

STATE OF CONNECTICUT

DEPARTMENT OF HEALTH SERVICES

Perkins Funeral Home
Inspection Certificate No. 489
c/o John Iacobucci
745 Wintergreen Avenue
Hamden, CT 06514

Petition No. 930127-56-001

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND:

On March 8, 1993, the Department of Health Services ("Department") presented the Connecticut Board of Examiners for Embalmers and Funeral Directors ("Board") with a Motion for Summary Suspension against Perkins Funeral Home ("Home" or "Respondent"), dated March 5, 1993. (Department Exhibit 3). The Motion for Summary Suspension was based on a Statement of Charges against the Home, affidavits, and the Department's information and belief that allowing the Home to continue to operate represented a clear and immediate danger to the public health and safety. (Department Exhibit 3). The Statement of Charges alleged in five (5) counts that the Home violated Connecticut General Statutes §20-227, and Regulations of Connecticut State Agencies §20-211-29.

In related matters on March 8, 1993, the Department presented the Board with a Motion for Summary Suspension against John Iacobucci, Embalmer ("Mr. Iacobucci"), and a Statement of Charges against James Perkins ("Mr. Perkins"). (Department Exhibits 1 and 4). The Memorandum of Decision for Mr. Iacobucci is a separate document captioned as John Iacobucci,

Embalmer, License No. 2169, 745 Wintergreen Avenue, Hamden, CT 06514; Petition No. 930127-30-002. The Memorandum of Decision for Mr. Perkins is a separate document captioned as James Perkins, 290 Bellevue Road, New Haven, CT 06511; Petition No. 930127-00-002.

Pursuant to the authority of Connecticut General Statutes §4-182c and §19a-17, on March 8, 1993, the Board ordered that Inspection Certificate 489 of the Home be summarily suspended pending the Board's final determination of the allegations contained in the Statement of Charges. The Board set the hearing date for March 19, 1993. (Department Exhibit 3).

On March 10, 1993, Mr. Iacobucci, as authorized agent for the Home, accepted personal service of the Motion for Summary Suspension, Statement of Charges, Notice of Hearing, Summary Suspension Order, and accompanying affidavits. (Department Exhibit 3). Mr. Iacobucci did not file an Answer or other response to the Statement of Charges against the Home. (Transcript 4/19/93 p. 12).

Mr. Iacobucci requested a continuance of the original hearing date, as well as the subsequent hearing dates set by the Board of March 26, 1993; and April 1, 1993. The Board granted these continuances.

The Board held an administrative hearing on April 19, 1993 to adjudicate the related cases of the Home, Mr. Iacobucci, and Mr. Perkins. Both the Department and Mr. Iacobucci presented evidence and conducted cross-examination of witnesses.

All members of the Board involved in this decision attest that they have either heard the case or read the record in its entirety. The decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

FINDINGS OF FACT:

1. On February 3, 1992, the Department issued Connecticut Inspection Certificate No. 489 to the Home. (Department Exhibit 3).

2. At all times referenced in the Statement of Charges, Mr. Perkins was not authorized to practice as a funeral director or embalmer under Connecticut General Statutes §20-207, et seq. (Department Exhibit 3).

3. In November, 1991, Mr. Iacobucci signed a three (3) year lease agreement between Greater New Haven Funeral Services, Inc. and Perkins Funeral Home. (Department Exhibit 8). Mr. Iacobucci signed as the principal officer of the lessee Greater New Haven Funeral Services, Inc.; Rev. Bosie Kimber signed as Manager of the lessor Home. (Department Exhibit 8). The lease

agreement permitted Mr. Iacobucci to operate a funeral home business utilizing the location and equipment of the Home. (Department Exhibit 8).

4. Following the signing of this lease agreement, Mr. Iacobucci intended to be the licensee of record for the Home. (Transcript 4/19/93 p. 52).

5. With Regard to the First Count:

In the First Count, the Department alleged that on January 18, 1993, and subsequent thereto, the Respondent violated Connecticut General Statutes §20-227 because Mr. Perkins performed the services of a funeral director by: (a) removing decedent Thelma Bouie; (b) transporting Ms. Bouie to the Home; (c) supervising the making of funeral arrangements; (d) supervising or directing a funeral; (e) supervising or directing the interment of a casket; and/or (f) supervising or directing the disinterment of a casket.

6. Thelma Bouie died on January 18, 1993; Mr. Perkins removed Ms. Bouie's body from her home on that date. (Transcript 4/19/93 pp. 25-26). Ms. Bouie's family members met with Veronica Leal at the Home that evening and began discussing funeral arrangements. (Transcript 4/19/93 pp. 27-28).

