STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
HEALTHCARE SYSTEMS BRANCH

In re: James T. Toohey and Son Funeral Home Petition No. 2009-0521-056-001

CONSENT ORDER

WHEREAS, James T. Toohey and Son Funeral Home of Shelton, Connecticut (hereinafter "respondent") has been issued Inspection Certificate Number 000396 to operate as a funeral home by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 385 of the General Statutes of Connecticut, as amended; and,

WHEREAS, respondent admits that:

1. At various times between 2006 and 2009, respondent failed to deposit the funds received for the following pre-need funeral service contracts into the escrow agent's escrow account within 15 days after receipt of funds as required by Connecticut General Statutes Section 42-202(a):

a.	R.T.	$1,100.00;
b.	W.B.	$2,680.00;
c.	X.B.	$1,000.00;
d.	J.B.	$ 500.00;
e.	J.D.	$1,075.00;
f.	D.B.	$5,400.00;
g.	J.D.	$3,766.00;
h.	R.H.	$ 500.00;
i.	T.M.	$ 200.00;
j.	G.P.	$5,400.00;
k.	C.R.	$3,800.00;
l.	W.R.	$2,000.00;
m.	R.T.	$1,000.00;
n.	D.T.	$ 571.49;
o.	B.T.	$1,500.00;
p.	R.W.	$5,400.00;
q.	V.Y.	$ 150.00;
r.	J.Z.	$5,400.00; and/or
s.	J.F.	$ 550.00.

2. Respondent established escrow accounts for pre-need funeral service contracts only after the court-appointed conservator for the beneficiaries attempted to verify the status of the escrow accounts in March 2009, but respondent did not make restitution for the interest earnings lost due to its failure to make the deposits as required by statute.

3. At various times from 2006 through 2009, respondent deposited funds received for pre-need funeral service contracts into the funeral home's checking account, and used the funds for funeral home expenses.

4. At various times from 2006 through 2009, respondent failed to maintain files for pre-need funeral service contracts and/or failed to provide a Cost of Goods and Services Selected Contract to customers.

5. 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. §20-227(5);
   d. §42-202;
   e. §42-203;
   f. §42-206; and/or
   g. §42-222(g).

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest this matter and agrees that for purposes of this or any future proceedings before the Board of Examiners of Embalmers and Funeral Directors (hereinafter "the Board"), this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14 and 20- 227 of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17 and 20-227 of the General Statutes of Connecticut, respondent hereby stipulates and agrees to the following:

1. Respondent waives its right to a hearing on the merits of this matter.

2. Respondent's inspection Certificate Number 000396 to operate as a funeral home in the State of Connecticut is hereby reprimanded.

3. Respondent shall pay a civil penalty of five thousand dollars ($5,000) 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 at the time respondent submits the executed Consent Order to the Department. The first payment of two thousand five hundred dollars ($2,500) shall be due upon signing. The second payment of two thousand five hundred dollars ($2,500) shall be due on February 15, 2011. The Department may present a motion for summary suspension of respondent's license for any failure to make the second payment by the due date without further notice, request, or demand.

4. Respondent's license shall be placed on probation for a period of one year under the following terms and conditions:

   a. Respondent shall obtain at its own expense, the services of a certified public accountant, pre-approved by the Department (hereinafter "CPA monitor"), to conduct a review of all of respondent's funeral home accounts, including funding for pre-need and escrow accounts.

      (1) Respondent shall provide a copy of this Consent Order to its CPA monitor. Respondent's CPA monitor shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Consent Order within fifteen (15) days of the effective date of this Consent Order.

      (2) Respondent's CPA monitor shall conduct such review and meet with its authorized representative not less than once every month for the first six months of his probationary period and quarterly for the remainder of the probationary period.

(3) The CPA monitor shall have the right to monitor respondent's practice by any other reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the CPA monitor in providing such monitoring.

(4) Respondent shall be responsible for providing written CPA monitor reports directly to the Department, monthly for the first six months, and then quarterly for the remainder of the probationary period. Such CPA monitor's reports shall include documentation of dates and duration of meetings with respondent, number and a general description of the records reviewed, additional monitoring techniques utilized, and statement that respondent is practicing with reasonable skill and safety.

b. Respondent shall obtain at its own expense, the services of a licensed embalmer or funeral director as a practice monitor, pre-approved by the Department (hereinafter "supervisor"), to conduct a review of all of respondent's funeral home accounts.

(1) Respondent shall provide a copy of this Consent Order to its supervisor. Respondent's supervisor shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Consent Order within fifteen (15) days of the effective date of this Consent Order.

(2) Respondent's supervisor shall conduct such review and meet with its authorized representative not less than once every month for the first three months of his probationary period and quarterly for the remainder of the probationary period.

(3) The supervisor shall have the right to monitor respondent's practice by any other reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the supervisor in providing such monitoring.

(4) Respondent shall be responsible for providing written supervisor reports directly to the Department, monthly for the first three months, and then quarterly for the remainder of the probationary period. Such supervisor's reports shall include documentation of dates and duration of meetings with respondent, number and a general description of the records reviewed, additional monitoring techniques utilized, and statement that respondent is practicing with reasonable skill and safety.

