

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

James Sanders
120 Hillside Avenue
Waterbury, Connecticut 06710

Petition No. 970812-000-068

MEMORANDUM OF DECISION

Procedural Background

The Department of Public Health ("Department") presented the Connecticut Board of Examiners for Embalmers and Funeral Directors ("Board") with a Statement of Charges brought against James Sanders ("Respondent") dated December 5, 1997. This Statement of Charges, along with the Notice of hearing, was sent to Respondent by certified mail, return receipt requested, and first class mail, on February, 26 1998. The Notice of Hearing scheduled a hearing for April 9, 1998, and notified the parties that the hearing would be held before Connecticut Board of Examiners for Embalmers and Funeral Directors. Dept. Exh. 1.

On April 9, 1998, the Board held an administrative hearing to adjudicate respondent's case. Respondent appeared without counsel. Ellen Shanley, Esq., represented the Department. At the hearing, the Department filed a Motion to Deem the Allegations Admitted. Respondent did not file an answer, but orally answered the charges during the hearing. Tr. pp. 8-17. After respondent orally answered the charges, the Department withdrew its Motion to Deem the Allegations Admitted except as it concerns Paragraph 6(a) of the Statement of Charges. Tr. p. 18. The Board reserved decision on the Motion.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act) and the Regulations of Connecticut State Agencies §19a-9-1, *et seq.* All Board members involved in this decision received copies of the entire record. All Board members involved in this decision attest that they have either heard the case or read the record in its entirety. This decision is based entirely on the record.

**STATE OF CONNECTICUT
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Petition No. 960718-000-063

MEMORANDUM OF DECISION

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The Department of Public Health ("Department") presented the Connecticut Board of Examiners for Embalmers and Funeral Directors ("Board") with a Statement of Charges brought against James Sanders ("Respondent") dated December 5, 1997. This Statement of Charges, along with the Notice of hearing, was sent to Respondent by certified mail, return receipt requested, and first class mail, on February, 26 1998. The Notice of Hearing scheduled a hearing for April 9, 1998, and notified the parties that the hearing would be held before Connecticut Board of Examiners for Embalmers and Funeral Directors. Dept. Exh. 1.

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Allegations

1. In Paragraph 1 of the Statement of Charges, the Department alleged that respondent formerly held embalmer license number 2055. Respondent admitted this allegation. Tr. pp. 8-9.
2. In Paragraph 2 of the Statement of Charges, the Department alleged that on or about May 31, 1995, respondent's Connecticut embalmer license expired. Respondent admitted that his license had expired in 1995, but asserted that the license did not expire until August 31, 1995 at the end of the three month grace period. Tr. p. 12.
3. In Paragraph 3 of the Statement of Charges, the Department alleged that since May 31, 1995, respondent has made arrangements for funerals, and/or handled the funerals of the decedents listed below:
 - a. Sherrill Wright;
 - b. Baby Girl Byers;
 - c. Etta King;
 - d. Ivan Smith;
 - e. James Coleman;
 - f. Charles Reuben;
 - g. Mary Ware;
 - h. Dennis Vaughn;
 - i. Homer Reeves;
 - j. Wilhemina Woods; and/or,
 - k. Charles Morgan, Jr.

Respondent admitted this allegation. Tr. pp. 13-14.

4. In Paragraph 4 of the Statement of Charges, the Department alleged that from approximately June 1996 to approximately March 11, 1997, respondent provided services for decedent Nathaniel Ervin, by accepting and retaining the corpse of decedent Nathaniel Ervin, and storing the corpse in a garage. Respondent admitted this allegation. Tr. p. 16.
5. In Paragraph 5 of the Statement of Charges, the Department alleged that the forgoing occurred within the State of Connecticut. Respondent admitted this allegation. Tr. p. 16.
6. In Paragraph 6 of the Statement of Charges, the Department alleged that the above described conduct constitutes violations of:
 - a. §20-212 of the General Statutes of Connecticut; and/or,
 - b. §20-220 of the General Statutes of Connecticut.

