

IN THE MATTER OF BRIAN HOWELL License Number M01344	* * * * * *	BEFORE THE MARYLAND STATE BOARD OF MORTICIANS AND FUNERAL DIRECTORS
--	----------------------------	--

CONSENT ORDER OF PROBATION

On or about November 16, 2015, the Maryland State Board of Morticians and Funeral Directors (the “Board”) conducted a routine inspection of a funeral establishment in Jessup, Maryland. Based upon the findings of that inspection, the Board initiated an investigation. As a result of that investigation, on May 11, 2016, the Board met with Brian Howell (the “Respondent”) in an attempt to settle the matter prior to the issuance of formal charges. Subsequently, the Respondent and the Board agreed to the following Consent Order.

FINDINGS OF FACT

The Board finds that:

1. At all times relevant, the Respondent was licensed to practice mortuary science in the State of Maryland, license number M01344, and was the supervising mortician of two funeral establishments in the Baltimore, Maryland area (hereinafter, “Establishment A” and “Establishment B”).

2. On or about November 14, 2015, the Board conducted a routine inspection of an affiliated funeral establishment located in Jessup, Maryland. During that inspection, the inspector audited several pre-need contract files. While the audited files did contain the pre-need contracts, the files did not contain any financial documents, such as bank statements, deposit slips, or copies

of checks. The Board's inspector advised the affiliated establishment's supervising mortician to forward the financial documents for the audited files to the Board.

3. On or about December 2, 2015, the requested documents were forwarded to the Board from Establishment A, which handled the administration of pre-need accounts for Establishment A, Establishment B, and the affiliated establishment. Those documents indicated that pre-need funds were deposited into two bank accounts at two separate banks.

4. The Board was provided with a bank statement from one of the accounts, dated September 30, 2013, which indicated a fund balance of approximately \$275,000.00. According to the statement, the account was held in the name of Establishment A. Further, the statement showed no indication that Establishment A's pre-need accounts were separated and individually identified by purchaser number and social security number.

5. The Board met with the Respondent, who confirmed that the pre-need accounts for Establishment A and B, as well as the affiliated establishment, were set-up with in the name of the establishments, not the pre-need purchaser.

6. Maryland law requires that a pre-need escrow or trust account be "[e]stablished using the name, address, and Social Security number of the buyer." Md. Code Ann., Health Occ. § 7-405(d)(3)(ii). In addition, pre-need escrow or trust accounts are not assets of any licensee or establishment. *See* Md. Code Ann., Health Occ. § 7-405(d)(3)(i). In this case, based upon the pre-need records inspected and based up on the Respondent's admission, the pre-need funds for Establishment A and Establishment B were maintained in accounts held in the name of the Establishment A and B. Further, the pre-need accounts were not established in the name or social

security number of the buyer in violation of Maryland law. The Board notes that the Respondent has made efforts at bringing his pre-need accounts into compliance.

7. As the supervising mortician, the Respondent is held responsible for “all activities performed on behalf of the funeral establishment with [his] knowledge.” Md. Code Ann., Health Occ. § 7-310(e)(5)(i). Thus, the Board finds that the Respondent is responsible for his Establishments’ failure to comply with Maryland law regarding pre-need funds, specifically the failure to maintain separate accounts, established in buyer’s name and social security number, for each pre-need holder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 7-316(a)(26) (“Commits an act of unprofessional conduct in the practice of mortuary science”).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the license of the Respondent to practice mortuary science in the State of Maryland is placed on **PROBATION** for a minimum of **ONE (1) YEAR** subject to the following terms and conditions:

1. The Respondent’s status as a mortician be listed in the Board's computer records and website as being on “**Probation**”;
2. For the pendency of the Respondent’s probation, the Respondent shall obtain a Board-approved mentor (the “Mentor”), who shall meet with the Respondent at least

twice per month and as necessary to review and consult the Respondent's administration of pre-need accounts and compliance with Maryland pre-need law. For purposes of satisfying this condition, the Respondent shall, within **FIFTEEN (15) DAYS** from the date of this Order, submit a list of at least **TWO (2)** proposed candidates for mentoring to the Board for its review and approval. The Mentor shall submit written reports, signed by the Mentor, to the Board on a monthly basis, detailing the Respondent's progress. The Respondent is solely responsible for ensuring the proper and timely submission of monthly reports to the Board. Failure to submit a list of mentor candidates to the Board within **FIFTEEN (15) DAYS** from the date of this Order or failure to ensure the proper submission of monthly mentorship reports shall constitute unprofessional conduct and a violation of this probation.

