

IN THE MATTER OF	*	BEFORE THE
JEFFREY LEE DAVIS, MORTICIAN	*	STATE BOARD OF
RESPONDENT	*	MORTICIANS AND FUNERAL DIRECTORS
License Number: M01414	*	Case No. 10 - 003

CONSENT ORDER

On November 16, 2009, the State Board of Morticians and Funeral Directors (the "Board"), charged Jeffrey Lee Davis, License Number M01414 (the "Respondent"), (D.O.B. September 14, 1974), with violation of certain provisions of the Maryland Morticians and Funeral Directors Act (the "Act"), Md. Health Occ. Code Ann. §§ 7-101 *et seq.* (2009 Repl. Vol.).

Specifically, the Board charged Respondent with violation of the following provisions of § 7-316 (a) of the Act:

Subject to the hearing provisions of § 7-319 of this subtitle, and except as to a funeral establishment license, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke any license if the applicant or licensee:

- (3) Commits fraud or misrepresentation in the practice of mortuary science;
- (20) Willfully makes or files a false report or record in the practice of mortuary science;
- (26) Commits an act of unprofessional conduct in the practice of mortuary science[;].

In addition, H. O. § 7-310 requires that a funeral establishment shall be licensed by the Board before the establishment may be used for the preparation of remains, viewing, and conducting services.

On January 8, 2010, a Case Resolution conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. At all times relevant to these charges, Respondent was and is licensed to practice mortuary science in the State of Maryland. Respondent was originally licensed to practice mortuary science in Maryland on or about July 29, 2004, being issued license number M01414. Respondent last renewed his license in or about April 2008, which license will be valid until April 2010.
2. At all times relevant to these charges, Respondent owned and operated J. L. Davis Funeral Home, P.A. (the "Funeral Home"), 12525 Bradbury Avenue, Smithsburg, Maryland 21783.
3. The Funeral Home was originally licensed by the Board as a funeral establishment on September 8, 2004, being issued license number E00397. The Funeral Home last renewed its license in or about November 2006, which license expired on November 30, 2008.
4. On or about September 19, 2008, the Board mailed to the Funeral Home, by regular mail, at its address of record with the Board, an Application for Renewal of Establishment License, with covering correspondence notifying Respondent that he had been identified by the Comptroller's office as delinquent in the payment of taxes or unemployment insurance contributions, which must be paid prior to the issuance of a

renewal establishment license. The Funeral Home was advised that the deadline for filing the renewal application was December 15, 2008, and that it will not be able to operate, after November 30, 2008, until the license is renewed.

5. The correspondence was not returned to the Board.

6. On or about December 11, 2008, Respondent filed an application for renewal of establishment license and paid the renewal application fee of \$600.

7. On January 19, 2009, the Funeral Home was sent correspondence by certified mail, at its address of record with the Board, notifying it that the Board was in receipt of the Funeral Home's renewal materials with the exception of a Letter of Good Standing from the State Department of Assessments and Taxation ("SDAT"); and therefore, the Board cannot issue the Funeral Home an establishment license. The letter instructed the Funeral Home to refrain from operating a funeral establishment IMMEDIATELY upon receipt of the letter and requested that Respondent execute a voluntarily "cease and desist" agreement, a copy of which was enclosed. (Emphasis in the original.)

8. Respondent personally signed for the certified mail on January 21, 2009.

9. Respondent did not submit a signed cease and desist agreement and did not respond to the Board.

10. On or about, February 18, 2009, the Executive Director of the Board noted in the file that the Funeral Home had not filed 2nd and 3rd quarter (June and September 2008) payroll unemployment insurance taxes with the State Comptroller.

11. In or about spring 2009, the Executive Director telephoned Respondent at the Funeral Home and left several messages for Respondent.

12. Respondent did not respond to the Executive Director.

13. On August 27, 2009, an Investigator/Inspector for the Board presented to the Funeral Home at approximately 8:30 a.m. The Investigator/Inspector observed a hearse on the property of the Funeral Home with the name of J. L. Davis Funeral Home on it. There was a casket in the hearse.

