

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

Hartford Trade Service

Petition No. 2006-0427-056-007

**MEMORANDUM OF DECISION**  
*Procedural Background*

On January 9, 2007, the Department of Public Health (“the Department”) presented the Connecticut Board of Examiners for Embalmers and Funeral Directors (“Board”) with a Statement of Charges and a Motion for Summary Suspension brought against Hartford Trade Service (“respondent”), which holds Connecticut funeral home inspection certificate 467. The Motion for Summary Suspension was based on the Statement of Charges, Affidavits, an Investigative Report and other related documents, and the Department’s information and belief that respondent’s continued operation as a funeral home represented a clear and immediate danger to the public health and safety. The Statement of Charges alleges that respondent violated various provisions of the General Statutes of Connecticut (“the Statutes”) and the Regulations of Connecticut State Agencies (“the Regulations”). On January 11, 2007, respondent filed a Motion to Dismiss the Department’s Motion for Summary Suspension, which the Board granted on January 18, 2007. Tr. 2/8/07, pp. 26, 29.

On January 18, 2007, the Department sent the Notice of Hearing to respondent via certified mail, return receipt requested. Joint Exh. 4. The Notice of Hearing instructed respondent to appear before the Board for a hearing on the allegations contained in the Statement of Charges.

On January 25, 2007, respondent filed a Motion to Dismiss the Statement of Charges because respondent was not offered an opportunity to attend a compliance conference prior to the filing of the Statement of Charges.

On February 1, 2007, respondent filed a Motion for a More Definite and Detailed Statement, to which the Department filed an Objection on February 6, 2007.

On February 2, 2007, the Board denied respondent’s Motion to Dismiss, dated January 25, 2007.

On February 5, 2007, respondent filed an Answer to the Statement of Charges.

On February 8, 2007, the Board heard arguments on respondent's Motion for a More Definite and Detailed Statement.

On February 16, 2007, the Board granted in part, and denied in part, respondent's Motion for a More Definite and Detailed Statement.

On March 1, 2007, the Board denied respondent's Motion to Dismiss, dated February 7, 2007, and the Department filed a Motion to Amend the Statement of Charges and an Amended Statement of Charges ("the Charges"). Joint Exh. 15.

On March 13, 2007, respondent filed an Answer to the Charges and a Special Defense. Joint Exh. 18.

The Board held seven days of hearings on February 8, March 15, March 29, May 1, May 22, June 12, and July 19, 2007 to adjudicate respondent's case. Attorneys John F. Droney and Jeffrey Mirman, represented respondent. Attorneys Diane Wilan and Ellen Shanley represented the Department.

The Board conducted the hearing in accordance with Chapter 54 of the Statutes and the Regulations of Connecticut State Agencies ("the Regulations") §19a-9a-1 *et seq.* Both the Department and respondent had the opportunity to present evidence, conduct cross-examination, and provide argument on all issues.

All Board members involved in this decision received copies of the entire record and attest that they have either 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 paragraphs 1, 5, 9, 12, 15, 18, 22, 26, 34, 37, 40, 43, 46, 52, 68, 72, 83, 94, 103, and 115 of the Charges, the Department alleges that Hartford Trade Service of East Hartford, Connecticut, is, and has been at all times referenced in the Charges, the holder of Connecticut funeral home inspection certificate 467.

***Count One***

2. In paragraph 2 of the Charges, the Department alleges that during 2005-2006, respondent utilized unlicensed person(s) to embalm human remains, in violation of §20-212 of the Statutes.
3. In paragraph 3 of the Charges, the Department alleges that during 2005-2006, unlicensed person(s) at respondent performed licensed activities, including offering to make funeral arrangements.
4. In paragraph 4 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to the §20-227 of the Statutes, including but not limited to:
  - a. §20-227(2)(in that the conduct described in ¶ 2 is a violation of §20-212, §20-227(4), and/or §20-227(7) of the Statutes, and the conduct described in ¶ 3 is also a violation of §20-212, §20-227(4), and/or §20-227(7) of the Statutes);
  - b. §20-227(4);
  - c. §20-227(5); and/or,
  - d. §20-227(7).

***Count Two***

5. In paragraph 6 of the Charges, the Department alleges that during 2005 and/or 2006, respondent employed a number of student embalmers in fulltime positions that exceeded the number permitted by statute.
6. In paragraph 7 of the Charges, the Department alleges that some of said student embalmers were misrepresented as having been apprenticed to another licensed funeral home.
7. 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:
  - a. §20-227(2) (in that the conduct described in ¶6 is a violation of §20-224(a) and/or §20-227 of the Statutes, and the conduct described in ¶7 is a violation of §§20-227(4) and/or 20-227(7) of the Statutes);
  - b. §20-227(4);
  - c. §20-227(5); and/or,
  - d. §20-227(7).

**Count Three**

8. In paragraph 10 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) offered, sold, and/or delivered goods and services that were not listed on their respective general price lists, including but not limited to:
  - a. refrigeration;
  - b. retrieval of cremains;
  - c. urns;
  - d. sanitary care and pouching;
  - e. use of pall bearers;
  - f. transfers to crematory;
  - g. trips to domicile and probate court;
  - h. office work; and/or
  - i. research.
  
9. In paragraph 11 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:
  - a. §20-227(2)(in that the conduct described in ¶10 is a violation of §20-230a and/or §20-227(4) of the Statutes);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

**Count Four**

10. In paragraph 13 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) represented to various families of deceased individuals and/or probate courts that they delivered or provided goods and/or services that, in fact, were not supplied, including but not limited to:
  - a. use of hearse(s);
  - b. use of sedan(s);
  - c. certified death certificate(s);
  - d. refrigeration of human remains; and/or,
  - e. embalming.
  
11. In paragraph 14 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:
  - a. §20-227(2) (in that the conduct described in ¶13 is a violation of §20-230b and/or §20-227(4) of the Statutes; and/or is a violation of §20-211-34 of the Regulations;
  - b. §20-227(4); and/or
  - c. §20-227(5).

***Count Five***

12. In paragraph 16 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) improperly billed for the delivery of goods and/or services that, in fact, were not supplied, including but not limited to:
  - a. use of hearse(s);
  - b. use of sedan(s);
  - c. certified death certificate(s);
  - d. refrigeration of human remains; and/or,
  - e. embalming.
  
13. In paragraph 17 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:
  - a. §20-227(2) (in that the conduct described in ¶16 is a violation of §20-230b and/or §20-227(4) of the Statutes and/or §20-211-34 of the Regulations);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Six***

14. In paragraph 19 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) submitted inaccurate death certificates to various governmental agencies.
  
15. In paragraph 20 of the Charges, the Department alleges that during 2005-2006, respondent's agents failed to amend death certificates within a reasonable timeframe.
  
16. In paragraph 21 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:
  - a. §20-227(2) (in that the conduct described in allegation ¶19 is a violation of §7-45 and/or §20-227(4) of the Statutes; and the conduct described in ¶20 is also a violation of §7-45 and/or 20-227(4) of the Statutes);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Seven***

17. In paragraph 23 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) failed to timely obtain Removal, Transit and Burial Permits for various human remains, in violation of §7-65 of the Statutes.

18. In paragraph 24 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) failed to timely file death certificates, in violation of §7-62b of the Statutes.
19. In paragraph 25 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:
  - a. §20-227(2) (in that the conduct described in ¶23 is a violation of §§7-65 and/or 20-227(4) of the Statutes; and the conduct described in ¶24 is a violation of §§7-62b and/or 20-227(4) of the Statutes);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Eight***

20. In paragraph 27 of the Charges, the Department alleges that during April 2006, respondent failed to maintain a current and accurate itemized price list of service(s) and good(s).
21. In paragraph 28 of the Charges, the Department alleges that during April 2006, respondent maintained multiple itemized price lists of service(s) and good(s), which contained different prices for the same items.
22. In paragraph 29 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) improperly failed to provide to the appropriate family member(s), fiduciaries and/or probate courts, an itemized, written statement of goods and services prior to rendering service(s) or providing merchandise, in violation of §20-230b of the Statutes.
23. In paragraph 30 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) failed to maintain a copy of such itemized, written statement.
24. In paragraph 31 of the Charges, the Department alleges that during 2006, respondent's agent(s) failed to provide the Department, upon request, with copies of itemized, written statements, given prior to rendering service(s) or providing merchandise, for funeral arrangements.
25. In paragraph 32 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) failed to follow the published price lists when billing for merchandise and/or services, thereby charging fees in excess of the price list.
26. In paragraph 33 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:

- a. §20-227(2) (in that the conduct described in ¶27 is a violation of §20-230a and/or §20-227(4) of the Statutes; the conduct described in ¶28 is a violation of §§20-230a and/or 20-227(4) of the Statutes; the conduct described in ¶29 is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §20-211-34 of the Regulations; the conduct described in ¶30 is a violation of §20-227(4) of the Statutes; and, the conduct described in ¶¶ 31 and 32 is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §20-211-34 of the Regulations);
- b. §20-227(4); and/or,
- c. §20-227(5).

