

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

In re: Petteway Funeral Home

Petition No.: 2006-0120-056-002

MEMORANDUM OF DECISION

Procedural Background

On January 4, 2007, 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 Petteway Funeral Home (“respondent”), which holds Connecticut Funeral Home license number 000614. At the same time, the Department moved the Board to issue a Summary Suspension Order (“the Order”) against respondent. Bd. Exh. 1.

On January 11, 2007, the Board granted the Motion to Summarily Suspend respondent’s license 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 January 13, 2007. The Notice of Hearing notified the parties that the hearing was scheduled for June 5 and 26, 2007. The hearing was continued to September 18, 2007. Bd. Exh. 4.

On March 9, 2007, respondent filed an Answer to the Charges. Bd. Exh. 2.

On June 5 and 26, and September 18, 2007, a hearing was held regarding the allegations contained in the Charges. At the hearing, respondent appeared through Clifton Petteway, owner and Lillard Lewis, manager, and was represented by Attorney David R. Gronback; Attorney Diane Wilan represented the Department.

On February 26, 2008, the Board granted respondent’s motion to revoke the summary suspension. There was no objection from the Department.

The Board conducted the hearing in accordance with Chapter 54 of the General Statutes and §19a-9-1, *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, 11, 20, 25, 28, 32, and 37 of the Charges, the Department alleges that respondent has been at all times referenced in the Charges, the holder of Connecticut Funeral Home license number 000614.
2. In paragraphs 2, 11, 20, 25, 28, 32, and 37 of the Charges, the Department alleges that Lillard Lewis was the licensed embalmer/manager for respondent.
3. In paragraphs 3, 11, and 20 of the Charges, the Department alleges that Mr. Lewis was away on vacation from December 23, 2005 until January 4, 2006.

Count One

4. In paragraph 4 of the Charges, the Department alleges that M.B. died on December 27, 2005.
5. In paragraph 5 of the Charges, the Department alleges that during approximately December 2005, Rev. S.P. Petteway (“Reverend Petteway”), an unlicensed employee of respondent, discussed and finalized the funeral arrangements, and/or sold funeral services and/or merchandise to the family of M.B.
6. In paragraph 6 of the Charges, the Department alleges that during approximately December 2005, Clifton Petteway, an unlicensed employee of respondent, dressed the deceased M.B., placed the deceased into a casket, and/or delivered the deceased to the church for funeral services. Clifton Petteway was not working under the supervision of a licensed funeral director or embalmer.
7. In paragraph 7 of the Charges, the Department alleges that during approximately December 2005, Clifton Petteway prepared and typed the Cost of Goods Services Contract for the funeral services of M.B. based on the services and merchandise provided for the prior funeral of M.B.’s mother. Clifton Petteway was not working under the supervision of a licensed funeral director or embalmer.
8. In paragraph 8 of the Charges, the Department alleges that Clifton Petteway obtained the signature of James Casso, a licensed embalmer, on the contract for the funeral of M.B., by falsely representing information to Mr. Casso.
9. In paragraph 9 of the Charges, the Department alleges that the human remains of M.B., while in the custody of respondent, were not under the supervision, care and custody of a licensed embalmer/funeral director.

10. In paragraph 10 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
 - a. §20-212;
 - b. §20-220;
 - c. §20-227(2); and/or
 - d. §20-227(7).

Count Two

11. In paragraph 12 of the Charges, the Department alleges that D. E. died on December 27, 2005.
12. In paragraph 13 of the Charges, the Department alleges that during approximately December 2005, Clifton Petteway, an unlicensed employee of respondent, discussed and finalized the funeral arrangements, and/or sold funeral services and/or merchandise to the family of D.E.
13. In paragraph 14 of the Charges, the Department alleges that during approximately December 2005, Clifton Petteway dressed the deceased D.E., placed the deceased into a casket and/or delivered the deceased to the church for the funeral services. Clifton Petteway was not under the supervision of a licensed funeral director or embalmer.
14. In paragraph 15 of the Charges, the Department alleges that during approximately December 2005, Clifton Petteway prepared and typed the Statement of Goods and Services Selected Contract for the funeral services of D.E. Clifton Petteway was not under the supervision of a licensed funeral director or embalmer.
15. In paragraph 16 of the Charges, the Department alleges that a copy of the Statement of Funeral Goods and Services Selected Contract was not given to the family prior to providing the funeral services for D.E.
16. In paragraph 17 of the Charges, the Department alleges that Clifton Petteway obtained the signature of James Casso, a licensed embalmer, on the contract for the funeral of D.E., by falsely representing information to Mr. Casso.
17. In paragraph 18 of the Charges, the Department alleges that the human remains of D.E., while in the custody of respondent, were not under the supervision, care and custody of a licensed embalmer or funeral director.
18. In paragraph 19 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:

- a. §20-212;
- b. §20-220;
- c. §20-227(2); and/or
- d. §20-227(7).

