

# **PLEASE NOTE:**

**THE ATTACHED DISCIPLINARY  
ORDER IS UNDER APPEAL  
AND THE DECISION IS  
CURRENTLY STAYED.**

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

In re: Colonial Funeral Home

Petition No.: 2005-0927-056-015

**MEMORANDUM OF DECISION**

*Procedural Background*

On November 15, 2005, the Department of Public Health (“the Department”) presented the Connecticut Board of Examiners of Embalmers and Funeral Directors (“the Board”) with a Statement of Charges (“the Charges”) brought against Colonial Funeral Home (“respondent”), which holds Connecticut Funeral Home Inspection Certificate number 00000591. At the same time, the Department moved the Board to issue a Summary Suspension Order (“the Order”) against respondent. Bd. Exh. 1.

On November 15, 2005, the Board granted the motion and summarily suspended respondent’s inspection certificate to operate as a funeral service business in Connecticut, pending a final determination by the Board regarding the allegations contained in the Charges. Bd. Exh. 1.

The Charges, Order, and Notice of Hearing, were served on respondent on November 18, 2005. Bd. Exh. 1. The Notice of Hearing notified the parties that the hearing was scheduled for November 29, 2005.

On November 22, 2005, the Department presented to the Board a Motion to Obtain Witness Testimony via Telephone Conference to allow two out of state witness to testify regarding their interactions with respondent. Bd. Exh. 3. On November 29, 2005, the Board denied the Motion. Tr. 11/29/05, p. 176.

On November 23, 2005, the Department filed a Motion to Amend the Statement of Charges. Respondent objected to certain paragraphs of the proposed Amended Charges because they involved a witness who was from out of state and, thus, could not be subpoenaed. On November 29, 2005, the Board granted the Motion to Amend with the stipulation that if the witness involved did not return if requested by respondent, his testimony would be stricken from the record. Bd. Exhs. 2, 6; Tr. 11/29/05, p. 7.

On November 28, 2005, respondent filed an Answer to the Charges, admitting some of the allegations and denying others. Resp. Exh. 1.

On November 29, 2005, the Department presented to the Board a Second Amended Statement of Charges, dated November 23, 2005, which the Board granted over respondent's objection, with the qualification that, to give respondent time to prepare its defense, the Board would hear evidence on the new allegations in the second amended statement of charges at a later date. Bd. Exh. 4; Tr. 11/29/05, p. 31; Tr. 1/10/06, p. 172 -173.

On November 29, 2005, and January 10, January 24, February 27, March 7, and April 11, 2006, a hearing was held regarding the allegations contained in the Charges. At the hearing, respondent appeared through its owner and manager, Paul Moraski, and was represented by Attorney William S. Palmieri; and, Attorney Ellen Shanley represented the Department.

The Board conducted the hearing in accordance with Chapter 54 of the General Statutes and §19a-9a-1, *et. seq* of the Regulations of Connecticut State Agencies ("the Regulations"). 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 paragraphs 1 and 40 of the Charges, the Department alleges that respondent has been at all times referenced in the Charges, the holder of Connecticut funeral home inspection certificate number 000591.
  - A. ***Count One***
2. In paragraph 2 of the Charges, the Department alleges that from August 2005 through October 2005, Paul Moraski was respondent's owner and manager.
3. In paragraph 3 of the Charges, the Department alleges that on or about August 30, 2005, Robert Foley ("Foley") died in New Haven, Connecticut.
4. In paragraph 4 of the Charges, the Department alleges that Foley was survived by his two children (Robert Foley and Alyssa Foley), his mother (Judith Sullivan), and his former wife (Lori Foley).
5. In paragraph 5 of the Charges, the Department alleges that on or about September 3, 2005, respondent's manager met with Judith Sullivan and Lori Foley, to make arrangements for Foley's funeral.

6. In paragraph 6 of the Charges, the Department alleges that neither of Foley's children participated in making the funeral arrangements for their father.
7. In paragraph 7 of the Charges, the Department alleges that respondent's manager did not give respondent's itemized price list to Foley's survivors prior to discussing funeral arrangements.
8. In paragraph 8 of the Charges, the Department alleges that respondent's manager provided erroneous information to Foley's mother and his former wife regarding government assistance available to pay for the funeral arrangements.
9. In paragraph 9 of the Charges, the Department alleges that respondent's manager indicated that in order to provide funeral arrangements for Foley he could only accept cash as payment, and that respondent could not have a "paper trail" of its dealings to provide funeral arrangements for Foley.
10. In paragraph 10 of the Charges, the Department alleges that on or about September 6, 2005, Foley's remains were removed from the Medical Examiner's Office in Farmington, Connecticut by an agent of respondent.
11. In paragraph 11 of the Charges, the Department alleges that on or about September 8, 2005, a viewing was held for Foley, he was transported for a church service, and was subsequently returned to respondent.
12. In paragraph 12 of the Charges, the Department alleges that subsequent to the viewing and service, respondent's manager told a family member of Foley that he would not dispose of, or release Foley's remains, until he had received payment for his services.
13. In paragraph 13 of the Charges, the Department alleges that during September 2005, at the request of a member of Foley's family, a representative from Graham, Putnam and Mahoney Funeral Parlors of Massachusetts ("Graham"), contacted respondent's manager to discuss transfer of Foley's remains to its funeral parlor.
14. In paragraph 14 of the Charges, the Department alleges that respondent's manager refused to consider such transfer prior to receiving payment for Foley's funeral arrangements.
15. In paragraph 15 of the Charges, the Department alleges that on or about September 19, 2005, respondent's manager applied to probate court for custody of Foley's remains.
16. In paragraph 16 of the Charges, the Department alleges that on or about September 26, 2005, respondent's manager was awarded custody of Foley's remains, effective as of September 28, 2005.