### ***Count Nine***

- 27. In paragraph 35 of the Charges, the Department alleges that during 2004-2006, while respondent was under contract with the Connecticut Office of the Chief Medical Examiner (“OCME”) to provide body service transportation, for a fee:
  - a. respondent’s agent(s) misrepresented the need to pay for the transportation of a decedent’s remains, to various families of decedents and/or probate courts; and/or
  - b. respondent’s agent(s) billed the estates of decedents for transportation of decedents that was covered by such contract.
- 28. In paragraph 36 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:
  - a. §20-227(2) (in that the conduct described in ¶35a is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §20-211-34 of the Regulations; and the conduct described in ¶35b is a violation of §20-227(4) of the Statutes);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

### ***Count Ten***

- 29. In paragraph 38 of the Charges, the Department alleges that during 2004-2006, respondent’s agent(s) improperly charged various estates and/or families for alternative cremation containers. The cost of such alternative containers was included in the cash advance crematory fees.
- 30. In paragraph 39 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:
  - a. §20-227(2) (in that the conduct described in ¶38 is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §20-211-34 and/or 20-211-35 of Regulations);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Eleven***

31. In paragraph 41 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) improperly charged for funeral arrangements by separately billing additional fees for services that were included in the Basic Services of Funeral Director and Staff fee.
32. In paragraph 42 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:
  - a. §20-227(2) (in that the conduct described in ¶41 is a violation of §20-230b and/or §20-227(4) of the Statutes and/or §20-211-34 of the Regulations);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Twelve***

33. In paragraph 44 of the Charges, the Department alleges that during 2006, respondent did not have a bathroom available for public use, in violation of §19-13-B106 of the Regulations.
34. In paragraph 45 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).

***Count Thirteen***

35. In paragraph 47 of the Charges, the Department alleges that during 2004-2006, respondent was under contract with OCME to provide body service transportation, for a fee.
36. In paragraph 48 of the Charges, the Department alleges that said contract prohibited respondent's agent(s) from soliciting business while performing such service for OCME.
37. In paragraph 49 of the Charges, the Department alleges that during 2004-2006, while maintaining remains pending disposition, pursuant to said contract, respondent's agent(s) improperly offered to make funeral service arrangements for decedents for whom respondent provided body transportation service under its contract with the OCME.
38. In paragraph 50 of the Charges, the Department alleges that during 2004-2006, while maintaining remains pending disposition, pursuant to said contract, respondent's agent(s) sought administration and/or administered the estates of such decedents.

39. In paragraph 51 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:
  - a. §20-227(2) (in that the conduct described in ¶¶49 and 50 is a violation of §20-227(4) of the Statutes);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Fourteen***

40. In paragraph 53 of the Charges, the Department alleges that during the month of August 2006, J. D. died in Meriden, Connecticut.
41. In paragraph 54 of the Charges, the Department alleges that decedent J. D. was predeceased by her husband, who had been buried in a local cemetery.
42. In paragraph 55 of the Charges, the Department alleges that decedent was survived by her son.
43. In paragraph 56 of the Charges, the Department alleges that during the month of August 2006, respondent's agent(s) performed a removal of decedent from her home in Meriden, pursuant to a contract with OCME.
44. In paragraph 57 of the Charges, the Department alleges that on or about August 22, 2006, respondent's agent applied to the Meriden Probate Court (hereinafter "the Probate Court"), as a Funeral Director, for custody of the decedent's remains, representing that the decedent left no surviving next of kin.
45. In paragraph 58 of the Charges, the Department alleges that on or about August 23, 2006, respondent's agent applied to the Probate Court for the temporary administration of decedent J. D.'s estate for the stated purpose of affording the decedent a "proper burial" after misrepresenting that decedent's only next of kin, her son, was in prison. Decedent's son was not in prison.
46. In paragraph 59 of the Charges, the Department alleges that on or about August 23, 2006, the Probate Court awarded respondent custody and control of the body of the decedent for final disposition.
47. In paragraph 60 of the Charges, the Department alleges that on or about August 24, 2006, respondent's agent applied for a cremation permit for decedent.
48. In paragraph 61 of the Charges, the Department alleges that on or about August 24, 2006, decedent J. D. was cremated, without any consultation with her son.

49. In paragraph 62 of the Charges, the Department alleges that subsequently, on or about August 28, 2006, the Probate Court appointed respondent's agent, Kevin Riley, as Temporary Administrator "for the sole purpose of having a proper burial for J. D."
50. In paragraph 63 of the Charges, the Department alleges that respondent failed to inform the Probate Court of the August 24, 2006 cremation.
51. In paragraph 64 of the Charges, the Department alleges that the death certificate of decedent, which bears respondent's name, incorrectly states that decedent J. D. was cremated on August 31, 2006.
52. In paragraph 65 of the Charges, the Department alleges that the death certificate was not corrected within a reasonable timeframe.
53. In paragraph 66 of the Charges, the Department alleges that subsequent to respondent's agent's application to the Probate Court for Temporary Administration, respondent's agent(s) disposed of personal property of the decedent and/or her surviving son, from decedent's home and estate, without having received proper authorization from the Probate Court.
54. In paragraph 67 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:
  - a. §20-227(2) (in that the conduct described in ¶¶ 57, 58, 61, 63, and 66 is a violation of §20-227(4) of the Statutes, and the conduct described in ¶¶ 64 and 65 is a violation of §§7-45, 7-62b(b) and/or §20-227(4) of the Statutes);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Fifteen***

55. In paragraph 69 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) improperly billed for "cash advance" items for funeral arrangements, by failing to bill the net amount paid for such items.
56. In paragraph 70 of the Charges, the Department alleges that during 2004-2006, respondent's agent(s) improperly charged additional fees for merchandise that was provided by the purveyor of cash advance items for funeral arrangements.
57. In paragraph 71 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:

- a. §20-227(2) (in that the conduct described in ¶¶ 69 and 70 is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §§20-211-34 and/or 20-211-35 of the Regulations);
- b. §20-227(4); and/or,
- c. §20-227(5).

***Count Sixteen***

58. In paragraph 73 of the Charges, the Department alleges that on or about July 27, 2005, S. S. died in Bridgeport, Connecticut.
59. In paragraph 74 of the Charges, the Department alleges that on or about July 27, 2005, respondent's agent(s) performed a removal of decedent from her home, pursuant to a contract with OCME.
60. In paragraph 75 of the Charges, the Department alleges that from approximately July 27, 2005 to August 10, 2005, the human remains of decedent were in the care of OCME, and physically housed with respondent.
61. In paragraph 76 of the Charges, the Department alleges that on or about August 10, 2005, an agent for respondent was granted custody and control of this decedent by the Bridgeport Probate Court for final disposition.
62. In paragraph 77 of the Charges, the Department alleges that respondent's agent(s) improperly charged such decedent's estate for 49 days of refrigerated storage of decedent's remains.
63. In paragraph 78 of the Charges, the Department alleges that during 2005, respondent's agent(s), failed to properly dispose of the human remains of decedent in timely fashion.
64. In paragraph 79 of the Charges, the Department alleges that respondent's agent(s) presented two different written statements to decedent's representatives of goods and services selected for S. S.'s funeral arrangements. Said written statements are inconsistent, in that only one of the two statements indicate decedent was embalmed.
65. In paragraph 80 of the Charges, the Department alleges that the death certificate filed by respondent's agent(s) and one of the two statements of goods and services selected indicate that this decedent's body was not embalmed.
66. In paragraph 81 of the Charges, the Department alleges that the prices of goods and services on the two statements are inconsistent in that different prices are listed on each for transportation fees, pallbearers, and/or cooler fees.

67. In paragraph 82 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:
- a. §20-227(2) (in that the conduct described in ¶¶ 77, 79, 80, and 81 is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §20-211-34 of the Regulations; and the conduct described in ¶ 78 is a violation of §§7-64 and/or 20-227(4) of the Statutes);
  - b. §20-227(4) and/or;
  - c. §20-227(5).