7. Mr. Perkins walked into the office at the Home while Ms. Leal was meeting with Ms. Bouie's family members. Mr. Perkins

asked how Ms. Leal was treating them. Mr. Perkins also told Ms. Bouie's family members to let him know if Ms. Leal gave them any trouble. Based on Mr. Perkins's behavior, Ms. Bouie's son, Rondall Roach, assumed Mr. Perkins was the manager of the Home. (Transcript 4/19/93 pp.28-29).

8. Ms. Bouie's funeral took place on January 22, 1993. Mr. Perkins transported Ms. Bouie's family members to the Home for services. (Transcript 4/19/93 p. 30). Mr. Perkins was present at the funeral; he appeared to be in charge of the funeral. (Transcript 4/19/93 p. 29).

9. After the service at the Home, the family processed to Beaverdale Cemetery. Mr. Perkins decided that his employees would serve as pallbearers, although there was a prior agreement that family members would be pallbearers. (Transcript 4/19/93 p.30).

10. Mr. Perkins's employees transported Ms. Bouie's casket to the grave site. After the brief service, Mr. Roach stayed to see Ms. Bouie's casket interred. Mr. Perkins told Mr. Roach they had to go. (Transcript 4/19/93 pp. 30-31). When Mr. Perkins realized that Mr. Roach intended to stay, Mr. Perkins spoke to an employee of the cemetery, and Ms. Bouie's body was immediately interred. (Transcript 4/19/93 p.31).

11. As Mr. Roach was leaving the cemetery, he noticed that the hearse had stayed behind. He thought this was strange and went back to the cemetery. (Transcript 4/19/93 pp. 32-33). Mr. Roach went back to his mother's grave site and discovered that his mother's casket was gone. He questioned one of the cemetery employees, who informed him "they took it." (Transcript 4/19/93 p. 33).

12. Mr. Roach returned to the Home and located Ms. Bouie's casket there. One of Mr. Perkins's employees told him that they were missing a top for the vault and were unable to bury Ms. Bouie without it. (Transcript 4/19/93 pp. 33-35).

13. With Regard to the Second Count:

In the Second Count, the Department alleged that the Respondent violated Connecticut General Statutes §20-227 because the 1993-94 New Haven Yellow Pages lists Mr. Perkins as "Funeral Director, Owner" of Perkins Funeral Home, which constituted: (a) incompetence, negligence, or misconduct in the carrying on of the funeral business; and/or (b) aiding or abetting the practice of funeral directing by an unlicensed person.

14. Page 516 of the 1993-94 New Haven Yellow Pages telephone directory, published by the Southern New England Telephone Company, contains an advertisement for Perkins Funeral Home. This advertisement identifies James A. Perkins as "Funeral Director, Owner" of the Home. (Department Exhibit 1). Mr.

Iacobucci testified that he had no role in the placement of this advertisement for the Home. (Transcript 4/19/93 pp. 134, 136-137). When questioned by Mr. Iacobucci, Mr. Perkins, Rev. Kimber, and Ms. Leal all denied knowledge of this advertisement. (Transcript 4/19/93 pp. 134-136). Mr. Iacobucci admitted that he should have been more diligent and vigilant in supervising the Home employees to prevent the advertisement from appearing. (Transcript 4/19/93 p. 137).

15. With Regard to the Third Count:

In the Third Count, the Department alleged that at all times referenced in the Statement of Charges, Ms. Leal was not authorized to practice as a funeral director or embalmer under Connecticut General Statutes §20-207, et seq., and that on January 18, 1993, and subsequent thereto, the Respondent violated Connecticut General Statutes §20-227 because Ms. Leal performed the services of a funeral director by: (a) removing decedent Thelma Bouie; (b) transporting Ms. Bouie to the Home; (c) making funeral arrangements; (d) providing a statement of goods and services to a person purchasing funeral services; (e) supervising or directing a funeral; (f) supervising or directing the interment of a casket; and/or (g) supervising or directing the disinterment of a casket.

16. Ms. Leal does not hold an embalmer's license or funeral director's license. (Transcript 4/19/93 pp. 54-55).

17. As noted previously, Ms. Bouie's family members met with Ms. Leal at the Home the evening of January 18, 1993 and began discussing funeral arrangements, including costs, burial site location, vaults, caskets, advertising, and flowers.

(Transcript 4/19/93 pp. 27-28). Ms. Leal finalized all arrangements with the family on January 20, 1993. (Transcript 4/19/93 p. 43). Ms. Leal prepared the Statement of Funeral Goods and Services Selected signed by Ms. Bouie's daughter, Carmen Roach. (Transcript 4/19/93 p. 214; Department Exhibit 1).

18. Ms. Bouie's family dealt with Ms. Leal all along regarding the financial arrangements for the funeral and, to a point, with respect to the funeral itself. (Transcript 4/19/93 p. 28). Ms. Leal was present at Ms. Bouie's funeral. (Transcript 4/19/93 p. 29).