Count Three

- 19. In paragraph 21 of the Charges, the Department alleges that L.H. died on December 31, 2005.
- 20. In paragraph 22 of the Charges, the Department alleges that during approximately January 2006, Reverend Petteway, an unlicensed employee of respondent, discussed and finalized the funeral arrangements, and sold funeral services and merchandise to the family of L.H.
- 21. In paragraph 23 of the Charges, the Department alleges that a copy of the Statement of Funeral Goods and Services Selected Contract was not given to the family prior to providing the funeral services for L.H.
- 22. In paragraph 24 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
 - a. §20-220;
 - b. §20-227(2);
 - c. §20-227(7); and/or
 - d. §20-230b.

Count Four

- 22. In paragraph 26 of the Charges, the Department alleges that approximately during the last week of February 2006, Reverend Petteway met with the family of a deceased, made funeral arrangements with them and collected approximately \$700.00 from the family.
- 23. In paragraph 27 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
 - a. §20-220;
 - b. §20-227(2); and/or
 - c. §20-227(7).

Count Five

- 25. In paragraph 29 of the Charges, the Department alleges that on or about September 4, 2006, Clifton Petteway, an unlicensed employee of respondent, removed the human remains of W.H. from the house into the Petteway removal van and drove the human

remains to the Petteway Funeral Home, prior to any communication between the family and a licensed embalmer/funeral director.

26. In paragraph 30 of the Charges, the Department alleges that the funeral home file for the funeral services for W.H. was not available on September 14, 2006.
27. In paragraph 31 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
 - a. §20-212;
 - b. §20-220;
 - c. §20-227(2);
 - d. §20-227(4); and/or
 - e. §20-227(7).

Count Six

28. In paragraph 33 of the Charges, the Department alleges that on or about September 1, 2006, Clifton Petteway, an unlicensed employee of respondent, transported the human remains of E.H. and/or A.B.¹ to the Pine Grove Crematory without the authorization of a licensed embalmer or funeral director.
29. In paragraph 34 of the Charges, the Department alleges that on or about September 2, 2006, Clifton Petteway, an unlicensed employee of respondent, transported the human remains of J.L.² to the Pine Grove Crematory without the authorization of a licensed embalmer or funeral director.
28. In paragraph 35 of the Charges, the Department alleges that at various times between approximately August 31, 2006 and September 4, 2006, the human remains of J.L., E.H., and/or A.B.³ were not under the supervision, care and custody of a licensed embalmer or funeral director while they were in the custody of respondent.
29. In paragraph 36 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
 - a. §20-212;
 - b. §20-227(2); and/or
 - d. §20-227(7).

¹ On June 5, 2007, the Department amended this paragraph to delete reference to "J.L." Tr. 6/5/07, p. 151.

² On June 5, 2007, the Department amended this paragraph to delete reference to "T.L." and insert the initials "J.L." Tr. 6/5/07, pp.148-151.

³ On June 5, 2007, the Department amended this paragraph to delete reference to "T.L." Tr. 6/5/07, pp.151, 152.

Count Seven

30. In paragraph 38 of the Charges, the Department alleges that T.H. died on August 31, 2006.
31. In paragraph 39 of the Charges, the Department alleges that the human remains of T.H. were removed from Meridian Manor and embalmed by James Casso, a licensed embalmer, at the request of Reverend Petteway, an unlicensed employee of respondent, without any communication between a licensed embalmer or funeral director and the decedent's family.
32. In paragraph 40 of the Charges, the Department alleges that no licensed embalmer or funeral director spoke with the family of the deceased T.H. from August 31, 2006 until September 5, 2006.
33. In paragraph 41 of the Charges, the Department alleges that the human remains of T.H. were not in the care and custody of a licensed embalmer or funeral director from August 31, 2006 through September 4, 2006.
34. In paragraph 42 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
 - a. §20-212;
 - b. §20-220;
 - c. §20-227(2); and/or
 - d. §20-227(7).

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut funeral home license number 000614. Bd. Exhs. 1, 2.
2. At all relevant times, Clifton Petteway was the owner of respondent. Clifton Petteway is not licensed as an embalmer or funeral director. Tr. 9/18/07, pp. 104, 105
3. At all relevant times, Reverend Stanley Petteway, was an unlicensed employee of respondent. Dept. Exh. 1, Tr. 9/18/07, pp. 85-102.
4. At all relevant times, Lillard Lewis was the licensed embalmer/manager for respondent. Bd. Exhs. 1, 2; Tr. 6/26/07, p. 20; Tr. 9/18/07, pp. 104, 105.
5. Mr. Lewis was away on vacation from December 23, 2005 until January 4, 2006. Bd. Exhs. 1, 2; Dept. Exh. 1, 2 p. D-3; Tr. 6/5/07, pp. 25; Tr. 6/26/07, pp. 20, 21, 47-51; Tr. 9/18/07, pp. 110, 111.