***Count Seventeen***

68. In paragraph 84 of the Charges, the Department alleges that on or about February 6, 2006, R. L. died in Wallingford, Connecticut.
69. In paragraph 85 of the Charges, the Department alleges that on or about February 6, 2006, respondent's agent(s) performed a removal of decedent from his home in Wallingford, pursuant to its contract with the OCME.
70. In paragraph 86 of the Charges, the Department alleges that on or about February 21, 2006, respondent's agent(s) applied to Wallingford Probate Court for custody and control of decedent's remains.
71. In paragraph 87 of the Charges, the Department alleges that on or about February 22, 2006, respondent's agent(s) filed a death certificate for decedent indicating a cremation date of February 21, 2006. Decedent was cremated on or about March 1, 2006.
72. In paragraph 88 of the Charges, the Department alleges that the death certificate for decedent was not timely corrected.
73. In paragraph 89 of the Charges, the Department alleges that respondent's agent(s) improperly charged such decedent's estate for refrigerated storage of decedent's remains while decedent was in the custody of OCME, and physically housed with respondent.
74. In paragraph 90 of the Charges, the Department alleges that respondent's agent(s) improperly charged such decedent's estate for refrigerated storage of decedent's remains for the period of February 1, 2006 – February 28, 2006.
75. In paragraph 91 of the Charges, the Department alleges that respondent's agent(s) written statement of goods and services selected submitted to such decedent's estate included items not on its general price list, including but not limited to:
- a. refrigeration;
  - b. transfer fee; and/or,
  - c. office work, research, paperwork, and/or trip to house and probate.

76. In paragraph 92 of the Charges, the Department alleges that respondent's agent(s) improperly charged decedent's estate an additional fee for an alternative cremation container. The cash advance crematory fee included the purchase of an alternative cremation container required for the cremation.
77. In paragraph 93 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:
  - a. §20-227(2) (in that conduct described in ¶¶ 87 and 88 is a violation of §§7-45, 7-62b(b), and/or §20-227(4) of the Statutes; the conduct described in ¶ 89 is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §20-211-34 of the Regulations; the conduct described in ¶ 90 is a violation of §§20-230b and/or 20-227(4) of the Statutes, and/or §20-211-34 of the Regulations; and the conduct described in ¶ 91 is a violation of §§20-230a, 20-230b, and/or 20-227(4) of the Statutes, and/or §20-211-34 of the Regulations; and, the conduct described in ¶ 92 is a violation of §§20-230a, 20-230b, and/or 20-227(4) of the Statutes; and/or §§20-211-34 and/or 20-211-35 of the Regulations;
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Eighteen***

78. In paragraph 95 of the Charges, the Department alleges that on or about January 24, 2006, A. C. died in East Haven, Connecticut.
79. In paragraph 96 of the Charges, the Department alleges that on or about February 10, 2006, respondent's agent(s) filed a death certificate for this decedent, listing respondent as the custodian.
80. In paragraph 97 of the Charges, the Department alleges that such death certificate indicates that decedent was buried on or about February 10, 2006.
81. In paragraph 98 of the Charges, the Department alleges that such death certificate indicates that this decedent's body was not embalmed.
82. In paragraph 99 of the Charges, the Department alleges that respondent's written statement of goods and services selected for decedent's funeral arrangements, dated April 28, 2006, improperly lists a charge for embalming.
83. In paragraph 100 of the Charges, the Department alleges that the written statement of goods and services incorrectly indicates that refrigeration was required by "law, cemetery or crematory requirements."

84. In paragraph 101 of the Charges, the Department alleges that respondent's written statement of goods and services for decedent's funeral arrangements, dated April 28, 2006, includes items not listed on its general price list, including but not limited to:
  - a. refrigeration;
  - b. locksmith services and new locks;
  - c. pall bearers;
  - d. hearse and sedan;
  - e. service/utility vehicle.
  
85. In paragraph 102 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:
  - a. §20-227(2) (in that conduct described in ¶99 is a violation of §§20-230b and/or 20-227(4) of the Statutes, and/or 20-211-34 of the Regulations; the conduct described in ¶100 is a violation of §20-227(4) of the Statutes; and the conduct described in ¶101 is a violation of §§20-230a and/or 20-227(4) of the Statutes);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Nineteen***

86. In paragraph 104 of the Charges, the Department alleges that Coventry Funeral Home of Coventry, Connecticut ("Coventry Funeral") is, and was, the holder of Connecticut funeral home inspection certificate 483.
  
87. In paragraph 105 of the Charges, the Department alleges that during 2006, Kevin Riley, an embalmer who holds embalmer license number 2251, was the owner and/or manager of respondent and of Coventry Funeral.
  
88. In paragraph 106 of the Charges, the Department alleges on or about April 28, 2006, J. C. died in West Hartford, Connecticut.
  
89. In paragraph 107 of the Charges, the Department alleges that on or about April 28, 2006, respondent's agent(s) performed a removal of decedent from his home in West Hartford pursuant to its contract with OCME.
  
90. In paragraph 108 of the Charges, the Department alleges that on or about May 25, 2006, respondent's agent applied to the West Hartford Probate Court for custody and control of decedent's remains. West Hartford Probate Court awarded said agent custody and control on June 1, 2006.

91. In paragraph 109 of the Charges, the Department alleges that on or about June 1, 2006, respondent's agent submitted an application to West Hartford Probate Court to become the temporary administrator of decedent's J. C.'s estate.
92. In paragraph 110 of the Charges, the Department alleges that the West Hartford Probate Court did not authorize respondent's agent(s) to provide and/or charge for funeral goods and services prior to the rendering of such goods and services, or to transfer custody and control of decedent's remains.
93. In paragraph 111 of the Charges, the Department alleges that respondent improperly transferred custody and control of decedent's remains to Coventry Funeral.
94. In paragraph 112 of the Charges, the Department alleges that on or about June 27, 2006, Coventry Funeral and/or its agent submitted an itemized statement of goods and services selected to West Hartford Probate Court, requested authorization to make payment for the funeral arrangements of such decedent.
95. In paragraph 113 of the Charges, the Department alleges that Kevin Riley, as agent for Coventry Funeral improperly charged for refrigerated storage of decedent's remains when the decedent was in the custody of the OCME, and physically housed with respondent.
96. In paragraph 114 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:
  - a. §20-227(2) (in that the conduct described in ¶111 is a violation of §20-227(4) of the Statutes; and, the conduct described in ¶112 is a violation of §§20-230b and/or 20-227(4) of the Statutes, and/or 20-211-34 of the Regulations);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Count Twenty***

97. In paragraph 116 of the Charges, the Department alleges that at all times referenced herein, Kevin Riley, embalmer license number 2251, was respondent's owner and/or manager.
98. In paragraph 117 of the Charges, the Department alleges that on or about October 18, 2005, H. G. died in Columbia, Connecticut.
99. In paragraph 118 of the Charges, the Department alleges that on or about October 18, 2005, respondent's agent(s) performed a removal of decedent from her home in Columbia pursuant to its contract with OCME.

100. In paragraph 119 of the Charges, the Department alleges that subsequently, the human remains of such decedent were in the care of OCME, and physically housed with respondent.
101. In paragraph 120 of the Charges, the Department alleges that respondent's written statement of goods and services selected for said decedent is dated October 18, 2005 and is signed with Kevin Riley's name.
102. In paragraph 121 of the Charges, the Department alleges that on or about October 19, 2005, Kevin Riley, as Funeral Director, filed an application in Andover Probate Court for custody and control of the body of decedent H. G., for disposition of the body.
103. In paragraph 122 of the Charges, the Department alleges that Andover Probate Court awarded Mr. Riley said custody and control on October 19, 2005.
104. In paragraph 123 of the Charges, the Department alleges that respondent's written statement of goods and services selected, submitted to such decedent's estate, included items not on its general price list, including but not limited to:
  - a. refrigeration;
  - b. sanitary care;
  - c. retrieval of cremains;
  - d. urn; and/or
  - e. various research, travel, meetings, paperwork, and/or arrangements.
105. In paragraph 124 of the Charges, the Department alleges that respondent improperly charged decedent's estate an additional fee for an alternative cremation container required for the cremation. The cash advance crematory fee included the purchase of an alternative cremation container required for cremation.
106. In paragraph 125 of the Charges, the Department alleges that respondent improperly billed such decedent's estate for transportation of decedent's remains that was covered by its contract with OCME to provide body service transportation.
107. In paragraph 126 of the Charges, the Department alleges that respondent improperly charged such decedent's estate for refrigerated storage of decedent's remains while said remains were in the custody of OCME.