17. In paragraph 17 of the Charges, the Department alleges that on or about September 27, 2005, respondent's manager told the Department's investigator that he had not received payment for Foley's funeral arrangements, and that he was refusing to release or to dispose of Foley's remains until he received payment.
18. In paragraph 18 of the Charges, the Department alleges that on or about October 12, 2005, respondent's manager filed Foley's death certificate with the appropriate authority.
19. In paragraph 19 of the Charges, the Department alleges that information contained on Foley's death certificate, filed October 12, 2005, was inaccurate.
20. In paragraph 20 of the Charges, the Department alleges that on or about October 12, 2005, respondent's manager received a Removal, Transit, and Burial permit for Foley from the appropriate authority.
21. In paragraph 21 of the Charges, the Department alleges that on or about October 19, 2005, respondent's garage door and basement door were open. An odor of decomposition was present in the garage.
22. In paragraph 22 of the Charges, the Department alleges that on various dates in October 2005, Foley's remains were stored outside the embalming room in respondent's basement, which is accessible through respondent's garage.
23. In paragraph 23 of the Charges, the Department alleges that during October 2005, the storage of Foley's un-refrigerated remains constituted a public health risk and hazard.
24. In paragraph 24 of the Charges, the Department alleges that as of mid-October 2005, respondent's manager had failed to provide an itemized statement to Foley's survivors, despite requests that he do so.
25. In paragraph 25 of the Charges, the Department alleges that on or about October 19, 2005, respondent's manager delivered Foley's remains to a crematory.
26. In paragraph 26 of the Charges, the Department alleges that on or about October 20, 2005, the Department requested that respondent's manager forward copies of all documentation relating to Foley's funeral arrangements by October 21, 2005.
27. In paragraph 27 of the Charges, the Department alleges that on or about October 25, 2005, the Department served respondent's manager with a subpoena duces tecum requesting that he produce copies of all invoices, statements, and contracts that detail the services and merchandise selected and utilized for Foley. Such subpoena required compliance by October 28, 2005.
28. In paragraph 28 of the Charges, the Department alleges that as of the date of the issuance of the Charges, respondent's manager failed to produce such documentation.

29. In paragraph 29 of the Charges, the Department alleges that during September and October 2005, respondent's manager was verbally abusive to Foley's survivors.
30. In paragraph 30 of the Charges, the Department alleges that during October 2005, respondent received Foley's packaged cremains and the cremation certificate for Foley from Evergreen Crematory.
31. In paragraph 31 of the Charges, the Department alleges that during October 2005, respondent refused to release Foley's cremains to his family.
32. In paragraph 32 of the Charges, the Department alleges that during October 2005, respondent failed to fully satisfy the New Haven Probate Court's order to deliver what had been produced by the crematory to the court.
33. In paragraph 33 of the Charges, the Department alleges that respondent's manager failed to obtain authorization for his services from Foley's next of kin, in violation of Chapter 802b of the General Statutes.
34. In paragraph 34 of the Charges, the Department alleges that respondent's manager failed to properly provide a general price list to Foley's next of kin, in violation of §20-230a of the General Statutes.
35. In paragraph 35 of the Charges, the Department alleges that respondent's manager failed to provide an itemized written statement of the price of items selected, cash advance items, and payment requirements to Foley's next of kin, in violation of §20-230b of the General Statutes.
36. In paragraph 36 of the Charges, the Department alleges that respondent's manager failed to timely obtain a Removal, Transit, and Burial permit for Foley's remains, in violation of §7-65 of the General Statutes.
37. In paragraph 37 of the Charges, the Department alleges that respondent's manager failed to timely file the death certificate for Foley, in violation of §7-62b of the General Statutes.
38. In paragraph 38 of the Charges, the Department alleges that respondent's manager failed to timely bury or cremate Foley's remains, in violation of §7-64 of the General Statutes.
39. In paragraph 39 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary actions pursuant §20-227 of the General Statutes, including but not limited to:
  - a. §20-227(2);
  - b. §20-227(4); and/or
  - c. §20-227(5).