3. Within **SIX (6) MONTHS** from the effective date of this Order, the Respondent shall provide documentation to the Board that he has, in accordance with Md. Code Ann., Health Occ. § 7-405(d), placed all pre-need funds associated with Establishment A and Establishment B into interest bearing escrow or trust accounts with a banking institution or savings and loan association that is insured by an agency of the federal government. The aforementioned accounts shall be established using the name, address, and Social Security number of the pre-need buyer and held in trust for the establishment that sold the contract to the purchaser. Failure to submit the requisite documentation clearly indicating compliance with Md. Code Ann., Health

Occ. § 7-405(d) within **SIX (6) MONTHS** from the effective date of this Order shall constitute unprofessional conduct and a violation of probation.

4. Pursuant to Md. Code Ann., Health Occ. § 7-310(e)(4), the Respondent may not act as a supervising mortician for any establishment during the pendency of this probation.
5. The Respondent is responsible for any costs associated with the compliance of the terms and conditions set forth in this Order.
6. The Respondent shall comply with the Maryland Morticians and Funeral Directors Act and the Board's regulations. Any violation of the Maryland Morticians and Funeral Directors Act or the Board's regulations shall constitute unprofessional conduct and a violation of probation; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this probation and/or this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Board, if there is a genuine dispute as to the material fact(s), or an opportunity for a show cause hearing before the Board, may impose any other disciplinary sanction which the Board may have imposed in this case under Md. Code Ann., Health Occ. § 7-316 including a reprimand, additional probation, suspension, revocation, and/or monetary fine, said violation being proven by a preponderance of the evidence; and it is further


ORDERED that no earlier than **ONE (1) YEAR** after the effective date of this Consent Order, the Board may consider a petition for termination of the Respondent's probationary status, provided that the Respondent has been compliant with the probationary terms of this Consent Order;

and it is further

ORDERED that there shall be no early termination of the **ONE (1) YEAR** probationary period. As such, the Board will not consider any requests from the Respondent to terminate probation any earlier than **ONE (1) YEAR** from the effective date of this Order; and it is further

ORDERED that this document is a **PUBLIC DOCUMENT** under Md. Code Ann., General Provisions § 4-333(b).

7/14/16
Date

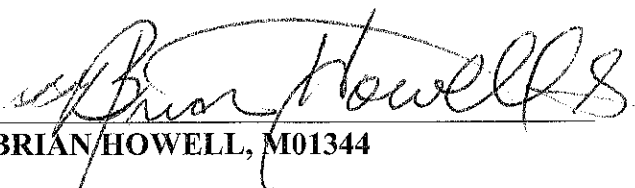


Victor C. March, Sr., President
Maryland State Board of Morticians and Funeral Directors

CONSENT

By this Consent, I acknowledge that I have read this Consent Order in its entirety and I hereby accept and submit to the foregoing Consent Order and its conditions. I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to legal counsel authorized to practice law in Maryland, to confront witnesses, to give testimony, to request subpoenas for witnesses, to call witnesses on my own behalf, to introduce testimony and evidence on my own behalf, and to all other substantive and procedural protections provided by law. I waive these rights, as well as any appeal rights under Maryland Code Annotated, State Government Article § 10-222.

I sign this Consent Order after having an opportunity to consult with an attorney, voluntarily and without reservation, and I fully understand and comprehend the language, meaning, terms, and effect of this Consent Order.


BRIAN HOWELL, M01344