6. Mr. Lewis arranged for James Casso, licensed embalmer and funeral director, to cover for him while he was away on vacation. Tr. 6/5/07, pp. 31,32, 41-43; 6/26/07, pp. 20, 21, 78, 79, 179-181, 192-195, 224, 227, 228, 238, 239, 266; Tr. 9/18/07, pp. 110, 111.

Count One

7. On October 20, 2003 a pre-need contract for M.B. was executed by George Knight. Mr. Knight is not related to M.B. The pre-need contract was prepared and signed by Mozell Clyburn, former manager and licensed embalmer for respondent. Bd. Exh. 2; Resp. Exh. A. Tr. 6/5/07, pp. 49, 52, 57, 58, 66; Tr. 6/26/07, pp. 22, 54, 56, 58, 66-68, 186, 187. 230, 240; Tr. 9/18/07, pp. 49, 50, 88, 95, 100-102, 105, 106, 109-116, 158
8. On December 27, 2005, M.B. died. Bd. Exhs. 1, 2; Tr. 6/26/07, p. 24.
9. In December 2005, after M.B. died, Reverend Petteway reviewed the pre-need arrangements for M.B.'s funeral. M.B. did not have any family to consult regarding the prearrangement. Reverend Petteway provided the pre-need contract to Mr. Casso. Dept. Exh. 1, 2; Tr. 6/5/07, pp. 30, 50, 54, 59, 62; Tr. 6/26/07, p. 56; 9/18/07, pp. 87, 88, 93, 97, 110.
10. In December 2005, Sal Albini, licensed funeral director and embalmer, removed M.B. Tr. 6/26/07, p. 243.
11. In December 2005, Mr. Casso embalmed M.B.'s body. Tr. 6/5/07, pp. 34, 73; Tr. 6/26/07, pp. 75, 232; Tr. 9/18/07, pp. 111, 120.
12. After M.B.'s body was embalmed, Clifton Petteway was instructed by Mr. Casso to dress M.B., and place M.B.'s body into a casket. This was a customary practice. Dept. Exh. 1; Tr.6/5/07, pp. 30, 76, 77, 169; 6/26/07, pp. 67-78, Tr. 9/18/07, pp. 44-46, 52, 119-121
13. Clifton Petteway was instructed and supervised by Chris Pender, a licensed funeral director, to deliver the body to the church. Tr. 6/5/07, pp. 78-87; Tr. 6/26/07, p. 24; Tr. 9/18/07, p. 120
14. When M.B.'s body was delivered to the church, Mr. Pender was on-site. Tr. 6/5/07, pp. 78-87.
15. There is insufficient evidence to establish who prepared the final Cost of Goods Services Contract for the funeral services of MB. Dept. Exh. 1; Tr. 6/5/07, pp. 30, 51; Tr. 6/26/07, pp. 58-60, 241-245; Tr. 9/18/07, pp. 41, 42.
16. Clifton Petteway obtained the signature of Mr. Casso on a prearrangement contract that he copied for the funeral of M.B. Clifton Petteway informed Mr. Casso that there was no family. Clifton Petteway did not make any false representations to obtain Mr. Casso's

signature. Dept., Exhs. 1, 2, pp. A-11, F-4; Tr. 6/5/07, p. 56, 57, 75; Tr. 6/26/07, pp. 62, 90, 228-233, 240-245, 263; Tr. 9/18/07, pp. 40-44, 152, 153, 158

Count Two

17. D.E. died on December 27, 2005. Bd. Exhs. 1, 2.
18. D.E.'s body was removed by the Wallingford Funeral Home. Tr.6/26/07, p. 91.
19. Mr. Casso embalmed the body of D.E. Tr. 6/26/07, pp. 91., 234
20. In or about September 2005, D.E.'s wife passed away. During the funeral service of D.E.'s wife, D.E.'s daughter casually remarked to Mr. Lewis that she wanted the same funeral arrangements for her mother to be done for her father, D.E. This does not constitute a pre-need arrangement. Dept. Exh. 2, p. D-4, pp. F-3, F-4; Tr. 6/5/07 pp. 90-92; Tr. 6/26/07, pp. 45, 93-96; 102-109, 187, 200, 201; Tr. 9/18/07, pp. 121, 122; 159-161
21. In December 2005, Mr. Casso embalmed the body of D.E.. Tr. 9/18/07, p. 122
22. In December 2005, Clifton Petteway met with the family of D.E., discussed and finalized the funeral arrangements, and/or sold funeral services and/or merchandise to the family of D.E. Tr. 6/5/07, pp. 89, 90, 92, 96, 97, 100; Tr. 6/26/07, pp. 26, 101-103, 106, 107, 250, 251; Tr. 9/18/07, pp. 123, 124, 161-165, 168.
23. In December 2005, Clifton Petteway dressed the deceased D.E., placed D.E.'s body into a casket and delivered the deceased to the church for the funeral services. Clifton Petteway had a practice of doing so under Mr. Casso's supervision. Tr. 6/5/07, p. 169; Tr. 6/26/07, pp. 26, 246, 247; Tr. 9/18/07, pp. 123, 124
24. During December 2005, Mr. Casso signed the Statement of Goods and Services Selected Contract prepared and typed by Clifton Petteway for the funeral services of D.E. There is insufficient evidence to establish that Clifton Petteway prepared the contract without the supervision of a licensed funeral director or embalmer. Tr. 6/26/07, pp., 27, 59, 60, 252 ; Tr. 9/18/07, p. 52
25. The evidence is insufficient to establish whether a copy of the contract was given to the family prior to providing funeral services for D.E. since the Statement of Funeral Goods and Services Selected Contract lacks any acknowledgement of the date received or signed. Tr. 9/18/07, pp. 166, 167
26. Clifton Petteway obtained the signature of Mr. Casso on the contract for the funeral of D. E. by falsely representing to Mr. Casso that Mr. Lewis met with D.E.'s family prior to going on vacation, when in fact, Mr. Lewis only had a general discussion with D.E.'s daughter during a previous family funeral held three months prior to D.E.'s death.