**B. Count Two**

40. In paragraph 41 of the Charges, the Department alleges that in February 2005, Paul Moraski was respondent's owner and manager.
41. In paragraph 42 of the Charges, the Department alleges that during February 2005, Judith Jimenez ("Jimenez") died in Florida.
42. In paragraph 43 of the Charges, the Department alleges that during February 2005, Jimenez's daughter, Carmen Torres, authorized respondent to transfer Jimenez from Florida to Connecticut.
43. In paragraph 44 of the Charges, the Department alleges that during February 2005, respondent's manager and Carmen Torres met to make funeral arrangements for Jimenez.
44. In paragraph 45 of the Charges, the Department alleges that during February, respondent failed to provide Carmen Torres a written statement itemizing the prices of the services and merchandise that were selected for Jimenez.
45. In paragraph 46 of the Charges, the Department alleges that during February 2005, respondent failed to provide an appropriate general price list to Carmen Torres.
46. In paragraph 47 of the Charges, the Department alleges that on or about February 7, 2005, Carmen Torres retained the services of Washington Memorial Funeral Home ("Washington") to handle Jimenez's funeral arrangements.
47. In paragraph 48 of the Charges, the Department alleges that on or about February 7, 2005, Washington was authorized to remove Jimenez from respondent.
48. In paragraph 49 of the Charges, the Department alleges that on or about February 7, 2005, respondent was informed that Carmen Torres had authorized release of Jimenez to Washington, and that calling hours for her would be the following evening.
49. In paragraph 50 of the Charges, the Department alleges that on or about February 7, 2005, respondent's manager contacted Carmen Torres demanding that she meet with him alone. Respondent's manager told her he would refuse to release Jimenez unless his demands were met.
50. In paragraph 51 of the Charges, the Department alleges that on or about February 8, 2005, when representative(s) from Washington went to respondent, respondent's manager refused to release Jimenez.
51. In paragraph 52 of the Charges, the Department alleges that during February 2005, respondent's manager was verbally abusive to Carmen Torres and/or Washington's staff.

52. In paragraph 53 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §20-277 of the General Statutes, including but not limited to:
- a. §20-227(2);
  - b. §20-227(4); and/or
  - c. §20-227(5).

### *Findings of Fact*

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut funeral home inspection certificate 000591. Resp. Exh. 1.
  2. From February 2005 through October 2005, Paul Moraski was respondent's owner and manager. Resp. Exh. 1; Tr. 2/27/06, p. 10.
- A. *Count One***
3. On or about August 30, 2005, Foley died in New Haven, Connecticut. Foley was survived by his two children (Robert Foley and Alyssa Foley), his mother (Judith Sullivan), and his former wife (Lori Foley). Dept. Exh. E; Tr. 11/29/05, p. 60; Tr. 1/10/06, p. 65.
  4. On or about September 3, 2005, Paul Moraski met with Judith Sullivan and Lori Foley to make arrangements for Foley's funeral. Tr. 11/29/05, p. 62; Tr. 1/10/06, pp. 77-78.
  5. Initially, neither of Foley's children participated in making the funeral arrangements for their father. Tr. 1/10/06, p. 124; Tr. 2/27/06, pp. 11-12.
  6. Paul Moraski provided a general price list to Judith Sullivan and Robert Foley prior to discussing funeral arrangements. Resp. Exhs. 6, 7; Tr. 1/10/06, pp. 80, 155.
  7. In September 2005, Robert Foley (Foley's son), participated in making the decision regarding the cremation of Foley's remains. Tr. 11/29/05, p. 77; Tr. 2/27/06, p. 69.
  8. In September 2005, Paul Moraski contacted the Veteran's Support Branch of the U.S. Army to determine whether Foley was eligible for government assistance to help pay for his funeral arrangements. The Army was unable to find any evidence of Foley's discharge form, and therefore, determined that he was not entitled to assistance. Dept. Exh. G.
  9. The evidence is insufficient to establish that Paul Moraski provided erroneous information to Judith Sullivan and Lori Foley regarding government assistance available to help pay for Foley's funeral arrangements. Dept. Exh. G; Tr. 11/29/05, p. 70; Tr. 1/10/06, p. 78.

