

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

SCI Connecticut Funeral Service *d.b.a.*,
Leo Gallagher & Son Funeral Home
Embalmer and Funeral Home
License No. 000492

Petition No. 2005-1209-056-021

MEMORANDUM OF DECISION

Procedural Background

On April 8, 2008, the Department of Public Health (“the Department”) presented the Connecticut Board of Examiners for Embalmers and Funeral Directors (“the Board”) with a Statement of Charges (“the Charges”) brought against license number 000492 of SCI Connecticut Funeral Service, *d.b.a.*, Leo Gallagher & Son Funeral Home (“respondent”). Bd. Exh. 2. The Charges, along with the Notice of Hearing, was sent to respondent by certified mail, return receipt requested, and first class mail, on April 8, 2008. Bd. Exhs. 2 and 3.

On August 7 and October 9, 2008, a hearing was held regarding the allegations contained in the Charges. Respondent appeared with its attorney Robert Simpson. Diane Wilan, Esq., represented the Department.

The Board conducted the hearing in accordance with *Conn. Gen. Stat.* (“the Statutes”) Chapter 54 and the Regulations of Connecticut State Agencies (“the Regulations”) §19a-9a-1 *et seq.* All Board members involved in this decision received copies of the entire record and attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut funeral home license number 000492.

2. In paragraph 2 of the Charges, the Department alleges that on or about December 28, 1988, respondent entered into a Pre-need Funeral Service Contract including an itemized Statement of Funeral Goods and Services Selected with A.D., through A.D.'s conservator.
3. In paragraph 3 of the Charges, the Department alleges that respondent did not file the death certificate for A.D. within the time period required by the Statutes.
4. In paragraph 4 of the Charges, the Department alleges that respondent did not obtain a Removal Burial Transit Permit for A.D. within the time period required by the Statutes.
5. In paragraph 5 of the Charges, the Department alleges that respondent did not prepare the human remains of A.D. as required by the Regulations, in that the body of the deceased was not embalmed or wrapped.
6. In paragraph 6 of the Charges, the Department alleges that respondent did not provide the timely funeral services/cremation for A.D. that the funeral home had agreed to pursuant to the Pre-need funeral contract, in that respondent held the body of the deceased for approximately five months.
7. In paragraph 7 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the Statutes, including, but not limited to:
 - a. §20-227(2);
 - b. §20-227(4);
 - c. §20-227(5);
 - d. §20-215;
 - e. §7-62b;
 - f. §7-64;
 - g. §7-65; and/or

the Regulations, including, but not limited to §19a-36-A40.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 000492. Dept. Exh. 1.
2. On or about December 28, 1988, the funeral home entered into a Pre-need Funeral Service contract including an itemized Statement of Funeral Goods and Services Selected with A.D., through her Conservator Atty. Stephen Bishop. Dept. Exh. 1; Rt. Exhs. 2-6; Tr. 08/07/2008, pp. 25-26.

3. At all relevant times in 2005, Thomas Gallagher was employed as a funeral director by respondent. Dept. Exh. 1.
4. A.D. died on March 22, 2005. Rec. Exh. 16; Tr. 08/07/2008, p. 24.
5. On March 29, 2005, Mr. Gallagher, while working for respondent, took custody of A.D.'s remains by removing the remains from Norwalk Hospital where A.D. had died. Rt. Exh. 25; Tr. 10/09/08, pp. 76-77.
6. On June 22, 2005, Mr. Gallagher filed A.D.'s death certificate. Tr. 10/09/08, pp. 82-83.
7. On August 24, 2005, Edward Bergin, an inspector for the Investigation and Licensure Unit of the Department of Public Health, conducted an inspection of the funeral home. At that time, A.D.'s remains were refrigerated, and had not been wrapped, disinfected, or embalmed. Tr. 08/07/2008, pp. 24-25; Tr. 10/09/08, pp. 60, 61.
8. On August 25, 2005, Mr. Gallagher obtained a Removal Burial Transit Permit to transport A.D.'s remains to New Jersey for cremation on August 26, 2008. Dept. Exh. 1; Rt. Exh. 21; Tr. 08/07/2008, pp. 27-28.
10. Respondent did not provide timely funeral services/cremation for A.D. as agreed pursuant to the Pre-need funeral service contract, in that respondent held the body of the deceased for approximately five months. Dept. Exh. 1; Tr. 08/07/2008, pp. 25-26; Tr. 10/09/08, pp. 133-134.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, No. CV970573367, Superior Court, J.D. Hartford/New Britain at Hartford, February 19, 1998.

