3 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
   a. § 20-227(2);
   b. § 20-227(4);
   c. § 7-65; and/or
   d. § 7-62b.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 002433. Dept. Exh. 1.

2. P.A. died on November 24, 2005. Dept. Exhs. 2 and 3; Tr. p. 19.

3. On November 24, 2005, respondent took custody of P.A.'s remains from the West Hartford Health and Rehabilitation Center, where P.A. had died, to prepare the remains for a traditional orthodox Jewish burial. Dept. Exhs. 2 and 3; Tr. p. p. 20.

4. On November 25, 2005, Dr. Walsh signed the Certificate for P.A. Dept. Exh. 3.

5. On November 27, 2005, P.A. was buried. Dept. Exh. 3.

6. On November 28, 2005, respondent filed the Certificate for P.A. and obtained the Permit. Dept. Exh. 3.

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, 67 L. Ed. 2d 69, *reh'g denied*, 451 U.S. 933, 101 S. Ct. 2008, 68 L. Ed. 2d 318 (1981); *Goldstar Medical Services, Inc. v. Dept. of Social Services*, 288 Conn. 790, 820-82 (2008); *Swiller v. Commissioner of Public Health*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 705601 (October 10, 1995, *Hodgson, J.*).

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."

The General Statutes of Connecticut § 20-227 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 sustained its burden of proof in this matter. Respondent admits and a preponderance of the evidence establishes that P.A. was buried on November 27, 2005. At that time, the certificate had not been filed and the Permit had not been obtained. Pursuant to C.G.S. §§ 7-65, 7-62b the Certificate must be filed before the Permit can be obtained; and, the Permit must be obtained prior to conducting the burial. Thus, the Certificate must be filed and the Permit obtained prior to a burial.[1]

In this case, neither the certificate nor Permit was timely processed. The permit for Burial, Removal and Transfer was not obtained until November 28, 2009, after the burial. Respondent's explanation that he did not know the exact row number and/or location is not sufficient to excuse his failures to file the death certificate and obtain the necessary permit before burial, and is not credible. It is not necessary that the exact cemetery row number or location be known to file a death certificate or obtain a permit. Respondent could have filed the death certificate and obtained the permit before the burial of P.A. The certificate and permit could have been amended after filing, if necessary. The alleged uncertainties surrounding the cemetery plot and complications posed by the weather do not negate respondent's obligation to adhere to the statutorily required procedures. A sub registrar could have been contacted prior to the burial and necessary procedures followed.

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[1] Section 7-62b of the Statutes states that an embalmer must file a death certificate no later than five days after death if filing a paper certificate, and no less than three days after death if filing with an electronic registry, in order to obtain a permit for final disposition.

Section 7-65 of the Statutes states that an embalmer who takes possession of remains must obtain a permit for Burial, Removal and Transfer prior to the final disposition or removal of the body.

The Board concludes that respondent's conduct constitutes grounds for discipline pursuant to §20-227 of the Statutes in conjunction with §§7-62b and 7-65 of the Statutes as alleged in the Charges. Therefore, respondent's embalmer license is subject to disciplinary action pursuant to §19a-17 of the Statutes.

Order

Pursuant to the authority vested in it by the Statutes §§ 19a-17 and 20-227, the Board orders the following:

1. Respondent's license number 002433 to practice as an embalmer in the State of Connecticut is hereby reprimanded.
2. Respondent's shall pay a civil penalty of two thousand five hundred dollars ($2500), 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.

   Failure to pay the civil penalty as ordered is a violation of this Memorandum of Decision and may result in further disciplinary action, up to and including license revocation.
3. The civil penalty 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

   Ms. Pinkerton may also be contacted at the following email address:
   bonnie.pinkerton@ct.gov
4. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Office of Practitioner Licensing and Certification of the Healthcare Systems Branch of the Department.

This Decision is effective upon signature.

Connecticut Board of Examiners for Embalmers, Funeral Directors

9-01-2009
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 3rd day of September 2009, by certified mail, return receipt requested, and first class mail to:

Robert Ludgin, Esq.
33 Linden Place
Hartford, CT 06106

Certified Mail RRR #91-7108-2133-3932-0692-2690

and by Inter-Departmental Mail 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