10. In September 2005, Paul Moraski indicated to Lori Foley, Ryan Potenziani (Lori's son), and Judith Sullivan that he could only accept cash as payment for Foley's funeral arrangements, and that he could not have a "paper trail" regarding respondent's provision of funeral services for Foley. Tr. 11/29/05, p. 71; Tr. 1/10/06, pp. 18, 124, 125.
11. On or about September 6, 2005, respondent removed Foley from the Medical Examiner's Office in Farmington, Connecticut. Resp. Exh. 1; Tr. 2/27/06, p. 13.
12. On or about September 8, 2005, a viewing was held for Foley at respondent, he was then transported for a church service, and he was subsequently returned to respondent the same day. Resp. Exh. 1; Tr. 2/27/06, p. 13.
13. During September 2005, a representative from Graham contacted Paul Moraski, at Judith Sullivan's request, to discuss transfer of Foley's remains to its funeral parlor. Tr. 11/29/05, p. 56; Tr. 1/10/06, p. 87.
14. Paul Moraski refused to transfer Foley's remains to Graham prior to receiving payment for goods and services respondent provided for Foley. Tr. 11/29/05, p. 56; Tr. 1/10/06, p. 134.
15. On or about September 19, 2005, Paul Moraski applied to the New Haven Probate Court for custody of Foley's corpse. Resp. Exh. 2.
16. On or about September 26, 2005, Paul Moraski was awarded custody of Foley's corpse by the New Haven Probate Court, effective September 28, 2005. Resp. Exh. 3; Tr. 11/29/05, p. 146.
17. During September and October 2005, Paul Moraski called Lori Foley a "bitch" and an "asshole," and Judith Sullivan a "scam artist," "psycho case," a "bitch," "con-artist," and a "shyster." Tr. 11/29/05, pp. 81-82; Tr. 1/10/06, p. 81.
18. In October 2005, Paul Moraski told Lori Foley and Ryan Potenziani that he would not dispose of, or release, Foley's remains until he received payment. Tr. 11/29/05, p. 80; Tr. 1/10/06, p. 22.
19. On or about October 12, 2005, Paul Moraski filed a death certificate for Foley with the Registrar of Vital Statistics of New Haven that contained the incorrect name of Foley's father. Dept. Exh. E; Tr. 1/10/06, p. 89; Tr. 2/27/06, p. 17.
20. On or about October 12, 2005, Paul Moraski received a Removal, Transit, and Burial permit for Foley from the appropriate authority. Tr. 2/27/06, p. 17.
21. On or about October 19, 2005, respondent's garage door and basement door were open. An odor of decomposition was present in the garage. Tr. 3/7/06, pp. 48-49.

22. On various dates in October 2005, Foley's remains were stored outside the embalming room in respondent's basement in an un-refrigerated environment. Tr. 2/27/06, p. 14; Tr. 3/7/06, p. 46; Tr. 4/11/06, p. 88.
23. Respondent's basement is accessible through its garage. Tr. 2/27/06, p. 15.
24. The evidence is insufficient to demonstrate that the storage of Foley's un-refrigerated remains in respondent's basement constituted a public risk or hazard. Tr. 4/11/06, p. 47.
25. As of mid-October 2005, Paul Moraski failed to give Foley's survivors an itemized statement of the goods and services respondent provided, despite requests that he do so. Tr. 11/29/05, p. 74.
26. On or about October 19, 2005, Paul Moraski delivered Foley's remains to Evergreen Crematory. Tr. 2/27/06, p. 17.
27. On or about October 20, 2005, the Department requested that Paul Moraski forward copies of all documentation relating to Foley's funeral arrangements by October 21, 2005. Dept. Exh. L; Tr. 3/7/06, p. 44.
28. On or about October 25, 2005, the Department served Paul Moraski with a subpoena duces tecum requesting that he produce copies of all invoices, statements and contracts that detail the services and merchandise selected and utilized for Foley. The subpoena required compliance by October 28, 2005. Dept. Exh. O; Tr. 2/27/06, p. 27.
29. As of the date of the issuance of the Charges, Paul Moraski had failed to produce the documentation requested by the Department. Tr. 3/7/06, p. 44.
30. During October 2005, respondent received Foley's packaged cremains and the cremation certificate for Foley from Evergreen Crematory. Tr. 11/29/05, pp. 81, 87; Tr. 2/27/06, p. 40.
31. During October 2005, respondent failed to satisfy fully the New Haven Probate Court's order to deliver what had been produced by the crematory to the court in that it failed to deliver Foley's cremation certificate along with his remains. Dept. Exh. C; Tr. 11/29/05, p. 151; Tr. 2/27/06, pp. 40-41.
32. During October 2005, Paul Moraski failed to provide an itemized written statement of the prices of items selected, cash advance items, and payment requirements to Robert Foley. Tr. 1/10/06, pp. 110, 127-129.
33. On several occasions in 2005, Paul Moraski indicated to Department staff that he was refusing to release or to dispose of Foley's corpse until he received payment from the family for the goods and services respondent had provided. Tr. 3/7/06, pp. 94-95, 97-98; *see also*, Dept. Exhs. L, M, N.