108. In paragraph 127 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:
- a. §20-227(2) (in that the conduct described in ¶123 is a violation of §§20-230a and/or 20-227(4) of the Statutes; the conduct described in ¶124 is a violation of §§20-230b and/or 20-227(4) of the Statutes and/or §20-211-35 of the Regulations; and, the conduct described in ¶¶125 and 126 is a violation of §§20-230b and/or 20-227(4) of the Statutes, and/or 20-211-34 of the Regulations);
  - b. §20-227(4); and/or,
  - c. §20-227(5).

***Findings of Fact***

1. Hartford Trade Service of East Hartford, Connecticut (hereinafter "respondent") is, and has been at all times referenced in the Charges, the holder of Connecticut funeral home inspection certificate 467. Joint Exh. 17.

***Count One***

2. During 2005-2006, respondent utilized unlicensed person(s) to embalm human remains. Joint Exh. 9; Resp. Exh. 9; Tr. 3/15/07, pp. 48-51, 75-78, 81-91, 102-110, 117-129, 142, 155-158, 167, 171-175, 190, 192-193.
3. The evidence is insufficient to establish that during 2005-2006, unlicensed person(s) at respondent offered to make funeral arrangements. Tr. 3/15/07, pp. 90, 102, 125-128, 138, 140.

***Count Two***

4. During 2005 and/or 2006, respondent employed a number of student embalmers in full time positions that exceeded the number permitted by statute. Joint. Exh. 9; Resp. Exh. 9.
5. Some of said student embalmers were misrepresented as having been apprenticed to another licensed funeral home. Board Exh. 8-N; Tr. 5/22/07, pp. 115-117.

***Count Three***

6. The evidence is insufficient to establish that during 2004-2006, respondent's agent(s) offered, sold, and/or delivered goods and services that were required to be listed but were not, in fact, listed on its respective general price list. Pet. Exh. 16; Tr. 3/15/07, p. 176; Tr. 3/29/07, pp. 31-34. To the extent that charges were asserted for items not on the price list, the items were not required to be included on the price list.

***Count Four***

7. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) represented to families of deceased individuals for whom evidence was presented and/or to the probate court, that they delivered or provided goods and/or services that, in fact, were not supplied, except for decedent A. C.'s family, which was erroneously told that embalming services were provided. Pet. Exh. 45; Tr. 5/1/07, pp. 86-87; Tr. 6/12/07, pp. 32-33, 35, 43-45.

***Count Five***

8. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) improperly billed for the delivery of goods and/or services that, in fact, were not supplied, except for decedent A. C.'s family, which was billed for embalming services that were not provided. Pet. Exhs. 5, 20; Tr. 3/29/07, pp. 171-172, 204-211.

***Count Six***

9. During 2004-2006, respondent's agent(s) submitted death certificates for J. D., S. S., R. L., and A. C., that were not accurate to various governmental agencies. Pet. Exhs. 20, 41, 45, 47, 49; Tr. 5/1/07, p. 105.
10. During 2004-2006, respondent's agent(s) failed to amend the death certificates for S. S., R. L., and A. C. within a reasonable timeframe. Pet. Exhs. 41, 45; Tr. 5/1/07, pp. 86-87; 105.

***Count Seven***

11. During 2004-2006, respondent's agent(s) failed to file death certificates for E. E., A. D., S. S., and R. L. on a timely basis. However, as agents for OCME, respondent's agent(s) ability to file death certificates on a timely basis was not within respondent's control. Pet. Exhs. 41, 47, 52, 55; Tr. 5/1/07, pp. 57-61, 105-107; Tr. 5/22/07, pp. 27-34.
12. During 2004-2006, respondent's agent(s) failed to timely obtain Removal, Transit and Burial Permits for human remains for E. E., A. D., S. S., and R. L., which should be within five days of decedents' death. However, as agents for the OCME, respondent's ability to obtain such permits on a timely basis was not within respondent's control. Pet. Exhs. 48, 49, 51, 52, 55; Tr. 5/1/07, pp. 105-107; Tr. 5/22/07, pp. 27-34.

***Count Eight***

13. There is insufficient evidence to establish that during April 2006, respondent failed to maintain a current and accurate itemized price list of services and goods. Pet. Exh. 16; Tr. 3/15/07, pp. 91, 126-127, 176-178; Tr. 3/29/07, pp. 31-34, 36.

14. There is insufficient evidence to establish that during April 2006, respondent maintained multiple itemized price lists of services and goods, which contained different prices for the same items. Pet. Exh. 16; Tr. 3/15/07, pp. 91, 126-127, 176-178; Tr. 3/29/07, pp. 31-34, 36.
15. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) improperly failed to provide itemized, written statements of goods and services to appropriate family members, fiduciaries and/or probate courts, prior to rendering services or providing merchandise. Tr. 3/29/07, pp. 131-132, 137-138, 160-165, 169-170. The Board does not interpret the statutes as requiring the respondent to provide respondent's agent, Mr. Riley, with a prior written statement in cases where Mr. Riley had been appointed fiduciary of the decedent estate. Similarly the Board does not interpret the statute as requiring a statement of goods and services to be sent to the Probate court prior to delivering the service.
16. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) failed to maintain copies of such itemized, written statements. Tr. 3/29/07, pp. 131-132, 137-138, 160-165, 169-170.
17. Except as noted below in Paragraph 18 with respect to Probate Court cases, there is insufficient evidence to establish that respondent's agent(s) failed to provide the Department, upon request, with copies of itemized, written statements given prior to rendering service(s) or providing merchandise, for funeral arrangements. Tr. 3/29/07, pp. 131-132, 137-138, 160-165, 169-170.
18. The Department established that there were cases where the respondent provided services or merchandise prior to providing respondent's agent, who had been appointed fiduciary of the decedent estate, with a written itemized statement of services. However, given the potential conflict of interest where the respondent's agent both owned and managed Hartford Trade Service and had been appointed fiduciary of the decedent estate, the Board finds that it would be unreasonable to interpret the statutes as requiring the respondent to, in essence, provide a prior written statement to himself, when the amount that would be paid for such services was subject to subsequent probate court review and approval.
19. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) failed to follow the published price lists when billing for merchandise and/or services, thereby charging fees in excess of the price lists.

***Count Nine***

20. There is insufficient evidence to establish that during 2004-2006, while respondent was under contract with OCME to provide body service transportation for a fee that respondent's agent(s): (a) misrepresented to various families of decedents' and/or probate courts the need to pay for the transportation of a decedent's remains to respondent's facility; (b) billed the estates of decedents for transportation of decedents that was covered by the OCME contract. Tr. 3/29/07, pp. 137-138.

***Count Ten***

21. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) improperly charged various estates and/or families for alternative cremation containers, which was included in the cash advance crematory fees. Tr. 3/29/07, pp. 164-165.

***Count Eleven***

22. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) improperly charged for funeral arrangements by separately billing additional fees for services that were included in the Basic Services of Funeral Director and Staff fees. Tr. 3/29/07, pp. 158-164.

***Count Twelve***

23. There is insufficient evidence to establish that during 2006 that respondent did not have a bathroom for public use. Resp. Exhs. 3, 4, 7; Tr. 3/15/07, pp. 131-132, 144, 179-180.

***Count Thirteen***

24. During 2004-2006, respondent was under contract with OCME to provide body service transportation, for a fee. Pet. Exh. 33.
25. During 2004-2006, the OCME contract prohibited respondent's agent(s) from soliciting business while performing body transportation services. Pet. Exh. 33.
26. There is insufficient evidence to establish that during 2004-2006, while maintaining remains pending disposition pursuant to its contract with OCME, respondent's agent(s) improperly offered to make funeral service arrangements for decedents for whom respondent provided body transportation service under its contract with OCME. Tr. 3/15/07, p. 197.

27. There is insufficient evidence to establish that during 2004-2006, while maintaining remains pending disposition pursuant to its contract with OCME, respondent's agent(s) improperly sought administration and/or administered the estates of such decedents. Tr. 7/19/07, pp. 80-85.

