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

Brian S. Delton, Embalmer
License No. 002536

Petition No. 2012-575

MEMORANDUM OF DECISION
Procedural Background

On July 25, 2012, the Department of Public Health ("Department") presented the Connecticut Board of Examiners for Embalmers and Funeral Directors ("Board") with a Statement of Charges ("Charges") and a Motion for Summary Suspension brought against license number 002536 of Brian S. Delton ("Respondent"). The Motion for Summary Suspension was based on the Charges, Affidavits, and the Department's information and belief that Respondent's continued practice as an embalmer presented a clear and immediate danger to the public health and safety. Bd. Exhs. 1 and 2.

On July 25, 2012, the Charges, along with the Notice of Hearing, were sent to Respondent by certified mail, return receipt requested, and first class mail. Bd. Exh. 4.

On August 13, 2012, the Department filed a Motion to Deem Allegations Admitted ("Motion"). Dept. Exh. 1

The hearing was held on August 14 and September 13, 2012. At the hearing, Respondent was present and was not represented by counsel. Attorney Ellen Shanley represented the Department. On the first day of hearing, Attorney Shanley orally moved to deem the allegations admitted. Tr. 8/14/12, pp. 5-6. The Board denied the Department's Motion (Tr. 8/14/12, p. 10) and Respondent orally answered the Charges on the record. Tr. 8/14/12, pp. 6-10.

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

Count One

1. In paragraphs one and five of the Charges, the Department alleges that Respondent of Glastonbury is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 002536.

2. In paragraph two of the Charges, the Department alleges that during May 2012, Respondent abused, or utilized to excess, cocaine.

3. In paragraph three of the Charges, the Department alleges that Respondent's abuse of cocaine does, and/or may, affect his practice as an embalmer.

4. In paragraph four of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the Statutes of Connecticut, § 20-227, including but not limited to § 20-227(9).

Count Two

6. In paragraph six of the Charges, the Department alleges that during June 2010, the Board ordered a Consent Order in Petition Number 2009-20091357 that placed Respondent's embalmer's license on probation for a period of four years. Such disciplinary action was based upon Respondent's admitted history of substance abuse.

7. In paragraph seven of the Charges, the Department alleges that during February 2011, the Board ordered a Modification of Consent Order in Petition Number 2010-5635 that incorporated the provisions contained in the Consent Order and modified the period of probation for Respondent's embalmer's license to four years and six months.

8. In paragraph eight of the Charges, the Department alleges that said Consent Order and Modification specifically provide that Respondent shall be responsible for submitting to urine screens for controlled substances; shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate purpose by an authorized, licensed, health care professional; and further, specifically provide that all urine screens be negative for controlled substances.

9. In paragraph nine of the Charges, the Department alleges that during May 2012, Respondent's urine screen tested positive for cocaine.

10. In paragraph ten of the Charges, the Department alleges that Respondent's conduct as described above constitutes violations of the terms of probation as set forth in the Consent Order and Modification, and subjects Respondent's license to revocation or other disciplinary action authorized by §§ 19a-17 and 20-227 of the Statutes.

Findings of Fact

1. Respondent of Glastonbury, is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 002536. Tr. 8/14/12, p. 7.

Count One

2. During May 2012, Respondent abused, or utilized to excess, cocaine. Tr. 8/14/12, pp. 7-8; Bd. Exh. 2, tab 1a, tab 1d.

3. Respondent's abuse of cocaine does, and/or may, affect his practice as an embalmer. Tr. 8/14/12, pp. 12-13.

Count Two

4. During June 2010, the Board ordered a Consent Order in Petition Number 2009-20091357 that placed Respondent's embalmer's license on probation for a period of four years. Such disciplinary action was based upon Respondent's admitted history of substance abuse. Tr. 8/14/12, p. 8; Bd. Exh. 2, tab 1b.