**B. Count Two**

34. During February 2005, Jimenez died in Florida. Tr. 1/10/06, pp. 180-181.
35. During February 2005, Carmen Torres, Jimenez's daughter, authorized respondent to transfer Jimenez from Florida to Connecticut. Tr. 1/24/06, p. 75.
36. During February 2005, Paul Moraski and Carmen Torres met to make funeral arrangement for Jimenez. Tr. 1/24/06, p. 78.
37. During February 2005, respondent failed to provide Carmen Torres a written statement itemizing the prices of the services and merchandise that were selected for Jimenez. Tr. 1/24/06, p. 78; Tr. 2/27/06, p. 136.
38. During February 2005, respondent failed to provide Carmen Torres a general price list that listed the prices of all available goods and services. Tr. 1/24/06, p. 102; Tr. 3/7/06, p. 23.
39. On or about February 7, 2005, Carmen Torres retained the services of Washington to handle Jimenez's funeral arrangements. Tr. 1/24/06, p. 83.
40. On or about February 7, 2005, Carmen Torres authorized Washington to remove Jimenez from respondent. Tr. 1/10/06, p. 216; 1/24/06, p. 91.
41. On or about February 7, 2005, respondent was informed that Carmen Torres had authorized the release of Jimenez to Washington, and that calling hours would be the following evening. Tr. 1/10/06, p. 208.
42. On or about February 7, 2005, Paul Moraski contacted Carmen Torres demanding that she meet with him alone. Paul Moraski told her he would refuse to release Jimenez's remains unless his demands were met. Tr. 1/24/06, pp. 84; 100.
43. The evidence is insufficient to establish that on or about February 8, 2005, when a representative of Washington went to respondent, Paul Moraski refused to release Jimenez's remains. Tr. 1/10/06, p. 193; Tr. 2/27/06, p. 72; Tr. 4/11/06, p. 100.
44. During February 2005, Paul Moraski stated to Carmen Torres during a phone conversation: "why are you fucking calling me if you don't have the money." Tr. 1/24/06, p. 85.
45. During February 2005, Paul Moraski yelled at John Iacobucci of Washington that "he wanted him the fuck off his property." Tr. 1/10/06, pp. 221, 224.

### Discussion and Conclusions of Law

Section 20-227 of the General Statutes provides in pertinent part:

[T]he board may take any of the actions set forth in section 19a-17 against a . . . 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 . . . .

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, 67 L. Ed. 2d 69, *reh'g denied*, 451 U.S. 933, 101 S. Ct. 2008, 68 L. Ed. 2d 318 (1981); *Swiller v. Commissioner of Public Health*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. 705601 (October 5, 1995, Hodgson, J.).

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).

With regard to paragraphs 1, 2, 40, and 41 of the Charges, respondent admits that it held Connecticut funeral home inspection certificate 0000591, and that Paul Moraski was its owner and, at all times relevant to the Charges. The Department, therefore, met its burden of proving these allegations.

#### A. **Count One**

With regard to paragraph 3 of the Charges, respondent admits that on or about August 30, 2005, Robert Foley died in New Haven, Connecticut. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 4 of the Charges, the evidence establishes that Foley was survived by two children (Robert Foley and Alyssa Foley), his mother (Judith Sullivan), and his former wife (Lori Foley). The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 5 of the Charges, the evidence establishes that Paul Moraski met with Judith Sullivan and Lori Foley on or about September 3, 2005, to make arrangements for Foley's funeral. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 6 of the Charges, the evidence establishes that Alyssa Foley did not participate in the funeral arrangements for Foley. Although Robert Foley did not participate

in the arrangements for the initial ceremony, he was involved with the New Haven Probate Court in making the decision to cremate Foley. The Department, therefore, met its burden of proving only a portion of this allegation.

With regard to paragraphs 7 and 8 of the Charges, the evidence establishes that Paul Moraski provided a general price list to Judith Sullivan and checked with the Veteran's Support Branch of the U.S. Army regarding government assistance for Foley's funeral. There is insufficient evidence in the record to establish that Paul Moraski provided erroneous information to Judith Sullivan or Lori Foley regarding government assistance for Foley's funeral. The Department, therefore, failed to meet its burden of proving these allegations.

With regard to paragraph 9 of the Charges, Paul Moraski claims that he did not instruct Foley's family about a specific manner in which payment had to be received. Lori Foley, Thomas Foley, Brenda Foley, and Ryan Potenziani testified that Paul Moraski told them that he would accept only cash as payment for the goods and services provided for Foley's funeral arrangements. Lori Foley, Ryan Potenziani, and Judith Sullivan also specifically testified that Paul Moraski stated to them that he did not want a "paper trail" of his dealings to provide funeral arrangements for Foley. Paul Moraski's claims to the contrary are not credible. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 10 of the Charges, respondent admits that on or about September 6, 2005, respondent removed Foley's remains from the Medical Examiner's Office. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 11 of the Charges, respondent admits that on September 8, 2005, respondent transported Foley's remains to the church where a viewing was held for Foley, and then after a church service, his body was returned to respondent. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 12 of the Charges, the evidence establishes that after the viewing and service for Foley, Paul Moraski told Lori Foley that he would not dispose of or release Foley's remains until he received payment for the goods and services he provided. Lori Foley's testimony was corroborated by Ryan Potenziani. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 13 of the Charges, the evidence establishes that during September 2005, a representative of Graham, at Judith Sullivan's request, contacted Paul