***Count Fourteen***

28. On August 11, 2006, J. D. died in Meriden, Connecticut. Pet. Exh. 20; Tr. 3/29/07, p. 196.
29. Decedent J. D. was predeceased by her husband, who was buried in a local cemetery. Tr. 3/29/07, p. 196.
30. Decedent was survived by her son. Tr. 3/29/07, p. 196.
31. During August 2006, respondent's agent(s) removed decedent from her home in Meriden, pursuant to a contract with OCME. Pet. Exh. 21; Tr. 3/29/07, pp. 196-197.
32. On or about August 22, 2006, respondent's agent applied to Meriden Probate Court as a Funeral Director, for custody of decedent's remains. Pet. Exh. 26; Tr. 3/29/07, p. 201.
33. There is insufficient evidence to establish that respondent's agent advised the Court that decedent left no surviving next of kin. Pet. Exhs. 27, 31; Tr. 3/29/07, p. 186.
34. On or about August 23, 2006, respondent applied to the Meriden Probate Court for the temporary administration of decedent's estate for the stated purpose of affording the decedent a "proper burial." Respondent's agent erroneously informed the Court that decedent's only next of kin, her son, was in prison. Decedent's son was not in prison. Pet. Exh. 27; Tr. 3/29/07; p. 197. Respondent's agent's actions as fiduciary of J.D.'s decedent estate are outside the scope of the practice of embalming and funeral directing and not subject to review by this Board.
35. On or about August 23, 2006, the Meriden Probate Court awarded respondent's agent custody and control of the decedent's body for final disposition. Pet. Exh. 31; Tr. 3/29/07, p. 175.
36. On or about August 24, 2006, respondent's agent applied for a cremation permit for decedent. Pet. Exh. 22.
37. On or about August 24, 2006, decedent J. D. was cremated, without any consultation with her son. Pet. Exh. 22; Tr. 3/29/07, p. 204.
38. On or about August 28, 2006, the Probate Court appointed respondent's agent, Kevin Riley, as Temporary Administrator "for the sole purpose of having a proper burial for J. D." Pet. Exh. 27.

39. There is insufficient evidence to establish that respondent's agent failed to inform the Probate Court of the August 24, 2006 cremation. Pet. Exh. 32.
40. Decedent's death certificate, which bears respondent's agent's name, incorrectly states that decedent J. D. was cremated on August 31, 2006. Pet. Exh. 20.
41. There is insufficient evidence to establish that the death certificate was not corrected within a reasonable timeframe. Tr. 3/29/07, pp. 210-211.
42. Any disposition of property of J.D. or her surviving son that may have occurred without the approval of the probate court is outside the scope of practice of embalming and not subject to review by this Board.

***Count Fifteen***

43. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) improperly billed for "cash advance" items for funeral arrangements, by failing to bill the net amount paid for such items. Tr. 3/29/07, pp. 167-168.
44. There is insufficient evidence to establish that during 2004-2006, respondent's agent(s) improperly charged additional fees for merchandise that was provided by the purveyor of cash advance items for funeral arrangements. Tr. 3/29/07, pp. 167-168.

***Count Sixteen***

45. On or about July 27, 2005, S. S. died in Bridgeport, Connecticut. Pet. Exhs. 41, 42.
46. On or about July 27, 2005, respondent's agent(s) removed decedent's body from her home. Pet. Exh. 42.
47. The respondent's agent removed the decedent's body pursuant to the respondent's contract with OCME. Tr. 5/2/07, pp. 25-76. Pursuant to directions from the Medical Examiner's office, respondent's agents brought the human remains to its establishment for storage. Tr. 5/1/07, pp 75-76.
48. From approximately July 27, 2005 to August 10, 2005, the human remains of decedent were physically housed with respondent. Tr. 5/1/07, pp. 75-76
49. On or about August 10, 2005, the Bridgeport Probate Court granted custody and control of the decedent S. S.'s body to an agent for respondent for final disposition. Pet. Exh. 42.
50. Respondent had custody and care of decedent S. S.'s remains from August 10, 2005 until the burial, on or about September 9, 2005, for a total of approximately 30 days. Pet. Exh. 42.

51. There is insufficient evidence to establish that respondent's agent(s) improperly charged such decedent's estate for 49 days of refrigerated storage of decedent S. S.'s remains. Pet. Exhs. 41, 43; Tr. 5/1/07, pp. 80-81. The OCME was only liable to Hartford Trade pursuant to its contract for the cost of removal only. There is no evidence in the record that OCME paid for the cost of storage between July 27, 2005 and August 10, 2005, which payment, had it been made, would not have been authorized under the contract.
52. There is insufficient evidence to establish that during 2005, respondent's agent(s) failed to properly dispose of decedent's human remains in a timely fashion. Pet. Exhs. 41, 42.
53. There is insufficient evidence to establish that there were two different written statements of goods and services for S. S.'s funeral arrangements. Pet. Exh. 43.
54. The death certificate filed by respondent's agent and the statement of goods and services selected indicate that S. S.'s body was not embalmed. Pet. Exh. 41.
55. There is insufficient evidence to establish that there were two inconsistent statements of goods and services for S. S.'s funeral arrangements. Pet. Exh. 43.

***Count Seventeen***

56. On or about February 6, 2006, R. L. died in Wallingford, Connecticut. Pet. Exh. 47.
57. On or about February 6, 2006, respondent's agent(s) removed decedent R. L.'s body from his home in Wallingford, Connecticut, pursuant to its contract with the OCME. Pet. Exh. 48.
58. On or about February 21, 2006, respondent's agent(s) applied to the Wallingford Probate Court for custody and control of decedent R. L.'s remains. Pet. Exh. 49.
59. On or about February 22, 2006, respondent's agent(s) filed a death certificate for decedent R. L. indicating a cremation date of February 21, 2006. Decedent was cremated on or about March 1, 2006. Pet. Exhs. 47, 49.
60. Decedent's death certificate was not timely corrected. Tr. 5/1/07, p. 105.
61. There is insufficient evidence to establish that respondent's agent(s) improperly charged decedent R. L.'s estate for refrigerated storage of decedent R. L.'s remains while decedent R. L. was in the custody of OCME, and physically housed with respondent. Pet. Exhs. 49, 50. The OCME was only liable to Hartford Trade pursuant to its contract for the cost of removal only. There is no evidence in the record that OCME paid for the cost of storage between February 6, 2006 and February 28, 2006.

62. There is insufficient evidence to establish that respondent's agent(s) improperly charged decedent R. L.'s estate for refrigerated storage of decedent R. L.'s remains for the period of February 6,, 2006 through February 28, 2006. Pet. Exhs. 49, 50.
63. Respondent's written statement of goods and services selected submitted to decedent R. L.'s estate included items not on its general price list, including, but not limited to refrigeration; a transfer fee; and/or, office work, research, paperwork, and/or trip to decedent's house and Probate Court. Pet. Exh. 50.
64. There is insufficient evidence to establish that respondent's agent(s) improperly charged decedent's estate an additional fee for an alternative cremation container. Pet. Exh. 50.

***Count Eighteen***

65. On or about January 24, 2006, A. C. died in East Haven, Connecticut. Pet. Exh. 45.
66. On or about February 10, 2006, respondent's agent filed a death certificate for this decedent, listing respondent's agent as the custodian. Pet. Exh. 45.
67. Such death certificate states that decedent A. C. was buried on or about February 10, 2006. Pet. Exh. 45.
68. Such death certificate states that decedent A. C.'s body was not embalmed. Pet. Exh. 45; Tr. 5/1/07, pp. 86-87.
69. Respondent's written statement of goods and services selected for decedent A. C.'s funeral arrangements, dated April 28, 2006, improperly lists a charge for embalming. Pet. Exh. 45.
70. The written statement of goods and services incorrectly states that refrigeration was required by "law, cemetery or crematory requirements." Pet. Exh. 46.
71. There is insufficient evidence to establish that respondent's written statement of goods and services for decedent A. C.'s funeral arrangements, dated April 28, 2006, includes items not listed on its general price list, such as refrigeration; locksmith services and new locks; pall bearers; hearse and sedan; and, service/utility vehicle because to the extent that such items were not on its general price list, they constitute services that are not routinely provided and are not required to be included on a general price list. Pet. Exh. 16.

***Count Nineteen***

72. Coventry Funeral Home of Coventry, Connecticut ("Coventry Funeral") is, and was, the holder of Connecticut funeral home inspection certificate 483. Joint Exhs. 17, 19.