Tr.6/5/07, pp. 91-101; Tr.6/26/07, pp. 61, 62, 181-183, 231-234, 247-249, 251, 253, 254, 258-262; Tr. 9/18/07, pp. 53, 123, 124, 161-165, 168.

27. There is insufficient evidence to determine whether the human remains of D.E., while in the custody of respondent, were not under the supervision, care and custody of a licensed embalmer or funeral director.

Count Three

28. On December 31, 2005, L.H. died. Bd. Exhs. 1, 2; Tr. 9/18/07, pp. 20, 124, 125.
29. Clifton Petteway provided a pricelist to L.H.'s family. Tr. 9/18/07, pp. 11-20, 125-127.
30. On January 4, 2006, after Mr. Lewis returned from vacation, he discussed and finalized the funeral arrangements and sold funeral services and merchandise to the family of L.H. Dept. Exhs. 2, 3, p. A-8; Resp. Exh. B; Tr. 6/5/07 pp. 102-109, 183, 184, 188-191; Tr., 6/26/07, p. 27, Tr. 9/18/07, pp. 11-22, 57, 88, 93, 94, 98, 125-127, 169.
31. On January 4, 2006, Mr. Lewis wrote a Statement of Funeral Goods and Services Selected Contract and later typed it and provided it to the family of L.H. prior to providing funeral services. The contract is signed and dated by Mr. Lewis on January 4, 2006. Dept. Exhs. 2, 3; Tr. 6/5/07, pp. 103, 104, 108, 109; Tr. 6/26/07, pp. 29, 30, 184, 170
32. The funeral for L.H. was held on January 7, 2006. Tr. 6/5/07, pp. 103, 104.

Count Four

33. On February 16, 2006, a family member stopped by respondent's location to pay \$700 on a pre-need contract for an ill relative. Reverend Petteway took the \$700 from the family member and gave it to Mr. Lewis the next day. . Resp. Exh. C; Tr. 6/5/07 pp. 127, 128, 131, 132; 6/26/07, pp. 33-35, 185, 195, 198, 207-209, 213; Tr. 9/18/07, pp. 57, 58, 68-70, 76, 79, 86, 90, 94, 131
34. Reverend Petteway did not make any funeral arrangements. Mr. Lewis met with the family on February 17, 2006 and made the funeral arrangements with them. Resp. Exh. C; Tr. 6/5/07 pp. 127, 128, 131, 132; 6/26/07, pp. 33-35, 185, 195, 198, 207-209, 213; Tr. 9/18/07, pp. 57, 58, 68-70, 76, 79, 86, 90, 94, 131

Count Five

35. From August 31, 2006 through September 4, 2006, Mr. Lewis took time off from working at respondent's funeral home to attend his son's wedding. Tr. 6/26/07, pp. 36, 165, 166.

36. Mr. Lewis called Mr. Casso to cover for him in his absence from August 31, 2006 through September 4, 2006. Tr. 6/26/07, pp. 36, 37, 165-169, 179-181, 192-195, 235, 236; Tr. 9/18/07, pp. 31, 32
37. On September 4, 2006, Clifton Petteway called Nick D'Amelio, licensed embalmer, to remove the body of W.H. from a house. Tr. 6/5/07 pp. 132, 133; Tr. 6/26/07, pp. 4, 5
38. On September 4, 2006, Clifton Petteway removed the human remains of W.H. from the house into respondent's van prior to any communication between the family and a licensed embalmer/funeral. Mr. D'Amelio arrived at the house and spoke with Clifton Petteway, but did not conduct the removal or transport of W.H.. Dept. Exh. 5; Tr. 6/5/07, pp. 36, 37, 133-136; Tr. 6/26/07, pp. 4-19; Tr. 9/18/07, pp. 58, 59, 133-138, 153-155, 171-178.
39. On September 14, 2006, the funeral home file for the funeral services for W.H. was not available. Dept. Exh. 1.