Moraski to discuss the transfer of Foley's remains to the Graham funeral home. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 14 of the Charges, Paul Moraski claims he could not transfer Foley's remains to Graham because Robert Foley had not authorized him to release those remains. Judith Sullivan credibly testified that Paul Moraski stated that he would not consider transfer of Foley's remains to Graham because he had not received payment for the goods and services provided. Furthermore, Paul Moraski had previously allowed Foley's mother, Judith Sullivan, to make decisions regarding Foley's arrangements. Thus, Paul Moraski's claim is not credible. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 15 and 16 of the Charges, Paul Moraski admits that on or about September 19, 2005, he applied to the New Haven Probate Court for custody of Foley's remains, and that on or about September 26, 2005, he was awarded custody of Foley's remains by the New Haven Probate Court. The Department, therefore, met its burden of proving these allegations.

With regard to paragraph 17 of the Charges, the evidence establishes that on several occasions in 2005 Paul Moraski told the Department's investigator that he had not received payment for Foley's funeral arrangements, and that he would not release or dispose of Foley's remains until payment was received. The Department, however, did not establish that any of these statements were specifically made on the date alleged in the Charges. The Department, therefore, met its burden of proving the substance of this allegation, albeit not on the specific date alleged.

With regard to paragraph 18 of the Charges, Paul Moraski admits that on or about October 12, 2005, he filed a death certificate for Foley. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 19 of the Charges, the evidence establishes that Foley's death certificate filed by Paul Moraski on October 12, 2005, contained the incorrect name of Foley's father. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 20 of the Charges, Paul Moraski admits that on or about October 12, 2005, he received a Removal, Transit, and Burial Permit for Foley. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 21 of the Charges, respondent denies that its garage door was left open. Stella Williams and Betty Haynes, neighbors of respondent, both testified that they never saw the garage door open. However, neither Stella Williams nor Betty Haynes was present on October 19, 2005, the date in question. The investigator, who is a former funeral director and was familiar with the smell of human decomposition, credibly testified that on October 19, 2005, respondent's garage and basement door were open, and that an odor of decomposition was present in the garage. The evidence further establishes that, although the investigator did not go down into the basement on October 19, 2005, Paul Moraski told him that Foley's body was the only one in the basement. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 22 of the Charges, the evidence establishes that on various dates in October 2005, Foley's remains were stored in respondent's basement outside of the embalming room. The evidence further establishes that respondent's basement is accessible through its garage. The Department's investigator and Paul Perruccio, a former embalmer who occasionally worked with respondent, testified that Foley's body was kept in the basement outside of the embalming room. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 23 of the Charges, respondent claims that the storage of Foley's remains in an un-refrigerated environment did not constitute a public health risk because the remains were properly stored and the area was not accessible to the public. Dr. David Lobo, an expert in infectious diseases, testified that the storage of Foley's body in a polyethylene bag eliminated the possibility of any direct physical contact between the body and the food or water supply. He also testified that without direct contact between the body and food or water supply, there was no public health risk. Thus, the evidence establishes that the un-refrigerated storage of Foley's remains did not constitute a public health risk or hazard. The Department, therefore, failed to meet its burden of proving this allegation.

With regard to paragraph 24 of the Charges, the evidence establishes that as of mid-October 2005, Paul Moraski failed to provide an itemized statement to the family of goods and services used in Foley's funeral arrangements, despite requests that he do so by Lori Foley and Brenda Foley. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 25 of the Charges, Paul Moraski admits that on or about October 19, 2005, he delivered Foley's remains to Evergreen Crematory for cremation. The Department, therefore, met its burden of proving this allegation.

With regard to paragraphs 26, 27, and 28 of the Charges, the evidence establishes that on or about October 20, 2005, the Department requested that Paul Moraski provide copies of all documentation relating to Foley's funeral arrangements by October 21, 2005. The evidence further establishes that on or about October 25, 2005, the Department served Paul Moraski with a subpoena duces tecum requesting that he produce copies of documents related to Foley's funeral arrangements by October 28, 2005. Paul Moraski argues that upon receipt of the subpoena he provided a written statement of goods and merchandise used in Foley's arrangements to the Department. However, his testimony was contradictory and inconsistent regarding whether he provided the Department a copy of a written statement of goods. To the contrary, the evidence establishes that as of the dates of the hearing, Paul Moraski failed to provide the requested documentation. The Department, therefore, met its burden of proving these allegations.