Respondent denied 6(a) and admitted 6(b). Tr. p. 17.

Findings of Fact

1. Respondent formerly held Connecticut embalmer license number 2055. Tr. pp. 8-9.
2. Respondent's embalmer license lapsed on May 31, 1995, due to his failure to renew it, and became void on August 31, 1995. Respondent was notified that he could not practice as an embalmer until his license was reinstated. Tr. 12; Dept. Exh. 7.
3. Since May 31, 1995, respondent has made arrangements for funerals, and/or handled the funerals of the following decedents: Sherrill Wright; Baby Girl Byers; Etta King; Ivan Smith; James Coleman; Charles Reuben; Mary Ware; Dennis Vaughn; Homer Reeves; Wilhemina Woods; and/or, Charles Morgan, Jr. The majority of these funerals occurred in 1996 or 1997. Tr. pp. 13-14, 31.
4. From approximately June of 1996, to approximately March 11, 1997, respondent took responsibility for the corpse of the decedent Nathaniel Ervin, by accepting and retaining the corpse of Nathaniel Ervin, making the arrangements for, and storing Mr. Ervin's corpse in a garage at the funeral home. Tr. p. 16.
5. From approximately June of 1996, to approximately March 11, 1997, respondent maintained and kept the corpse of decedent Nathaniel Ervin. Tr. p. 55.
6. Respondent admits to providing funeral services without a license as either an embalmer or funeral director. Tr. pp. 35-36.
7. The foregoing conduct occurred within the State of Connecticut. Tr. p. 16.

Discussion and Conclusions of Law

Section 19a-11 of the Connecticut General Statutes provides in pertinent part: "Any board . . . may, in its discretion, issue an appropriate order to any person found to be violating an applicable statute or regulation, providing for the immediate discontinuance of the violation."

Section 20-212 of the Connecticut General Statutes provides in pertinent part: "No person, except a licensed embalmer . . . shall enter, engage in, carry on or manage for another the business of caring for, preserving or disposing of dead human bodies"

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

" . . . [n]o 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] as a funeral director"

The Board finds that 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. 9333 (1981); *Swiller v. Commissioner of Public Health*, CV 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

The Department sustained its burden of proof with regard to all the allegations in the Statement of Charges. Respondent admits that he provided funeral services without a proper license, and that all of the allegations contained in the Statement of Charges are true, except for the allegation that he violated §20-212 of the Connecticut General Statutes as alleged in Paragraph 6(a).

The evidence establishes that from approximately June of 1996, to approximately March 11, 1997, respondent maintained and kept the corpse of decedent Nathaniel Ervin. This conduct constitutes "the caring for a dead human body" and is a violation of §20-212 of the Connecticut General Statutes.

Therefore, the Board finds that respondent violated §§20-121 and 20-220 of the Connecticut General Statutes by deliberately and intentionally operating as an embalmer and funeral director without a license.

The Board finds the nature of the misconduct so significant, that had Mr. Sanders held a license at the time of this proceeding and violated the Connecticut General Statutes in as serious a manner, his license would have been revoked.

Order

Pursuant to the authority vested in it by §19a-11 of the Connecticut General Statutes, the Board orders that James Sanders immediately cease and desist from the practice of embalming and funeral directing. Any retainers which persons have paid to the respondent to arrange for future funerals must be returned to those persons upon receipt of this order. Anyone who has pre-arranged any type of funeral business with the respondent must be notified, and their money returned within sixty (60) days of this order. A list of said consumers and the amounts being returned to them must be provided to this Board by mailing a copy of the list within sixty (60) days to:

State of Connecticut
Board of Examiners for Embalmers and Funeral Directors
Department of Public Health
410 Capitol Avenue, #13ADJ
Hartford, Connecticut 06106
Attn: Board Liaison

Connecticut Board of Examiners for
Embalmers and Funeral Directors

Nov. 12, 1998
Date

Celia Pinzi
By: Celia Pinzi, Chairperson,

c: Cynthia Denne, Director, Division of Health Systems Regulation