Count Six

40. On September 1, 2006, Clifton Petteway transported the human remains of E.H. and A.B. to the Pine Grove Crematory. Dept. Exhs. 9, 10; Tr. 6/5/07 pp. 38, 39, 147-149; Tr. 6/26/07, pp. 37, 38; Tr.9/18/07, pp. 139-145, 176
41. On September 2, 2006, Clifton Petteway transported the human remains of J.L. to the Pine Grove Crematory. Dept. Exh. 11; Tr. 6/5/07 pp. 38, 39, pp. 138-146; Tr. 6/26/07, pp. 39, 211-213; Tr.9/18/07, pp. 139-145, 176
42. Mr. Lewis pre-signed cremation and disposition authorization forms, which granted Clifton Petteway implied permission and authorization to transport human remains to the Pine Grove Crematory. The pre-signed forms were used for E.H, A.B, and J.L. Dept. Exhs. 9, 10, 11; Tr. 6/5/07, pp. 138-146; Tr. 6/26/07, pp. 37-39, 145-161, 186, 201-207, 254-257; Tr. 9/18/07, pp. 24-31, 33-37; Tr. 9/18/07, pp. 59-61, 63, 64, 139-145.

Count Seven

43. T.H. died on August 31, 2006. Bd. Exhs. 1, 2; Tr. 6/26/07, pp. 161, 236, 257.
44. The human remains of T.H. were removed from Meridian Manor. Mr. Pender removed T.H.'s body from the facility. Dept. Exhs. 1, 8; Tr. 6/5/07, pp. 37, 38, 155; Tr.6/26/07, pp. 4, 162; Tr. 9/18/07, pp. 92, 145
45. Reverend Petteway received permission from the family of T.H. to have his remains embalmed. Tr. 6/26/07, 257, 258; Tr. 9/18/07, p. 146-148
46. Mr. Casso embalmed the human remains of T.H.. Tr. 6/5/07, pp. 37, 38, 155, 163; 6/26/07, pp. 237, 257; Tr. 9/18/07, p. 146.

47. There is insufficient evidence to establish that no licensed embalmer or funeral director spoke with the family of the deceased T.H. from August 31, 2006 until September 5, 2006. Tr. 6/5/07, pp. 37, 38, 157-160; Tr. 6/26/07, pp 41, 42, 164; Tr. 9/18/07, pp. 62, 63, 91, 92, 98.
48. There is insufficient evidence to establish that the human remains of T.H. were not in the care and custody of a licensed embalmer or funeral director from August 31, 2006 through September 4, 2006. Tr. 6/5/07, pp. 37, 38, 157.

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); 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).

Section 19a-10 of the Connecticut General 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." As provided in Section 19a-14(b)(10), the Board of Examiners of Embalmers and Funeral Directors is authorized to conduct a hearing relating to the allegations enumerated within the Charges against Petteway Funeral Home, licensed funeral home.

Section 20-212 of the Connecticut General Statutes ("the Statutes") provides in pertinent part that:

Embalming, care and disposal of bodies restricted. 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, firm or corporation so engaged has obtained from the Department of Public Health and holds a license as provided in this chapter; nor shall any person be employed to remove a dead human body, except a licensed embalmer, a registered student embalmer, a licensed funeral director, or a person authorized in each instance by the Chief Medical Examiner, Deputy Medical Examiner or assistant medical examiner incidental to examining the body of a deceased person, except that once a dead human body has been prepared in accordance with the Public Health Code and the applicable provisions of the general statutes, an embalmer or funeral director

licensed in this state may authorize an unlicensed employee to transport such body. . . .

Section 20-220 of the Statutes provides in pertinent part that:

. . . no person shall carry on or engage in the business of funeral directing, or hold himself out to the public as a funeral director, unless he is licensed by the Department of Public Health as a funeral director and unless he owns his business of funeral directing or is an employee or member of a firm, partnership or corporation operating a funeral directing business at an established place of business, for which place of business there has been issued a certificate of inspection by said department

Section 20-227(2), (4), and (7) of the Statutes provides in pertinent part that:

Disciplinary action; grounds; appeals. The Department of Public Health 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; . . .

(7) aiding or abetting the practice of embalming or funeral directing by an unlicensed person

Count One

With respect to paragraph five of the Charges, the Department failed to establish that Reverend Petteway discussed and finalized the funeral arrangements, and/or sold funeral services and/or merchandise to the family of M.B. Instead, M.B. had a pre-need contract that was drafted by respondent's former funeral director and embalmer, Mozell Clyburn, and executed by George Knight on M.B.'s behalf. M.B. did not have any family to consult for finalization of the pre-arrangements, and Reverend Petteway simply reviewed the pre-need contract originally executed by Mr. Clyburn and Mr. Knight, and presented it to Mr. Casso.