5. During February 2011, the Board ordered a Modification of Consent Order in Petition Number 2010-5635 ("Modification") that incorporated the provisions contained in the Consent Order and modified the period of probation for Respondent's embalmer's license to four years and six months. Tr. 8/14/12, pp. 8-9; Bd. Exh. 2, tab 1c.

6. Said Consent Order and Modification specifically provide that Respondent shall be responsible for submitting to urine screens for controlled substances; shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate purpose by an authorized, licensed, health care professional; and further, specifically provide that all urine screens be negative for controlled substances. Tr. 8/14/12, p. 9.

7. During May 2012, Respondent's urine screen tested positive for cocaine. Tr. 8/14/12, pp. 9-10; Bd. Exh. 2, tab 1d.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Goldstar Medical Services, Inc., et al. v. Department of Social Services,* 288 Conn. 790 (2008). 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 Board relied on the training and experience of its members in making its findings of facts and conclusions of law. *Pet v. Department of Health Services,* 228 Conn. 651, 667 (1994).

The Department alleges that Respondent's license is subject to disciplinary action pursuant to §20-227 of the Statutes which provides, in pertinent part, that:

> [t]he . . . board may take any 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: . . . (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 the allegations contained in all of the paragraphs of the Charges, except paragraph three of Count One. Specifically, Respondent admits that during May 2012, he abused or utilized cocaine to excess. Moreover, Respondent testified that despite being in treatment for almost four years, he went out with friends and suffered a relapse in May 2012. Tr. 8/14/12, p. 12. On May 14, 2012, Respondent tested positive for cocaine. Bd. Exh. 2, section 1, tab d.

Respondent also implored the Board for understanding. Respondent testified that while he has been "working his program and working with his therapist," it is not easy to remain clean after "spending most of life using cocaine." Tr. 8/14/12, p. 12. Respondent explained to the Board that after his relapse he increased his counseling sessions from monthly to weekly, and also submitted to observed, random urine screenings on a weekly basis. Tr. 8/14/12, pp. 15, 19.

With respect to the allegation in paragraph three of the Charges, the Board finds that the Department established by a preponderance of the evidence that Respondent's abuse of cocaine does, and/or may affect his practice as an embalmer. However, the Board does not find that Respondent's addiction is a detriment to his practice as long as he continues to seek treatment. Thus, the Board lifts the summary suspension of respondent's license, and permits Respondent to resume the practice of embalming under the terms of the Order described below.

Order

Pursuant to §§ 19a-17 and 20-227(9) of the Statutes, the Board hereby orders the following:

1. Respondent's license number 002536 to practice as an embalmer in the State of Connecticut shall be placed on probation for a period of four years under the following terms and conditions.

   A. Respondent shall participate in regularly scheduled therapy at his own expense with a licensed or certified therapist pre-approved by the Department ("therapist").

      1. Respondent shall provide a copy of this Memorandum of Decision ("Decision") to his therapist.
      2. Respondent's therapist shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Decision within 15 days of the effective date of this Decision.
      3. If the therapist determines that therapy is no longer necessary, that a reduction in frequency of therapy sessions is warranted, or that Respondent should be transferred to another therapist, the therapist shall advise the Department, and the Department shall pre-approve said termination of therapy, reduction in frequency of therapy sessions, and/or Respondent's transfer to another therapist.
      4. The therapist shall submit reports monthly for the first and fourth years of probation; and quarterly for the second and third years of probation. Such reports shall address, but not necessarily be limited to, Respondent's ability to practice as an embalmer in an alcohol and substance-free state safely and competently. Said reports shall continue until the therapist determines that therapy is no longer necessary or the period of probation has terminated.

5. The therapist shall immediately notify the Department in writing if the therapist believes Respondent's continued practice poses a danger to the public, or if Respondent discontinues therapy and/or terminates his or her services.
6. Respondent shall attend "anonymous" or support group meetings on an average of four times a month, and shall provide quarterly reports to the Department concerning his record of attendance.