With regard to paragraph 29 of the Charges, Paul Moraski claims that he never used foul language or yelled at members of Foley's family. However, Lori Foley and Judith Sullivan testified that on October 13, 2005, Paul Moraski yelled at them and called them insulting names. The testimony of the Department's witnesses was more credible than Paul Moraski's denial. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 30 of the Charges, respondent admits that during October 2005, it received Foley's packaged cremains and cremation certificate from Evergreen Crematory. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 31 of the Charges, respondent claims that it did not refuse to release Foley's cremains to his family. Lori Foley credibly testified that Paul Moraski refused to set up an appointment with the family to hand over the remains. The testimony of the Department's witness was more credible than Paul Moraski's denial. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 32 of the Charges, Paul Moraski claims that the New Haven Probate Court only requested that respondent provide Foley's cremains, not the cremation certificate, to the court. Judge Keyes, of the New Haven Probate Court, credibly testified that the cremains were delivered to the court in a plastic bag without any identification, and that he had

to solicit the services of another embalmer to prepare the remains properly. The evidence further establishes that Paul Moraski failed to deliver the cremation certificate to the court and, thus, did not deliver all of the items from the crematory as directed. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 33 of the Charges, the evidence establishes that Judith Sullivan authorized the funeral services for Foley, and that Robert Foley authorized Foley's cremation. The Department, therefore, failed to meet its burden of proving this allegation.

With regard to paragraph 34 of the Charges, §20-230a of the General Statutes provides that:

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 services or merchandise with an itemized price list of all available services and merchandise . . . .

The evidence establishes that Paul Moraski provided a general price list to Judith Sullivan on September 3, 2005, and to Robert Foley on October 13, 2005. The Department, therefore, failed to meet its burden of proving this allegation.

With regard to paragraph 35 of the Charges, §20-230b of the General Statutes provides that:

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 services or providing merchandise, a written statement indicating to the extent then known: (1) The price of the services 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.

Respondent makes no claim that Paul Moraski produced an itemized written statement of services and merchandise to anyone involved in Foley's funeral and final disposition. Paul Moraski claims, however, that he did not have to provide such an itemized written statement to Judith Sullivan because she was not Foley's next of kin, and that he did not provide a written statement to Robert Foley because he did not have any direct contact with him. However, pursuant to §20-230b, Paul Moraski was required to provide a written statement to Judith

Sullivan because she made the arrangements regarding Foley's funeral. Similarly, Paul Moraski was also required under §20-230b to provide a written statement of goods and services to Robert Foley, because he was involved in Foley's cremation process. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 36 of the Charges, §7-65 of General Statutes provides that: "[t]he 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 . . . ." Foley died on August 30, 2005. Thus, pursuant to §7-65 of the General Statutes, Paul Moraski should have obtained the Removal, Transit, and Burial permit for Foley by September 4, 2005. However, he did not obtain the permit until October 12, 2005. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 37 of the Charges, §7-62b of General Statutes provides that: "[a] death certificate for each death which occurs in this state shall be completed in its entirety and filed . . . no later than five days after death . . . ." The evidence establishes that Foley died on August 30, 2005, but that Paul Moraski did not file his death certificate until October 12, 2005, 42 days after Foley's death. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 38 of the Charges, §7-64 of the General Statutes provides that "the body of each person who dies in this state shall be buried, removed, or cremated within a reasonable time after death." The evidence establishes that Foley died on August 30, 2005, but that he was not cremated until October 19, 2005, 49 days after his death. Paul Moraski claims that he cremated Foley's body within a reasonable amount of time after making several attempts to get Robert Foley to authorize the cremation. The evidence, however, demonstrates that Paul Moraski failed to timely conduct Foley's cremation because he hoped that a delay would encourage the Foley family to pay for the services and goods he had provided. Under these circumstances, Paul Moraski's delay in disposing of Foley's remains was not reasonable. The Department, therefore, met its burden of proving this allegation.

With regard to the allegations contained in paragraph 39 of the Charges, the Board concludes that the actions of respondent with regard to Foley's funeral arrangements constitute

grounds for disciplinary action pursuant to §§20-227(2), 20-227(4), and 20-227(5) of the General Statutes.

**B. Count Two**

With regard to paragraph 42 of the Charges, the evidence establishes that in February 2005, Judith Jimenez died in Florida. The Department, therefore, met its burden of proving this allegation.

With regard to paragraphs 43 and 44 of the Charges, Paul Moraski admits that during February 2005, Carmen Torres, Jimenez's daughter, authorized him to transfer Jimenez from Florida to Connecticut. Paul Moraski also admits that he met with Carmen Torres to make Jimenez's funeral arrangements. The Department, therefore, met its burden of proving these allegations.

With regard to paragraph 45 of the Charges, Paul Moraski claims that he did not provide Carmen Torres with a written itemized statement of services and merchandise selected for Jimenez because she was unsure of whether she would use respondent. Carmen Torres testified, however, that she did not receive an itemized statement from respondent although she selected items, such as a casket, for Jimenez. Paul Moraski's explanation of why he did not provide an itemized statement is not credible. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 46 of the Charges, §20-230a of the General Statutes states that:  
[n]o 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 services or merchandise with an itemized price list of all available services and merchandise . . . .

The evidence establishes that the price list respondent provided Carmen Torres did not itemize all goods and services provided by respondent. The Department, therefore, met its burden of proving this allegation.