With respect to paragraph six of the Charges, the evidence is insufficient to establish that Clifton Petteway acted without the supervision of a licensed funeral director or embalmer, as alleged, when he dressed the deceased, placed M.B.'s remains into the casket, and delivered M.B. to the church. Respondent presented sufficient rebuttal evidence that Mr. Casso, a licensed embalmer, embalmed the body of M.B., and that Clifton Petteway prepped the body of M.B. at the direction of Mr. Casso, and delivered the body to the church at the direction of Chris Pender, a licensed funeral director. Therefore, the Department failed to meet its burden of proof.

With respect to paragraph seven of the Charges, there is insufficient evidence to establish who prepared the final Cost of Goods Services contract for the funeral service of M.B. The Department alleges Clifton Petteway prepared the final Cost of Goods Services contract. However, Reverend Petteway testified that it was prepared years prior and that he simply copied it. The Department failed to secure any evidence or testimony to contradict this claim, and therefore, failed to meet its burden.

With respect to paragraph eight of the Charges, the Department alleges that Clifton Petteway obtained Mr. Casso's signature on the contract for the funeral, by falsely representing information to Mr. Casso. The evidence is insufficient to support this allegation. Both Mr. Casso and Clifton Petteway testified that Clifton Petteway informed Mr. Casso that there was no family, which was an accurate statement.

With respect to paragraph nine of the Charges, there is insufficient evidence to establish that the human remains of M.B., while in the custody of respondent, were not under the supervision, care and custody of a licensed embalmer or funeral director. Instead, Mr. Albini, a licensed funeral director and embalmer, removed the body of M.B; Mr. Casso, a licensed embalmer and funeral director, embalmed the body of M.B. and instructed Clifton Petteway to dress M.B. and place M.B. in the casket; and, Chris Pender, a licensed funeral director, instructed Clifton Petteway to deliver M.B. to the church, where Mr. Pender was on-site and conducting the service. Therefore, the Department failed to meet its burden of proof.

With respect to paragraph 10 of the Charges, the Board concludes that the actions of respondent with regard to M.B.'s funeral arrangements do not constitute grounds for disciplinary action pursuant to §§20-212, 20-220, 20-227(2), 20-227(7), and 20-227(5) of the Statutes.

Count Two

With respect to paragraph 13 of the Charges, the Department sustained its burden of proof that Clifton Petteway discussed and finalized the funeral arrangements and/or sold funeral services and/or merchandise to the family of D.E.. While respondent claims that Mr. Lewis arranged D.E.'s funeral, Mr. Lewis' previous discussion with D.E.'s daughter did not qualify as a formal pre-arrangement for D.E.'s funeral services. Mr. Lewis, furthermore, did not reduce his discussion with D.E.'s daughter into writing. In December 2005, Clifton Petteway presented a contract, with all of the funeral arrangements for D.E., to Mr. Casso for his signature. Thus, a

preponderance of the evidence establishes that it was Clifton Petteway, not Mr. Lewis, who discussed and finalized the funeral arrangements and/or sold funeral services and/or merchandise to the family of D.E.

With respect to paragraph number 14 of the Charges, a preponderance of the evidence establishes that in December 2005, Clifton Petteway dressed D.E., placed D.E. into the casket and delivered D.E. to the church. However, there is insufficient evidence to establish that Clifton Petteway acted without the supervision of a licensed funeral director or embalmer. Mr. Casso, a licensed embalmer, embalmed the body of D.E. Clifton Petteway prepped the body of D.E., as directed by Mr. Casso, and delivered the body to the church. Therefore, Clifton Petteway acted under the supervision of a licensed funeral director or embalmer, and the Department failed to meet its burden of proof.

With respect to paragraph 15 of the Charges, the Board finds that Clifton Petteway prepared and typed the Statement of Goods and Services Selected Contract for the funeral services of D.E. Mr. Casso signed the Statement of Goods and Services Selected Contract, and as a funeral director, his signature is proof of supervision, although there is evidence to suggest Mr. Casso signed under false representations made by Clifton Petteway. As such, there is insufficient evidence to establish that Clifton Petteway prepared the contract without supervision of a licensed funeral director or embalmer, as alleged. Therefore, the Department failed to sustain its burden of proof.

With respect to paragraph 16 of the Charges, the Board finds there is insufficient evidence to establish that D.E.'s family was not given a Statement of Funeral Goods and Services Selected Contract prior to D.E.'s funeral service, since there is no evidence establishing the date the contract was received and signed. Therefore, the Department failed to sustain its burden of proof.

With respect to paragraph 17 of the Charges, a preponderance of the evidence establishes that Clifton Petteway obtained the signature of Mr. Casso on the contract for the funeral for D.E., by falsely representing to Mr. Casso that the contract was a pre-need contract arranged by Mr. Lewis. Mr. Lewis denied drafting the contract for the family and Clifton Petteway testified that he does not know who drafted the contract. Clifton Petteway's testimony is inconsistent with the information he gave to Mr. Casso to obtain his signature for D.E.'s contract, and therefore, lacks credibility.