73. During 2006, Kevin Riley, an embalmer who holds embalmer license number 2251, was the owner and/or manager of respondent and Coventry Funeral. Joint. Exh. 18.
74. On or about April 28, 2006, J. C. died in West Hartford, Connecticut. Pet. Exh. 36.
75. On or about April 28, 2006, respondent's agent(s) removed decedent J. C. from his home in West Hartford pursuant to respondent's contract with OCME. Pet. Exh. 35.
76. On or about May 25, 2006, respondent's agent applied to the West Hartford Probate Court for custody and control of decedent J. C.'s remains, which was awarded on June 1, 2006. Pet. Exh. 36.
77. On or about June 1, 2006, respondent's agent submitted an application to the West Hartford Probate Court to become the temporary administrator of decedent's estate. Pet. Exh. 36.
78. The West Hartford Probate Court did not authorize respondent's agent(s) to provide and/or charge for funeral goods and services prior to the rendering of such goods and services. Pet. Exh. 37.
79. There is insufficient evidence to establish that respondent improperly transferred custody and control of decedent J. C.'s remains to Coventry Funeral.
80. On or about June 27, 2006, Coventry Funeral and/or its agent submitted an itemized statement of goods and services selected to the West Hartford Probate Court, requesting authorization to make payment for the funeral arrangements. Pet. Exh. 40.
81. There is insufficient evidence to establish that Kevin Riley, as agent for Coventry Funeral, improperly charged for refrigerated storage of decedent's remains when the decedent was in the custody of the OCME, and physically housed with respondent.

***Count Twenty***

82. Kevin Riley, embalmer license number 2251, at all times referenced herein, was respondent's owner and/or manager. Joint Exh. 18.
83. On or about October 18, 2005, H. G. died in Columbia, Connecticut. Pet. Exh. 5; Tr. 3/29/07, pp. 104-105.
84. On or about October 18, 2005, respondent's agent(s) removed decedent H. G. from her home in Columbia pursuant to its contract with OCME. Pet. Exhs. 2, 11; Tr. 3/29/07, p. 145.

85. The evidence is insufficient to establish that the human remains of decedent H. G. were in the care of OCME, and physically housed with respondent. Pet. Exh. 5; Tr. 3/29/07, p. 147.
86. Respondent's written statement of goods and services selected for decedent H. G. is dated October 18, 2005 and is signed with the name of Kevin Riley. Pet. Exh. 1; Tr. 3/29/07, p. 54.
87. On or about October 19, 2005, Kevin Riley, as Funeral Director, filed an application in the Andover Probate Court for custody and control of the body of decedent H. G. for its disposition. Pet. Exh. 12; Tr. 3/29/07, pp.103-105.
88. On or about October 19, 2005, the Andover Probate Court awarded said custody and control to Mr. Riley. Pet. Exh. 12; Tr. 3/29/07, pp.103-104.
89. Respondent's written statement of goods and services selected, submitted to decedent H. G.'s estate, included items not on its general price list; however, to the extent that the written statement of goods and services contained items not on its general price list, the Board finds that such items are not routinely provided and need not be included on the price list. Pet. Exh. 1; Tr. 3/29/07, pp. 158-160, 162-164.
90. The evidence is insufficient to establish that respondent improperly charged decedent's estate an additional fee for an alternative cremation container required for the cremation. Tr. 3/29/07, pp. 164-165, 168.
91. The evidence is insufficient to establish that respondent improperly billed such decedent's estate for transportation of decedent's remains that was covered by its contract with OCME to provide body service transportation. Tr. 3/29/07, p. 147.
92. The evidence is insufficient to establish that respondent improperly charged decedent H. G.'s estate for refrigerated storage of H. G.'s remains while her remains were in the custody of OCME. Tr. 3/29/07, pp. 147-154.

### ***Discussion and Conclusions of Law***

The Department bears the burden of proof by a preponderance of the evidence. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Bender v. Clark*, 744 F. 2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F. 2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc., v. Connecticut Dept. of Health Services*, No. CV 88-0349673-S (Sup. Court, J.D.

Hartford/New Britain at Hartford, July 6, 1989); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

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 funeral home inspection certificate is subject to disciplinary action pursuant to §20-227 of the Statutes which provides, in pertinent part:

. . . [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: . . . (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 or such business or profession; (5) violation of or noncompliance with the provisions of this chapter or the rules established hereunder; . . . (7) aiding or abetting the practice of embalming or funeral directing by an unlicensed person; . . .

In presenting its case, the Department relied on decedents' records that were obtained from respondent and/or various probate courts, where applicable, and the testimony of multiple witnesses, including many of respondent's former and current employees, and the Department investigator and expert witness, Edward Bergin.

With respect to the general allegation of the Charges, respondent admits that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut funeral home inspection certificate 467.

With respect to the allegations contained in Count One, the Department proved by a preponderance of the evidence that during 2005-2006, respondent aided and abetted the unlicensed practice of embalming, in violation of §§ 20-212 <sup>1</sup>and 20-227(2), (4), (5) and (7) of the Statutes, but failed to establish that unlicensed persons were engaged in the practice of funeral directing, in violation of § 20-227 (7).

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<sup>1</sup>This section provides:

No person, except a licensed embalmer, shall inject any fluid or substance into any dead human body, except that a registered student embalmer may, even if not in the presence of a licensed embalmer, make such injection or perform any other act under his instruction; and no person, . . . shall enter, engage in, carry on or manage for another the business of caring for preserving or disposing of dead human bodies until each person, . . . so engaged has obtained from the Department of Public Health . . . ; nor shall any person be employed to remove a dead human body, except a licensed embalmer, a registered student embalmer, a licensed funeral director, . . .

Leah Gonzalez, former embalmer apprentice; Michaela Branch, licensed embalmer; Lori Richardson, former embalmer apprentice; Darlene Rau, licensed embalmer; Scott Masamery, former licensed embalmer/funeral director/manager at Hartford Trade; Kathryn Matthews, former embalmer apprentice; and, Sheri Blews, former embalmer apprentice and currently licensed embalmer and manager at Hartford Trade, all testified that during 2005-2006, there were unlicensed persons engaged in the practice of embalming at Hartford Trade and/or Coventry Funeral. Each of the witnesses consistently testified that Sheri Blews, Kathryn Matthews, Leah Gonzalez, Lauren Black, Lori Richardson, all of whom were unlicensed at the time, engaged in the practice of embalming. Some of the witnesses admitted that they also performed embalming tasks while they were unlicensed apprentices under the supervision of Darlene Rau, until she left respondent, and later under Scott Masamery who replaced Ms. Rau. They also admitted that they conferred with Sheri Blews, who was also unlicensed, if they needed assistance or had questions when Scott Masamery or respondent was not available.

The Board finds, however, that the Department did not sustain its burden of proof that respondent aided or abetted the unlicensed practice of funeral directing. Specifically, none of the witnesses testified that they made or offered to make any funeral arrangements and the Department did not offer any evidence to rebut their testimonies.

With respect to the allegations contained in Count Two, the Department met its burden of proof by establishing that during 2005 and/or 2006, respondent violated §20-224(a)<sup>2</sup> of the Statutes by employing a number of apprentice embalmers in full time positions that exceeded the number permitted by Statute (two at any one time), without the approval of the Board.

It is undisputed that respondent employed more than two apprentice embalmers at a time by assigning two of the apprentices to the Hartford Trade facility, two others at Coventry Funeral, two more at DeLeon Funeral Home, and two more at the Southern Connecticut Funeral Home. The apprentices were working either under Kevin Riley's license (as respondent's agent) or under the license of his former manager, Scott Masamery. However, since it was not clear at

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<sup>2</sup>This section provides:

The provisions of sections 20-217, 20-220 and 20-227 shall not prohibit the employment of assistants or of student, embalmers and student funeral directors as provided in this chapter, provided a licensed funeral service business may employ no more than two student embalmers at any one time, . . . without the approval of the Board of Examiners of Embalmers and Funeral Directors.

the time that respondent's practice of assigning student embalmers to different facilities at the same time was prohibited, respondent's agent formally requested the Board's clarification of this issue. Resp. Exhs. 8, 10. Subsequently, the Board determined that a funeral home may not employ more than a total of two apprentice embalmers no matter how many locations it operates, without Board approval to do so. Resp. Exh. 12. Because respondent lacked notice of this interpretation, and because the respondent had specifically asked for an interpretation, the Board finds that these violations do not rise to a level that warrants disciplinary action.

With respect to the allegations contained in Count Three, the Department did not sustain its burden of proof that respondent's agent(s) offered, sold, and/or delivered goods and services that were not listed on their respective general price lists, including refrigeration, retrieval of cremains, urns, sanitary care and pouching, use of pall bearers, transfers to crematories, trips to their domiciles and Probate Court, office work, and/or research, in violation of §§20-227(2), 20-227(4), 20-227(5), and/or 20-230a<sup>3</sup> of the Statutes.

The Board finds that items such as refrigeration and sanitary care and pouching, if offered, should be on respondent's general price list. However, items such as the use of pallbearers, transfers to crematory, trips to domicile and probate court, office work and research are generally not offered as goods and services provided by licensed embalmers, are not expected to be on the general price list. Although respondent is also a licensed funeral home, it typically does not deal with the general public and the services that respondent provided exceeded the scope of embalming services and funeral arrangements that licensed embalmers generally provide. Therefore, the Board finds no violation.