Section 19a-10 of the Statutes provides in pertinent part: "Any board . . . may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with Chapter 54 and the regulations established by the Commissioner of Public Health."

The General Statutes of Connecticut §20-227 provides in relevant part:

The Department of Public Health may . . . take any of the actions set forth in section 19a-17 against a license . . . 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;

With regard to the allegations contained in paragraph 2 of the Charges, the Department sustained its burden of proof. On or about December 28, 1988, the funeral home entered into a Pre-need Funeral Service contract with A.D., through her Conservator.

With regard to the allegations contained in paragraph 3 of the Charges, the Department sustained its burden of proof. Section 7-62b of the Statutes requires that funeral directors complete and file death certificates with the registrar of vital records within five days if filing a paper certificate, and three days if filing electronically. The preponderance of the evidence establishes that more than five days expired between the time respondent took possession of the A.D.'s remains and the date it filed the death certificate. A.D. died on March 22, 2005, and March on 29, 2005, Mr. Gallagher, a funeral director employed by respondent, took possession of A.D.'s remains when he transported the remains from Norwalk Hospital, where A.D. died, and brought them to the funeral home. On June 22, 2005, Mr. Gallagher filed the death certificate with the vital registry in Norwalk.

Respondent contends that it did not file a death certificate within the five days required by law because it did not have important information regarding A.D.'s date of birth, social security number, address, and parent's names. However, when the death certificate was finally filed, it did not list date and place of birth, and A.D.'s parents' names were unknown, demonstrating that respondent could have filed the death certificate with some of the information missing. Moreover, this explanation does not does not excuse respondent from complying with the Statute. The Statute includes no exceptions that would excuse compliance. Thus, respondent's license is subject to discipline pursuant to §20-227(2), (4), and (5) based on its violation of §7-62b of the Statutes.

With regard to the allegations contained in paragraph 4 of the Charges, the Department sustained its burden of proof. Sections 7-65 of the Statutes requires that “[t]he embalmer or funeral director . . . 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 preponderance of the evidence establishes that on March 29, 2009, Mr. Gallagher took custody of A.D.’s remains when it removed them from Norwalk Hospital. Respondent did not request a Removal Burial Transit Permit until August 25, 2005, more than five days after respondent took control of the body. Thus, respondent did not obtain a Removal Burial Transit Permit for A.D. within the time period required by the Statutes.

With regard to the allegations contained in paragraph 5 of the Charges, the Department sustained its burden of proof. Section 19a-36-A40 of the Public Health Code requires that, among other things, the licensed embalmer having charge of a body sign the death certificate. In so doing, the embalmer obligates himself to further prepare the body by disinfecting, embalming, and wrapping it. On August 24, 2005, when the inspector found A.D.’s remains at respondent’s facility, the body was found in the refrigeration unit in a double pouch without having being embalmed, disinfected, or wrapped.¹ Thus, the Department sustained its burden of proof with regard to the allegations contained in paragraph 5 of the Charges.

With regard to the allegations contained in paragraph 6 of the Charges, the Department sustained its burden of proof. The pre-need funeral contract and §7-64 of the Statutes require that A.D.’s remains be buried, removed or cremated within a reasonable time. The preponderance of the evidence establishes that on March 29, 2005, respondent

¹ Section 19a-36-A39 states that:

Human bodies dead of any communicable disease . . . shall be prepared for burial by being washed with a disinfecting solution or embalmed or wrapped.