B. During the entire probationary period, Respondent shall refrain from the ingestion of alcohol in any form and the ingestion, inhalation, injection or other use of any controlled substance and/or legend drug unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications. Respondent shall inform said licensed health care professional of Respondent's substance abuse history. In the event a medical condition arises requiring treatment utilizing controlled substances, legend drugs, or alcohol in any form, Respondent shall notify the Department and, upon request, provide such written documentation of the treatment as is deemed necessary by the Department.

C. Observed random urine screens

1. At his expense, Respondent shall be responsible for submitting to observed random chain of custody urine screens for alcohol and drugs for the entire probationary period, at a testing facility approved by the Board, after consultation with the Department, as ordered by his therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that specimen donor and chain of custody can be identified throughout the screening process.
2. Respondent shall be responsible for notifying the laboratory, his therapist, the Board, the Department and his prescribing practitioner of any drug(s) he is taking. For any prescription of a controlled substance(s) for more than two consecutive weeks, Respondent shall cause the provider

prescribing the controlled substance(s) to submit quarterly reports to the Department until such time as the controlled substance(s) are no longer prescribed. The reports shall include the following:

a. A list of controlled substances prescribed by this provider for Respondent;
b. A list of controlled substance(s) prescribed by other providers;
c. An evaluation of the Respondent's need for the controlled substance;
d. An assessment of the Respondent's continued need for the controlled substance(s).

3. There must be at least one such observed, random alcohol/drug screen per week for the first year of the probationary period. During the second and third years, Respondent shall submit to such observed, random screens on a bimonthly basis; and during the fourth year of probation, Respondent shall submit to such observed, random screens on a monthly basis.

4. Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive *drug* screen results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. All positive *alcohol* screen results shall be confirmed by the urine Ethyl Glucuronide (EtG) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

5. Random alcohol/drug screens must include testing for the following substances:

Amphetamines	Methadone
Barbiturates	Methaqualone
Benzodiazepines	Opiates (Metabolites)
Cannabinoids (THC Metabolites)	Phencyclidine (PCP)
Cocaine	Propoxyphene
Meperidine (Demerol)	Ethanol (alcohol)

6. Laboratory reports of random alcohol and drug screens shall be submitted to the Department, at the address cited in Paragraph H below, by Respondent's therapist, personal physician or the testing laboratory.

D. Respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for him, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.

E. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine and that the ingestion of mouthwash may produce a positive result indicating the presence of alcohol. For that reason, any food substance containing poppy seeds, and mouthwash should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine and/or alcohol, the ingestion of poppy seeds and/or mouthwash shall not constitute a defense to such positive screen.

F. Respondent understands and agrees that if he fails to submit a urine sample when requested by his monitor, such missed screen shall be deemed a positive screen.

G. The Department must be informed in writing prior to any change of address.

H. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P. O. Box 340308
Hartford CT 06134-0308

2. Any deviation from the terms of probation, without prior written approval by the Board shall constitute a violation of probation, which will be cause for an immediate hearing on charges of violating this Order. Any finding that Respondent has violated this Order will subject Respondent to sanctions under §19a-17(a) and (c) of the Statutes, including but not limited to, the revocation of his license. Any extension of time or grace period for reporting granted by the Board shall not be a waiver or preclude the Board's right to take subsequent action. The Board shall not be required to grant future extensions of time or

grace periods. Notice of revocation or other disciplinary action shall be sent to Respondent 's address of record (most current address reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department).

3. This Memorandum of Decision becomes effective on the date signed by the Board.

The Board hereby informs Respondent, Brian S. Delton, and the Department of this decision.

Dated at Hartford, Connecticut this 4th day of December, 2012.

Connecticut Board of Examiners of Embalmers and Funeral Directors

by Daniel P. Jowdy

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 provided to respondent in-hand and was mailed this 6th day of December 2012, by certified mail, return receipt requested to:

Brian S. Delton
582 Oakwood Drive
Glastonbury CT 06033

Certified Mail RRR #91-7199-9991-7030-9618-9986

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