With respect to the allegations contained in Count Four, the Department did not sustain its burden of proof, except with respect to decedent A. C., that during 2004-2006, respondent's agent(s) represented to various families of deceased individuals and probate courts that they

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<sup>3</sup> This section provides:

No licensed funeral director or licensed embalmer shall offer to sell services to arrange for or conduct funerals or offer to sell any merchandise used in connection with a funeral without first providing the purchaser of such services or merchandise with an itemized price list of all available services and merchandise and every such purchaser shall also be informed by such funeral director or embalmer, prior to entering into any sales agreement, of the right to select only such services or merchandise which the purchaser so desires.

delivered or provided goods and/or services that, in fact, were not supplied, in violation of §§20-227(2), 20-227(4), 20-227(5), and/or 20-230b<sup>4</sup> of the Statutes. These services concerned the use of hearses and sedans, the certification of death, refrigeration of remains, and embalming.

Michael Kroll, Superintendent of the Walnut Grove Cemetery and full-time crematorium operator, testified that his organization provided cremation services to respondent's agent(s). Specifically, Mr. Kroll testified that during the relevant timeframe, respondent delivered bodies to his crematorium for cremation that were contained in doeskin, regular caskets, cremation caskets, or in body bags on stretchers, and that the bodies were delivered sometimes in hearses, but more frequently in minivans. Tr. 6/12/07, pp. 32-33, 35, 43-45. Thus, Mr. Kroll's testimony rebutted the Department's allegations regarding respondent's agent(s) transporting of bodies to the crematorium.

With respect to the allegations concerning whether death certificates were certified, remains were refrigerated, and embalming services were provided, the Department failed to establish by a preponderance of the evidence that respondent's agent(s) made any misrepresentations concerning whether these services were provided or failed to supply such goods and services, except with respect to decedent A. C., whose family was charged for embalming services that were not provided. However, the Board finds that this one incident does not establish that respondent's agent(s) engaged in a pattern or practice of intentional violations and further finds that this one incident does not warrant the imposition of discipline.

With respect to allegations contained in Count Five, for the reasons discussed above in Count Three, the Department failed to sustain its burden of proof that during 2004-2006, respondent's agent(s) improperly billed for the delivery of goods and/or services that, in fact, were not supplied, except for A. C.'s family that was improperly billed for embalming services that were not provided. However, the Board finds that this one incident is not symptomatic of a

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<sup>4</sup> This section provides:

No person engaged in the business of funeral directing and no licensed funeral director or licensed embalmer shall fail to provide the person making funeral arrangements or arranging for disposition of a dead human body, at the time funeral arrangements are completed and prior to the time of rendering service or providing merchandise, a written statement indicating to the extent then known: (1) [t]he price of the service that the person has selected and what is included therein; (2) the price of each supplemental item of service or merchandise requested; (3) the amount involved for each of the items for which the funeral firm will advance money as an accommodation to the family of the deceased; and (4) the methods of payment. No person engaged in the business of funeral directing and no licensed funeral director or licensed embalmer shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item by the funeral firm is the same as is billed by the funeral firm.

pattern or practice of intentional violations and that this one incident does not warrant the imposition of discipline.

With respect to the allegations contained in Count Six, the Department sustained its burden of proof that during 2004-2006, respondent's agent(s) submitted to various governmental agencies, death certificates that were not accurate, in violation of §§20-227(2), 20-227(4), 20-227(5) and 7-45<sup>5</sup> of the Statutes.

The Board finds that with respect to decedents J. D., S. S., R. L., and A. C., respondent's agent(s) filed death certificates with various governmental agencies with incorrect dates of disposition, and that the amended death certificates of J. D., R. L., and H. G. were not filed on a timely basis. However, the Board does not find that such instances establish a pattern or practice of intentional violations or that these isolated errors warrant the imposition of discipline.

With respect to the allegations contained in Count Seven, the Department sustained its burden of proof that respondent's agent(s) failed to obtain burial transit removal permits within five calendar days of various decedents' deaths (e.g., E. E., A. D., S. S., and R. L.) and failed to file death certificates no later than five days after the decedents' deaths, in violation of §§7-65<sup>6</sup>, and 7-62b<sup>7</sup>, respectively, of the Statutes. See, Findings of Fact, ¶¶11-12. However, the Board finds that the timely filing of death certificates or the obtaining of burial transit removal permits

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<sup>5</sup> This section provides that: "[e]ach person making any certificate of . . . death . . . shall cause the same to be typewritten or printed in a legible manner as to all material information or facts required . . .

<sup>6</sup> This section provides:

The embalmer or funeral director licensed by the department, . . . who assumes custody of a dead body shall obtain a burial transit removal permit from the registrar of the town in which the death occurred not later than five calendar days after death, and prior to final disposition or removal of the body from the state. The burial permit shall specify the place of burial or other place of interment and state that the death certificate and any other certificate required by law have been returned and recorded . . .

<sup>7</sup> This section provides:

A death certificate for each death which occurs in this state shall be completed in its entirety and filed with the registrar of vital statistics in the town in which the death occurred no later than five days after death if filing a paper certificate . . . in order to obtain a burial permit prior to final disposition. The death certificate shall be registered if properly filed. If the place of death is unknown but the body is found in this state, the death certificate shall be completed and filed in accordance with this section, provided the place where the body is found shall be shown as the place of death.

The funeral director or embalmer licensed by the department, . . . in charge of the burial of the deceased person shall complete the death certificate on a form provided by the department. Said certificate shall be filed by a licensed embalmer . . . in accordance with the provisions of this section, . . . The Social Security number of the deceased person shall be recorded on such certificate. Such licensed funeral director or licensed embalmer shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain a medical certification from the person responsible therefore, . . .

on a timely basis was not within respondent's control. Therefore, such violations do not warrant disciplinary action.

With respect to the allegations contained in Count Eight, the Department failed to sustain its burden of proof that respondent's agents: (a) failed to maintain a current and accurate itemized price list of services and goods; (b) maintained multiple, itemized price lists with different prices for the same items; (c) failed to provide purchasers with itemized, written statements prior to rendering services or providing merchandise; (d) failed to maintain a copy of itemized, written statements and provide the Department, upon request, with copies of such statements given to purchasers; and/or (e) failed to follow the published price lists when billing for merchandise and/or services, in violation of §§20-227(2), 20-227(4), 20-227(5), 20-230a, and/or 20-230b of the Statutes, or 20-211-34 of the Regulations. Moreover, with respect to those cases where Mr. Riley had been appointed fiduciary of the decedent estate, the Board finds that it would be unreasonable to interpret the statutes as requiring Mr. Riley, as owner of Hartford Trade Services, to in effect, provide a prior written statement of goods and services to himself, as fiduciary of the decedent estate. In all such cases, the amount to be paid to Hartford Trade Services was subject to subsequent review and approval by the probate court. See, Findings of Fact, ¶¶ 13-19.

With respect to the allegations contained in Count Nine, the Department failed to sustain its burden of proof that during 2004-2006, while respondent was under contract with OCME to provide body service transportation, for a fee that respondent's agent(s): (a) misrepresented the need to pay for the transportation of a decedent's remains to respondent; and/or (b) billed the estates of decedents for transportation of decedents that was covered by the contract with OCME, in violation of §§20-227(2), 20-227(4), 20-227(5), and/or 20-230b of the Statutes, and 20-211-34 of the Regulations. The Board finds that the OCME contract explicitly covers removals only; thus, there is no violation. See, Findings of Fact, ¶20.

With regard to the allegations contained in Count Ten, the Department did not sustain its burden of proof that during 2004-2006, respondent's agent(s) improperly charged decedents' estates and/or decedents' families for alternative cremation containers, in violation of §§ 20-227 (2), 20-227(4), 20-227(5) and/or 20-230b of the Statutes, and 20-211-34 and/or 20-211-35 of the Regulations.

With regard to the allegations contained in Count Eleven, the Department did not sustain its burden of proof that during 2004-2006, respondent's agent(s) improperly charged for funeral arrangements by separately billing additional fees for services that were included in the Basic Services of Funeral Director and Staff fees, in violation of §§20-227(2), 20-227(4), 20-227(5) and/or 20-230b of the Statutes, and 20-211-34 of the Regulations. The Board finds that the additional services and fees (*e.g.*, office work, research, and trips to the domicile and probate court) for which respondent charged the decedent's estate or the person making the funeral arrangements generally are *not* included in the Basic Services of Funeral Director/Staff fees.