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

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

6. All reports required by the terms of this Consent Order shall be due according to a schedule to be established by the Department of Public Health.

7. Respondent shall comply with all state and federal statutes and regulations applicable to its licensure.

8. Respondent shall pay all costs necessary to comply with this Consent Order.

9. Any alleged violation of any provision of this Consent Order may result in the following procedures at the discretion of the Department:

   a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.

   b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.

c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 9.a. above to demonstrate to the satisfaction of the Department that it has complied with the terms of this Consent Order or, in the alternative, that it has cured the violation in question.

d. If respondent does not demonstrate compliance or cure the violation within the fifteen (15) days specified in the notification of violation to the satisfaction of the Department, it shall be entitled to a hearing before the Board which shall make a final determination of the disciplinary action to be taken.

e. Evidence presented to the Board by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.

10. In the event respondent is not operating as a funeral home for periods of thirty (30) consecutive days or longer, respondent shall notify the Department in writing. Such periods of times shall not be counted in reducing the probationary period covered by this Consent Order and such terms shall be held in abeyance. During such time period, respondent shall not be responsible for complying with the terms of probation of this Consent Order. In the event respondent resumes operation as a funeral home, respondent shall provide the Department with thirty (30) days prior written notice. Respondent shall not return to the operation as a funeral home without written pre-approval from the Department. Respondent agrees that the Department, in its complete discretion, may require additional documentation from respondent and/or require respondent to satisfy other conditions or terms as a condition precedent to respondent's return to operation. Respondent understands that any return to the operation as a funeral home without pre-approval from the Department shall constitute a violation of this Consent Order and may subject the respondent to further disciplinary action.

11. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of its Inspection Certificate before the Board.

12. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Practitioner Licensing and Investigations Section of the Healthcare Systems Branch of the Department.

13. This Consent Order is effective on the first day of the month immediately following the date this Consent Order is accepted and ordered by the Board.

14. Respondent understands this Consent Order shall be deemed as a public document and evidence of the above-admitted violations in any proceeding before the Board in which its compliance with this Consent Order or with §20-227 of the General Statutes of Connecticut, as amended, is at issue.

15. In the event respondent violates a term of this Consent Order, respondent agrees immediately to refrain from operating as a funeral home, upon request by the Department, with notice to the Board, for a period not to exceed 45 days. During that time period, respondent further agrees to cooperate with the Department in its investigation of the violation. Respondent further agrees that failure to cooperate with the Department in its investigation during said 45-day period shall constitute grounds for the Department to seek a summary suspension of respondent's Inspection Certificate. In any such summary action, respondent stipulates that failure to cooperate with the Department's investigation shall be considered by the Board and shall, as a matter of law, constitute a clear and immediate danger as required pursuant to Connecticut General Statutes, sections 4-182(c) and 19a-17(c). The Department and respondent understand that the Board has complete and final discretion as to whether a summary suspension is ordered.

16. Any extension of time or grace period for reporting granted by the Department shall not be a waiver or preclude the Department from taking action at a later time. The Department shall not be required to grant future extensions of time or grace periods.

17. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that it may have under the laws of the State of Connecticut or of the United States.

18. This Consent Order is a revocable offer of settlement which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.

19. Respondent permits a representative of the Legal Office of the Healthcare Systems Branch to present this Consent Order and the factual basis for this Consent Order to the Board. Respondent understands that the Board has complete and final discretion as to whether this executed Consent Order is approved or accepted.

20. Respondent has the right to consult with an attorney prior to signing this document.

21. The execution of this document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau. The purpose of this Consent Order is to resolve the pending administrative license disciplinary petition only, and is not intended to affect any civil or criminal liability or defense.

22. This Consent Order embodies the entire agreement of the parties with respect to this case. All previous communications or agreements regarding the subject matter of this consent order, whether oral or written, between the parties are superseded unless expressly incorporated herein or made a part hereof.

I, Ellen S. Tookey, affirm that I am fully authorized and empowered to bind respondent. I have read the above Consent Order, and I stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.

Ellen S. Tookey

Subscribed and sworn to before me this 14 day of Oct. 2010.

Margaret [illegible] exp 7/31/2014

Notary Public or person authorized
by law to administer an oath or affirmation

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 18th day of October 2010, it is hereby accepted.

Jennifer Filippone

Jennifer Filippone, Section Chief
Practitioner Licensing and Investigations
Healthcare Systems Branch

The above Consent Order having been presented to the duly appointed agent of the Board of Examiners of Embalmers and Funeral Directors on the 7th day of December 2010, it is hereby ordered and accepted.

Daniel P. Gowdy

Board of Examiners of Embalmers and Funeral Directors

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

January 26, 2012

James Toohey & Son Funeral Home
92 Howe Ave
Shelton, CT 06484

Consent Order
Petition No. 2009-0521-056-001
License No. 000396

Dear Mr.Toohey:

Please accept this letter as notice that you have satisfied the terms of your license probation effective January 16, 2012.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from your license related to the above-referenced Consent Order.

Please be certain to retain this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during this process.

Thank you,

Olive Tronchin, HPA
Practitioner Licensing and Investigations Section

J: Fillippone

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