With respect to paragraph 18 of the Charges, the Board finds there is insufficient evidence to determine whether the human remains of D.E., while in the custody of respondent, were not under the supervision, care and custody of licensed embalmer or funeral director. The Department failed to sustain its burden of proof.

With respect to paragraph 19 of the Charges, the Board concludes that the actions of respondent with regard to D.E.'s funeral arrangements do not constitute grounds for disciplinary action pursuant to §§20-212 and 20-227(7) of the Statutes, but finds that Clifton Petteway engaged in the unlicensed practice of funeral directing as alleged in paragraph 13 in violation of §20-220 of the Statutes when he discussed and finalized the funeral arrangements, and/or sold funeral services and/or merchandise to the family of D.E. Although the Board finds that Clifton Petteway obtained the signature of Mr. Casso on the contract for the funeral for D.E. by false representation, the Department failed to cite an applicable provision of the Statutes to constitute a violation. As such, respondent is subject to disciplinary action in accordance with §20-227(2) of the Statutes for violation of §20-220 relative to funeral directing.

Count Three

Section 20-230b of the Statutes provides, in pertinent part, that:

Statement of prices for requested services and merchandise. . . . 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) The 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. . . .

With respect to paragraph 22 of the Charges, the Department alleges that Reverend Petteway discussed and finalized the funeral arrangements, and sold funeral services and merchandise to the family of L.H. The Board finds that the Department failed to sustain its burden of proof. Specifically, Mr. Lewis testified that he personally discussed and finalized the funeral arrangements, and sold funeral services and merchandise to the family of L.H. in accordance with §20-230b of the Statutes. Moreover, Clifton Petteway, not Reverend Petteway,

provided the family of L.H. a price list for services, which does not constitute funeral directing in accordance with the Statutes.

With respect to paragraph 23 of the Charges, the Board finds that the Department failed to sustain its burden of proof. Mr. Lewis testified that he wrote a Statement of Funeral Goods and Services Selected Contract, typed it, and presented it to the family of L.H. prior to the funeral services.

With respect to paragraph 24 of the Charges, the Board concludes that the actions of respondent with regard to L.H.'s funeral arrangements do not constitute grounds for disciplinary action pursuant to §§20-220, 20-227(2), 20-227(7), and 20-230b of the Statutes.

Count Four

With respect to paragraph 26 of the Charges, a preponderance of the evidence establishes that on February 16, 2006, Reverend Petteway met with the family of a deceased and collected \$700.00 from the family, but there is insufficient evidence to establish that he made funeral arrangements with them. Reverend Petteway and Mr. Lewis both testified that Reverend Petteway collected the \$700.00, gave it to Mr. Lewis, and Mr. Lewis met with the family of the deceased the next day to discuss funeral arrangements. The collection of money for payment of funeral services is an administrative task, and does not require a license. Reverend Petteway engaged in an administrative task, not the unlicensed practice of funeral directing. The Department failed to sustain its burden of proof.

With respect to paragraph 27 of the Charges, the Board concludes that the actions of respondent with regard to the collection of money and funeral arrangements made during the last week of February 2006 do not constitute grounds for disciplinary action pursuant to §§20-220, 20-227(2), and 20-227(7), of the Statutes.

Count Five

With respect to paragraph 29 of the Charges, the Board finds that the Department sustained its burden of proof. In accordance with §20-212 of the Statutes, no person shall "be employed to remove a dead human body, except a licensed embalmer, a registered student embalmer, a licensed funeral director. . . ." A preponderance of the evidence establishes that on September 4, 2006, Clifton Petteway, an unlicensed person, removed the human remains of

W.H. from the house to respondent's van and transported W.H. to respondent's location. Clifton Petteway does not dispute this allegation, but claims that he thought it was sufficient for Mr. D'Amelia, a licensed embalmer, to be present for the removal of W.H.'s body, and did not think that Mr. D'Amelia had to conduct the actual removal and transport of the body prior to embalming. Clifton Petteway's actions constitute "funeral directing" in violation of §20-220 of the Statutes and "misconduct" in violation of §20-227(4) of the Statutes as an unlicensed employee for respondent.

With respect to paragraph 30 of the Charges, a preponderance of the evidence establishes on September 14, 2006, the funeral home file for the funeral services for W.H. was not available. Failure to have W.H.'s file available is evidence of negligence in the carrying on of respondent's business in violation of §20-227(4) of the Statutes. The Board notes that although the investigator, Edward Bergin, testified the file for the funeral services for W.H. was available on September 14, 2006, his investigative report establishes otherwise, and is given greater weight for accuracy, as it was actually recorded on September 14, 2006, as opposed to Mr. Bergin's testimony given on June 5, 2007.

With respect to paragraph 31, the Board concludes that the actions of respondent with regard to the removal and transport of W.H.'s body on September 4, 2006 constitute grounds for disciplinary action pursuant to §§20-212, 20-220, 20-227(2), and 20-227(4), of the Statutes. His actions, however, do not constitute a violation of §20-227(7) because there is insufficient evidence to establish Clifton Petteway aided or abetted in the unlicensed practice of embalming or funeral directing. Instead, he was the person who actually engaged in the unlicensed practice.