With regard to paragraphs 47 and 48 of the Charges, the evidence establishes that on February 7, 2005, Ms. Torres retained Washington's services to handle Jimenez's funeral arrangements, and to remove Jimenez's body from respondent. The Department, therefore, met its burden of proving these allegations.

With regard to paragraph 49 of the Charges, the evidence establishes that on or about February 7, 2005, John Iacobucci of Washington informed respondent that Carmen Torres had

authorized the release of Jimenez's body to Washington, and that calling hours for Jimenez would be the following evening. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 50 of the Charges, Paul Moraski claims that he offered to meet with Carmen Torres on the evening of February 7, 2005, in order to have her sign a release form for Jimenez's body, and to obtain payment for the transfer of Jimenez's body from Bradley Airport. Carmen Torres credibly testified that Paul Moraski stated that if she did not meet with him alone and pay him \$350 for the transfer of Jimenez's body from the airport he would not release Jimenez's body to Washington on February 8, 2005. The testimony of the Department's witnesses was more credible than the testimony of Paul Moraski. The Department, therefore, met its burden of proving this allegation.

With regard to paragraph 51 of the Charges, Paul Moraski claims that he never refused to release Jimenez's body to Washington once he was presented with a signed release and payment for his services rendered. James Casso and Paul Perruccio, who worked with Paul Moraski on February 8, 2005, testified that Paul Moraski released Jimenez's body after a signed release was presented. They further testified that the only reason that Washington was delayed in removing Jimenez's body was because John Iacobucci, from Washington, sent his driver and transport van away. The Department, therefore, failed to meet its burden of proving this allegation.

With regard to paragraph 52 of the Charges, Paul Moraski claims that he was never verbally abusive toward Carmen Torres or Washington's staff. Carmen Torres credibly testified that Paul Moraski was verbally abusive toward her on February 7, 2005. John Iacobucci credibly testified that Paul Moraski was verbally abusive toward him on February 8, 2005. Paul Moraski's testimony regarding his statements to Carmen Torres and Washington's staff is not credible. However, there is insufficient evidence in the record to establish that Paul Moraski was verbally abusive to Carmen Jimenez. The Department, therefore, met its burden of proving only a portion of this allegation.

With regard to paragraph 53 of the Charges, the Board concludes that the actions of respondent with regard to Foley's funeral arrangements constitute grounds for disciplinary action pursuant to §§20-227(2), 20-227(4), and 20-227(5) of the General Statutes.

### *Penalty*

The General Statutes regarding the conduct of certified funeral homes have an important public purpose, which is to ensure that decedents and their families are treated with respect, dignity, care, and honesty. These provisions also ensure that the public's trust and confidence in the profession is maintained. In order to accomplish these important goals, the General Statutes set forth a detailed set of requirements that a certified funeral home must comply with at every stage of the funeral and final disposition process.

In this case, the record amply demonstrates respondent's repeated and systematic failure to comply with these statutory requirements. Its violations include, but were not limited to: (1) insisting that it be paid in cash for its services; (2) failing to provide statutorily required price lists; (3) failing to timely obtain a Removal, Transit, and Burial permit; (4) failing to timely file a death certificate; (5) failing to timely cremate remains; (6) failing to release remains in a timely manner in an effort to force decedents' families to pay for its services; (7) disobeying a court order; (8) improper storage of human remains; and, (9) using abusive language toward family members and employees of other funeral homes. The actions of respondent's owner and manager showed a complete disregard and lack of respect for the law, respondent's clients, and the general public.

In addition, throughout the investigation and public hearing into the Charges, respondent's owner and refused to acknowledge his misconduct, or to demonstrate any remorse for the violations he committed. Respondent's manager's conduct was not only contrary to the law, it was also contrary to the accepted norms of the profession. Respondent's owner and 's conduct threatened the integrity of the profession and posed a potential danger to the public.

Respondent also demonstrated a lack of respect for the legitimate regulatory functions of the Department when its owner and repeatedly ignored requests by the Department for information regarding his conduct in these matters, including failing to comply with a duly authorized subpoena.

Section 19a-17(a)(1) of the General Statutes authorizes the Board to revoke a funeral home's inspection certificate. Given respondent's blatant disregard for the laws governing funeral homes in Connecticut, the lack of respect it demonstrated towards its clients and the deceased, and the potential danger its manager's conduct posed to the general public, respondent's license should be revoked.

**Order**

Based on the record in this case, the above Findings of Fact and Conclusions of Law, and pursuant to the authority vested in it by §§19a-17 and 20-227 of the General Statutes, the Board orders the following in the case of Colonial Funeral Home, funeral home inspection certificate number 000591:

1. Respondent's funeral home inspection certificate number 000591 is revoked.
2. All correspondence is to be addressed to:

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

3. This decision shall be effective upon the date of signature.

Connecticut Board of Examiners of Embalmers and  
Funeral Directors

9-18-06  
Date

Celia Pinzi  
By: Celia Pinzi, Chairperson