14. The Investigator/Inspector rang the bell and Respondent greeted the Investigator/Inspector at the door and allowed her to enter the Funeral Home. Respondent told the Investigator/Inspector that he had just loaded the casket in the hearse and was preparing to go to the church and then to the cemetery. When informed by the Investigator/Inspector that the funeral establishment license was non-renewed, Respondent replied, "A man has to make a living." Respondent also stated that he had received two bodies at the Funeral Home during the week of August 24, 2009, which he prepared for final disposition. The Investigator/Inspector entered the viewing room and obtained a copy of a funeral program for a decedent¹ who had died on August 23, 2009. The program stated that the funeral arrangements were by "J. L. Davis Funeral Home, Smithsburg, Maryland."

15. The Investigator/Inspector asked Respondent how many contracts for funeral services he has signed on behalf of the Funeral Home since November 30, 2008. Respondent estimated he has signed approximately thirty (30) to forty (40) contracts.

16. On or about August 27, 2009, the Investigator/Inspector presented to the Washington County Health Department and received copies of thirteen (13) death

¹ The name of the decedent is confidential. Respondent is aware of the name of the decedent.

certificates which the Funeral Home had submitted since November 30, 2008. Respondent signed² these death certificates as the "Funeral Service Licensee" and provided the name and address of the facility as "J. L. Davis Funeral Home, 12525 Bradbury Ave, Smithsburg, MD 21783."

17. In or about the week of August 31, 2009, the Investigator/Inspector presented to the Division of Vital Records ("Vital Records") office and was informed that the Funeral Home had filed a number of death certificates since November 30, 2008. Thereafter, Vital Records sent 108 death certificates to the Board, from December 1, 2009 through July 31, 2009, which Respondent signed as the "Funeral Service Licensee" and provided the name and address of the facility as "J. L. Davis Funeral Home, 12525 Bradbury Ave, Smithsburg, MD 21783."

18. On or about August 31, 2009 Respondent presented to the Board's office and gave Board staff a copy of his 2007 Corporate Tax Return and a receipt from the SDAT for payment of \$1,387.00, which represented payment of the total balance of corporate taxes due for tax year 2007.

19. While in the Board's office, the Investigator/Inspector asked Respondent about his signatures on the death certificates and pointed out that they were in different handwriting. Respondent acknowledged that all of the signatures were not his and that he had given his father permission to sign his name on his behalf.³

20. On or about September 15, 2009, the Investigator/Inspector for the Board presented to the Funeral Home. The Investigator/Inspector spoke with Respondent and

² The signatures do not all appear to be in the same handwriting.

³ Respondent's father was a licensed mortician; however, on August 21, 2003, his license was revoked for a minimum of one year. To date, Respondent's father has not petitioned the Board for reinstatement.

asked if she could perform the annual inspection of the Funeral Home, the last inspection having been performed in September 2008. Respondent agreed.

21. The Investigator/Inspector noted the following deficiencies:

- a. Floors were non-impervious, need sealant;
- b. Floors, walls and ceiling were not clean and sanitary;
- c. Ventilation system in the embalming room was not adequate because the exhaust fan was not operational;
- d. Prep table legs were porous due to rust;
- e. Walk-in refrigerator was not clean and contained contents other than human remains;
- f. Last bio-medical waste pickup at the Funeral Home was November 15, 2008;
- g. Previous annual inspection letter from the Board was not conspicuously displayed; and
- h. Funeral establishment license was not conspicuously displayed.

22. On or about September 15, 2009, the Investigator/Inspector verbally informed Respondent of the deficiencies and gave Respondent a copy of the "Funeral Firm Inspection Report." The Investigator/Inspector informed Respondent that he had thirty (30) days from the date of the inspection to correct the deficiencies.

23. To date, Respondent has not notified the Investigator/Inspector that he has completed the correction of the deficiencies.

24. To date, Respondent has not presented to the Board any additional receipts of payment of taxes from SDAT and the Comptroller's office has not notified the Board that it has received full payment of quarterly unemployment insurance taxes.

Summary of Violations

25. Executing death certificates with the name of an unlicensed funeral establishment is evidence of fraud or misrepresentation in violation of H.O. § 7-316(a)(3) (Commits fraud or misrepresentation in the practice of mortuary science.)