Section 19a-36-A40(b) states that:

Dead human bodies to be removed from the place of death to another location for preparation shall be temporarily prepared by enclosing in an impervious container. The license embalmer having charge of such a body may sign the certificate required in section 7-62 of the general statutes, but in so doing, such licensed embalmer obligates himself to further prepare the body as required by section 19a-36-A39 as soon as practicable after arrival at this regular place of business

took charge of A.D.'s remains, and yet did not cremate the remains until on August 26, 2005, five months later. Five months is not a reasonable period of time.

Respondent contends that it did not dispose of the remains sooner since it has a policy not to seek custody of bodies. Instead, respondent claims that it is the responsibility of families and conservators to secure custody of bodies, and decide what type of burial to perform. In this case, Attorney Bishop had been A.D.'s conservator while she was alive, and had committed to obtain custody of her body in Probate Court. He, however, failed to secure such custody even after several calls from the funeral home reminding him of his obligation. Nonetheless, respondent remained responsible for complying with applicable statutes and regulations. The duties and responsibilities of respondent as a licensed funeral home cannot be waived by Atty. Bishop. It is the responsibility of licensed funeral homes to obtain and file death certificates and burial transit permits.

Furthermore, respondent had a pre-need contract with A.D., accepted her remains, and, therefore, was obligated to provide her with a funeral and dispose of her body within a reasonable time. Respondent complied with its duty only after the Department's inspector found A.D.'s remains, five months after her death, when the body had not been disinfected, wrapped, or embalmed. Therefore, respondent did not comply with its professional obligation within reasonable time.

No factual allegations were made in the Charges regarding §20-215 of the Statutes.² Therefore, no findings are made regarding the affidavit required by this section.

The Board concludes that respondent's conduct constitutes grounds for discipline pursuant to §20-227 of the Statutes in conjunction with §§7-62b, 7-64, and 7-65 of the Statutes and §19a-36-A40 of the Regulations as alleged in the Charges. Therefore, respondent's funeral home license is subject to disciplinary action pursuant to §19a-17 of the Statutes.

² Section 20-215 of the Statutes require that:

No licensed embalmer shall sign an affidavit attesting the preparation or embalming of any body unless such body has been prepared or embalmed by him, or by a registered student embalmer under his personal supervision.

Order

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 SCI Connecticut Funeral Service, *d.b.a.*, Leo Gallagher & Son Funeral Home's Connecticut funeral home license number 000492:

1. Respondent shall pay a civil penalty of twenty five thousand dollars (\$25,000) 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's license shall be placed on probation for a period of one year under the following terms and conditions:
 - (a) Respondent shall be supervised at all times by an inspector from the Department.
 - (b) The inspector shall meet with respondent not less than once per quarter for the entire probationary period.
 - (c) The inspector shall have the right to monitor respondent by any other reasonable means, which he or she deems appropriate. Respondent shall fully cooperate with the inspector in providing such monitoring.
3. Respondent shall be responsible for all costs associated with the satisfaction of the terms of this Memorandum of Decision.
4. This Order shall become effective upon signature.

Connecticut Board of Examiners for Embalmers,
Funeral Directors

4/23/09

Date

Daniel P. Jowdy

By: Daniel Jowdy
Connecticut of Examiners for Embalmers,
Funeral Directors

CERTIFICATION

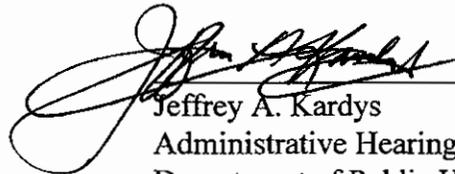
I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 23rd day of April 2009, by certified mail, return receipt requested, and by facsimile to:

Robert Simpson, Esq.
Shipman & Goodwin
One Constitution Plaza
Hartford, CT 06103-1919

Certified Mail RRR #7005-2570-001-4582-2835

and by Inter-Departmental Mail to:

Stanley K. Peck, Section Chief
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
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