19. With Regard to the Fourth Count:

In the Fourth Count, the Department alleged that the Home violated Regulations of Connecticut State Agencies §20-211-29 1/ and Connecticut General Statutes §20-227 by maintaining a sign

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1. The Fourth Count contains an apparent typographical error; the Department made reference to §20-211-2a, rather than §20-211-29. The Department correctly noted §20-211-29 in an identical count in the Statement of Charges against John Iacobucci, Petition No. 930127-30-002.

identifying the premises, without having the name of the licensee of record in a conspicuous place easily visible to the public.

20. When the Department conducted its annual inspection of the Home on December 2, 1991, there was no posting of Mr. Iacobucci's name anywhere on the facility. (Transcript 4/19/93 p. 49). Mr. Iacobucci signed the inspection report on that date after receiving notification from Gary Griffin, the Department's inspector, regarding the need for the sign. (Transcript 4/19/93 p. 138).

21. According to Mr. Iacobucci's lease agreement with the Home, he bore the sole responsibility and expense for making improvements to the Home's property. (Transcript 4/19/93 p. 169). Mr. Iacobucci repeatedly asked Mr. Kimber to acquire a sign, but no sign was ever installed. (Transcript 4/19/93 pp. 138-141). Mr. Iacobucci admitted that he was negligent in signing the Home's renewal license on June 19, 1992 without the sign being in place. (Transcript 4/19/93 p. 155).

22. With Regard to the Fifth Count:

In the Fifth Count, the Department alleged that the Respondent violated Connecticut General Statutes §20-227 because Mr. Iacobucci, the licensee of record at the Home, severed his relationship with the Home without replacing himself by another licensee.

23. On February 5, 1993, Mr. Iacobucci unilaterally severed his relationship with the Home and removed his license from the Home. (Respondent Exhibits A and C). No licensed person has come forward since that time to take over operation of the Home. (Transcript 4/19/93 p. 55).

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes §20-227 provides in pertinent part:

The department of health services may refuse to grant a license or inspection certificate or the board may take any of the 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 of such business or profession; (5) violation of or noncompliance with the provisions of this chapter or the rules established hereunder; (6) loaning, borrowing or using a license or inspection certificate of another, or knowingly aiding or abetting in any way the granting of an improper license or inspection certificate; (7) aiding or abetting the practice of embalming or funeral directing by an unlicensed person....

The Department sustained its burden of proof as to the First Count. As set forth in the Findings of Fact, Mr. Roach provided credible testimony that Mr. Perkins performed numerous services of a funeral director with respect to Mr. Roach's mother, Ms. Bouie. The Board finds that the Respondent violated Connecticut General Statutes §20-227 because of Mr. Perkins's conduct.

The Department sustained its burden of proof as to the Second Count. The appearance of the Home's advertisement in the current New Haven Yellow Pages directory constitutes misconduct in the carrying on of the funeral business, and aiding and abetting the practice of funeral directing by an unlicensed person. The Board finds that the Respondent violated Connecticut General Statutes §20-227 because of this advertisement.

The Department sustained its burden of proof as to the Third Count. Mr. Roach provided credible testimony regarding Ms. Leal's high degree of involvement in Ms. Bouie's funeral arrangements. Connecticut statutes prohibit an unlicensed person such as Ms. Leal from engaging in these activities. The Board finds that the Respondent violated Connecticut General Statutes §20-227 because of Ms. Leal's conduct.

The Department sustained its burden of proof as to the Fourth Count. Mr. Iacobucci testified that he never acquired the requisite sign identifying him as licensee of record for the Home. Although he tried unsuccessfully to delegate this responsibility to Rev. Kimber, Mr. Iacobucci admitted his own negligence in this matter. The Board finds that the Respondent violated Regulations of Connecticut State Agencies §20-211-29 and Connecticut General Statutes §20-227 because this sign was never installed.

The Department sustained its burden of proof as to the Fifth Count. Mr. Iacobucci testified that he severed his relationship with the Home on February 5, 1993. No licensee has replaced him at the Home. The Board finds that the Respondent violated Connecticut General Statutes §20-227 because it was operating without a licensee of record.

ORDER:

Pursuant to the authority vested in it by Connecticut General Statutes §19a-17, the Board orders the following in this case against the Perkins Funeral Home, Petition No. 930127-56-001, Inspection Certificate No. 489:

1. Inspection Certificate No. 489, which was issued to the Home with Mr. Iacobucci as licensee, shall be revoked. Without a licensee, the Respondent shall not function as a funeral home.
2. This Order becomes effective upon the signature of the Board chairperson.

Connecticut Board of Examiners for
Embalmers and Funeral Directors

6/17/93

DATE

Morton Weinstein

by: Morton L. Weinstein, Chairperson