26. Executing death certificates with the name of an unlicensed funeral establishment is evidence of making or filing a false report or record in violation of H. O. § 7-316(a)(20) (Willfully makes or files a false report or record in the practice of mortuary science.)

27. Practicing mortuary science in an unlicensed funeral establishment, in violation of H.O. § 7-310, which requires that a funeral establishment shall be licensed before the establishment may be used for the preparation of remains, viewing, and conducting services, is evidence of unprofessional conduct in violation of H.O. § 7-316(a)(26) (Commits an act of unprofessional conduct in the practice of mortuary science.)

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board makes the following findings of fact, the Board concludes as a matter of law that Respondent committed fraud or misrepresentation in the practice of mortuary science, in violation of § 7-316(a)(3); Willfully made or filed a false report or record in the practice of mortuary science, in violation of § 7-316(a)(20); and committed an act of unprofessional conduct in the practice of mortuary science, in violation of § 7-316(a)(26).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 13th day of January, 2010, by an affirmative vote of a majority of the full authorized membership of the Board:

ORDERED that Respondent's license to practice mortuary science shall be **SUSPENDED**, effective the date of this Consent Order through, April 30, 2010, and it is further

ORDERED that effective May 1, 2010, Respondent shall be placed on **PROBATION** under the following terms and conditions for a minimum of two (2) years:

1. Respondent shall, prior to November 30, 2010, successfully complete a Board-approved course in professional ethics;
2. Respondent shall, prior to November 30, 2010, successfully complete a Board - approved course in management of a funeral establishment;
3. The above courses shall be in addition to any continuing education requirements mandated for continuing licensure. The hours of continuing education shall not count toward fulfilling other continuing education requirements that Respondent must fulfill in order to renew its license to operate;
4. Respondent shall pay to the Board, for deposit in the General Fund, a monetary penalty of \$1,200.00 payable in four (4) quarterly installments, with the first quarterly payment of \$300.00 due on March 31, 2010, the second quarterly payment due on June 30, 2010, the third quarterly payment due on September 30, 2010, and the fourth and final quarterly payment due on December 30, 2010;
5. Respondent shall comply with the Maryland Morticians and Funeral Directors Act and all laws, statutes and regulations pertaining to the practice of mortuary science; and it is further

ORDERED that any violation of the terms and conditions of this Consent Order shall be deemed unprofessional conduct in the practice of mortuary science; and it is further

ORDERED that if Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before a quorum of the Board if there is a genuine dispute as to the underlying material facts, or after an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case under §§ 7-316 & 7-317 of the Maryland Morticians and Funeral Directors Act, including a reprimand, probation, suspension, revocation and/or a monetary fine; and it is further

ORDERED that no earlier than two (2) years from May 1, 2010, and provided that Respondent has complied with the Consent Order terms during Respondent's period of two years and there are no new complaints, Respondent may petition the Board to terminate the conditions of this Consent Order; and it is further

ORDERED that Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.*

2-1-2010

Date



P. Hari Close, II, President
State Board of Morticians

CONSENT

I, Jeffrey Lee Davis, acknowledge that I am represented by counsel and have reviewed this Consent Order with my attorney, J. Gregory Hannigan, Esquire, before signing this document.

I am aware that I am entitled to a formal evidentiary hearing before a quorum of the Board of Morticians and Funeral Directors. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections.

I voluntarily enter into and agree to abide by the foregoing Findings of Fact, Conclusions of Law, and Order and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law and I waive my right to a full evidentiary hearing as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license to practice mortuary science.

I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order, consisting of eleven (11) pages.

1-28-2010

Date

Jeffrey Lee Davis

Jeffrey Lee Davis
Respondent

January 28, 2010

Date

J. Gregory Hannigan
J. Gregory Hannigan, Esquire
Respondent's counsel

STATE OF MARYLAND

CITY/COUNTY OF WASHINGTON :

I HEREBY CERTIFY that on this 28th day of January, 2010, before me, a Notary Public of the State and County aforesaid, personally appeared Jeffrey Lee Davis, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Emilia J. Henson
Notary Public



My commission expires: 2-8-13