With respect to the allegations contained in Count Twelve, the Department did not meet its burden of proof that respondent did not have a bathroom available for public use, in violation of §§19-13-B106<sup>8</sup> of the Regulations and 20-227 of the Statutes. The Board finds that the bathroom in question at the facility was available to the public, although the public generally did not frequent this facility.

With regard to the allegations contained in Count Thirteen, the Department did not meet its burden of proof that during 2004-2006, respondent's agent(s), while maintaining remains pending disposition under the OCME contract, improperly offered to make funeral service arrangements for decedents and/or sought administration and/or improperly administered the estates of such decedents, in violation of §§20-227(2), 20-227(4) and 20-227(5) of the Statutes. *See*, Findings of Fact, ¶¶ 24-27. Moreover, to the extent that Kevin Riley administered decedent estates pursuant to Probate Court appointments and related to Hartford Trade Services' status as a creditor of the decedent estates, his administration of decedent estates is outside the scope of the practice of funeral directing and embalming, not subject to review by the Connecticut Board of Examiners of Embalmers and Funeral Directors, and not the subject of potential discipline under Conn. Gen. Stat. § 20-227.

With respect to the allegations contained in Count Fourteen, the evidence establishes that when respondent's agent was awarded custody and control of decedent J. D.'s remains by the Meriden Probate Court, he erroneously informed the Court first that decedent J. D.'s son was in prison; that respondent cremated decedent J. D.'s remains without any consultation with her son;

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<sup>8</sup> This section provides that: "[t]oilet and hand washing facilities accessible to the public and separated for each sex, shall be provided at new or extensively renovated public buildings, places of public assembly, . . ."

and that decedent's death certificate, which bears respondent's agent's name, incorrectly states that decedent J. D. was cremated on August 31, 2006, when she was cremated on August 24, 2006. Based on the totality of the evidence, the proven violation with respect to the erroneous date on the death certificate does not rise to a level warranting discipline. *See*, Findings of Fact, ¶¶ 28-42. Any disposition of property of J.D. or J.D.'s son without probate court authorization is subject to probate court review, but is outside the scope of embalming or funeral directing and not subject to review by this Board.

With respect to the allegations contained in Count Fifteen, the Department did not sustain its burden of proof that during 2004-2006, respondent's agent(s) improperly billed for "cash advance" items for funeral arrangements, by failing to bill the net amount paid for such items and/or improperly charged additional fees for merchandise that was provided by the purveyor of cash advance items for funeral arrangements, in violation of §§ 20-227(2), (4), (5) and 20-230b of the Statutes, and 20-211-34 and/or 20-211-35 of the Regulations. *See*, Findings of Fact, ¶¶ 43 and 44.

With regard to the allegations contained in Count Sixteen, the Department did not sustain its burden of proof that respondent improperly charged the decedent's estate for 49 days of refrigerated storage of decedent's remains; failed to timely dispose of S. S.'s remains; and failed to provide the person arranging for final disposition of decedent S. S.'s remains a written statement of the prices of goods and services, including transportation fees, pallbearers, and/or cooler fees, prior to the rendering of the service, in violation of §§ 7-64, 20-230b, 20-227(2), (4), and (5) of the Statutes and 20-211-34 of the Regulations. Specifically, the Board finds that the 30 days that S. S.'s remains were in respondent's custody following Probate court authorization was not an unreasonable amount of time. The Board also finds that the Department failed to establish by a preponderance of the evidence that the prices of goods and services for S. S.'s funeral arrangements were inconsistent because there is only one statement of goods and services in the record. The Board further finds that the OCME was only responsible for the costs of removal pursuant to its contract with the respondent and the respondent did not improperly charge the estate for storage for all days that the decedent's remains were in storage. *See*, Findings of Fact, ¶¶ 45-55.

With regard to the allegations contained in Count Seventeen, the Department met its burden of proof that respondent performed a removal of decedent R. L. from his home pursuant to a contract with OCME; respondent filed an inaccurate death certificate for decedent R. L. that was not timely corrected; and, respondent's written statement of goods and services included items not on its general price list, including transfer fee and/or office work, research, paperwork, and/or trip to the house and Probate Court. However, the Department did not establish by a preponderance of the evidence that respondent improperly charged R. L.'s estate for refrigerated storage of decedent R. L.'s remains for the period of February 6, 2006 through February 28, 2006, or that respondent improperly charged decedent's estate an additional fee for an alternative cremation container. Furthermore, to the extent that charges were made for items not on the price list, the charge was for items that are not required to be included on the general price list. The Board also finds that respondent's filing of the decedent's death certificate with the incorrect cremation date was a "technical violation" that does not warrant disciplinary action. *See*, Findings of Fact, ¶¶ 56-64.

With regard to the allegations contained in Count Eighteen, the Department established by a preponderance of the evidence that respondent erroneously charged the decedent's estate for embalming instead of sanitary care and pouching, and that respondent mistakenly included disclosure language about refrigeration in the wrong section of the written statement of goods and services. However, the Board finds that such violations are "technical," and, based on the totality of the evidence, do not warrant disciplinary action. *See*, Findings of Fact, ¶¶ 65-71.

With regard to the allegations contained in Count Nineteen, the Department did not meet its burden of proof that respondent's agent(s): (a) provided goods and services for decedent J. C. without first providing an itemized price list of all available services and merchandise to the West Hartford Probate Court; (b) improperly transferred custody and control of decedent's remains to Coventry Funeral; and (c) improperly charged for refrigerated storage of decedent's remains. *See*, Findings of Fact, ¶¶ 72-81. There is no requirement that prior approval of the statement of charges be obtained from the Probate Court.

With regard to the allegations contained in Count Twenty, the Department failed to establish by a preponderance of the evidence that respondent's agent(s) improperly charged decedent H. G.'s estate for transportation, refrigerated storage of H. G.'s remains, or an

alternative cremation container required for the cremation. The Department established by a preponderance of the evidence that respondent's statement of goods and services submitted to H. G.'s estate included items not on its general price list. However, to the extent that charges were asserted for items not on the price list, there is no requirement that the item be included on the price list. *See*, Findings of Fact, ¶¶ 82-92.

Based on the foregoing, the Board finds that respondent's license is subject to disciplinary action for the allegations contained in Count One, which the Department proved by a preponderance of the evidence. While the Board also finds that the Department proved by a preponderance of the evidence allegations contained in ¶¶ 9 and 10 in Count Six; ¶¶ 34, 37, and 40 in Count Fourteen; ¶ 54 in Count Sixteen; ¶¶ 59, 60, and 63 in Count Seventeen; ¶¶ 67-70 in Count Eighteen; and, ¶ 89 in Count Twenty, the Board also finds that such violations consisted of "technical violations" and/or areas over which respondent had no control. Overall, the Board finds that such violations do not warrant disciplinary action. Accordingly, the Board concludes that there is sufficient basis upon which to issue the following order.

### *Order*

Based upon the record in this case, the above findings of fact and the conclusions of law, and 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 Hartford Trade Service, Petition number 2006-0427-056-007, which holds Connecticut funeral home inspection certificate 467:

1. Respondent shall pay a civil penalty of ten thousand dollars (\$10,000) 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 within thirty days of the effective date of this Decision.
2. Respondent shall comply with all state and federal statutes and regulations applicable to its certificate.

This Order is effective as of the date of signature.

Connecticut Board of Examiners for  
Embalmers and Funeral Directors

Dec 2, 2008

Date

Celia Pinzi

By: Celia Pinzi, Chairperson

**CERTIFICATION**

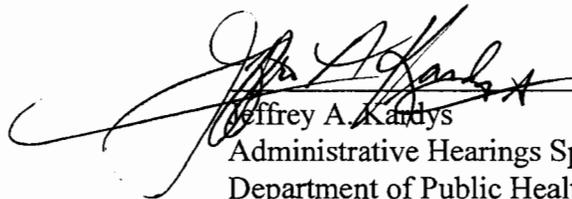
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 2nd day of December 2008, by certified mail, return receipt requested, to:

John F. Droney, Jr., Esq.  
Levy and Droney  
Pondview Corporate Center  
74 Batterson Park Road  
Farmington, CT 06032

Certified Mail RRR #91-7108-2133-3932-0551-0201

and by Inter-Departmental Mail to:

Stanley K. Peck, Director  
Legal Office  
Department of Public Health  
410 Capitol Avenue, MS #12LEG  
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Jeffrey A. Kardys  
Administrative Hearings Specialist/Board Liaison  
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