Count Six

With respect to paragraphs 33 and 34 of the Charges, there is insufficient evidence to establish that Clifton Petteway transported the human remains of E.H. and A.B. on September 1, 2006, and the human remains of J.L. on September 2, 2006, without the authorization of a licensed embalmer or funeral director. Instead, Mr. Lewis pre-signed the cremation and disposition forms authorizing Clifton Petteway to transport the human remains of E.H. and A.B. on September 1, 2006, and J.L. on September 2, 2006, to the Pine Grove Crematory. Although, Mr. Lewis testified it was not his intent to authorize the transport of such remains by pre-signing the cremation and disposition forms, James Sanders, a former employee for respondent, testified

to the contrary. Mr. Sanders was present when Mr. Lewis explained to Clifton Petteway that while he was on vacation, Clifton Petteway could take the remains of E.H., A.B. and J.L. to the crematory because Mr. Lewis already signed the crematory paperwork requiring his signature. The Board finds that the pre-signed cremation and disposition forms constituted implied permission and authorization for the transport of the remains to the crematory.

With respect to paragraph 35 of the Charges, the evidence is insufficient to establish that at various times between August 31, 2006 and September 4, 2006, the human remains of J.L., E.H., and A.B were not under the supervision, care and custody of a licensed embalmer or funeral director while they were in the custody of respondent. The Board finds that while Mr. Lewis was on vacation between August 31, 2006 through September 4, 2006, the human remains of E.H., A.B, and J.L. were under the supervision, care and custody of Mr. Lewis, a licensed embalmer and funeral director. Mr. Lewis' signature on the pre-signed cremation and disposition forms, acknowledged his licensed authority and his supervision, care and custody was implied, while in the custody of respondent.

With respect to paragraph 36 of the Charges, the Board concludes that the custody and transport of the human remains of E.H. and A.B. on September 1, 2006, and J.L. on September 2, 2008 by Clifton Petteway to the Pine Grove crematory do not constitute grounds for disciplinary action pursuant to §§20-212, 20-227(2), and 20-227(7), of the Statutes.

Count Seven

With respect to paragraph 39 of the Charges, a preponderance of the evidence establishes that the human remains of T.H. were removed from Meridian Manor and embalmed by Mr. Casso at the request of Reverend Petteway, without any communication between a licensed embalmer or funeral director and the decedent's family. The evidence establishes that Reverend Petteway received permission from T.H.'s family for the removal and embalming of T.H's body. Mr. Pender removed T.H's body from Meridian Manor, and Mr. Casso embalmed T.H's body. Although there was no direct communication between Mr. Casso and T.H.'s family, the Board finds Reverend Petteway's conveyance of the family's wishes to Mr. Pender and Mr. Casso as sufficient and does not constitute a violation.

With respect to paragraph 40 of the Charges, the Board finds the evidence is insufficient to establish the allegation that no licensed embalmer or funeral director spoke with the family of

the deceased T.H. from August 31, 2006 until September 5, 2006, as alleged. Therefore, the Department failed to satisfy its burden of proof.

With respect to paragraph 41 of the Charges, the Board finds there is insufficient evidence to establish the allegation that the human remains of T.H. were not in the care and custody of a licensed embalmer or funeral director from August 31, 2006 through September 4, 2006. Therefore, the Department failed to satisfy its burden of proof.

With respect to paragraph 42 of the Charges, the Board concludes that Reverend Petteway's communication with the family and Mr. Casso does not constitute grounds for disciplinary action pursuant to §§20-212, 20-227(2), and 20-227(7), of the Statutes.

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 Petteway Funeral Home, funeral home license number 000614:

1. Respondent's license number 000614 to operate as a funeral home in the State of Connecticut is hereby reprimanded.
2. Respondent shall pay a civil penalty of five thousand dollars (\$5,000). Such payment shall be made by certified or cashier's check payable to "Treasurer, State of Connecticut." This 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.
3. All correspondence and the civil penalty payment are 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

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

Connecticut Board of Examiners of Embalmers and
Funeral Directors

June 3 2008
Date

Peter V Hansen
By: Peter Hansen, Board Member

CERTIFICATION

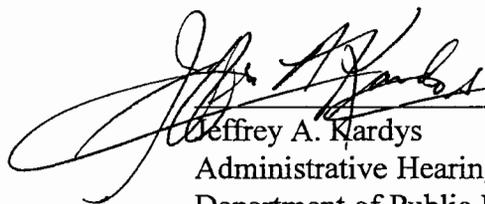
I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 3rd day of June 2008, by certified mail, return receipt requested, to:

David R. Gronbach, Esq.
Moynahan & Minnella, LLC
141 East Main Street
Waterbury, CT 06722-2242

Certified Mail RRR #9171082133393205554991

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
Department of Public Health
Public Health Hearing Office