

IN THE MATTER OF	*	BEFORE THE MARYLAND
	*	
DREW REMOVAL SERVICE, LLC	*	STATE BOARD OF
	*	
Permit Number MT0012	*	MORTICIANS AND
	*	
	*	FUNERAL DIRECTORS

CONSENT ORDER OF PROBATION

On or about October 27, 2016, the Maryland State Board of Morticians and Funeral Directors (the “Board”) received information regarding a mortuary transport service (the “Respondent”) in the State of Maryland. Based upon that information, the Board initiated an investigation. As a result of that investigation, on February 27, 2017, the Board met with the owner of the mortuary transport service and his attorney in an attempt to resolve 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 permitted to operate as a mortuary transport service in the State of Maryland, permit number MT0012.
2. On or about October 27, 2016, the Board received a complaint from an individual regarding the Respondent. The complainant made several allegations, including (1) that the Respondent did not use body bags during removal, aside from medical examiner cases; and (2) that the Respondent did not have workers’ compensation insurance nor did the Respondent pay into the Maryland Unemployment Insurance fund. The Board initiated an investigation.

3. Pursuant to that investigation, the complainant was interviewed under oath by the Board's investigator. During that interview, the Complainant stated that he was hired by the Respondent to provide it with transport and removal services. The Complainant was registered with the Board as a registered transporter for the Respondent after completing the requirements set forth in COMAR 10.29.21.04(B)-(C). The Complainant further stated that he was asked to sign a contract stating that he would be operating as an independent contractor under the name "[Complainant's Surname's] Removal Service." The Complainant stated that the Respondent paid him by check made out to the Removal Service that was identified in the contract. The Removal Service identified in the contract signed by the Complainant is not and was not a permitted transport service in the State of Maryland.

4. Pursuant to the investigation, the Board's investigator interviewed another individual under oath that provided transport and removal services for the Respondent. This individual was registered with the Board as a registered transporter for the Respondent after completing the requirements set forth in COMAR 10.29.21.04(B)-(C). This individual stated that he worked for the Respondent as a "self-contractor" under the name "W. Transport Service." "W. Transport Service" is not and was not a permitted transport service in the State of Maryland. In reference to the Complainant's allegations regarding the Respondent's use of body bags, the individual stated that he was instructed to re-use them as long as they could be wiped clean.

5. The owner of the Respondent mortuary transport service also was interviewed under oath. The owner stated that the Complainant and the individual described in paragraph 4 above had completed the requirements to be registered transporters and that they were registered under Respondent's license. He stated that he paid these individual transporters as sub-

contractors and issued them a 1099 tax form at the end of the year. Each transporter would rent a vehicle owned by the Respondent to perform removal services. The owner analogized the arrangement between the transporters and the Respondent as being similar to the arrangement between a trade embalmer performing services for a funeral establishment. The owner acknowledged that he requested the contractors sign contracts with the Respondent transport service. Regarding the use of body bags, he acknowledged that the Respondent transport service did re-use body bags if no fluid residue was left within them and they were cleaned after each use.

6. The Board issued an investigative subpoena to the Respondent. Among other documents requested, the Board requested the contracts (the "Agreement") that the Respondent had with its removers/transporters. The Respondent complied with the subpoena and supplied those documents to the Board. Section II, Paragraphs B. and C. of the Agreement establish that the remover/transporter agrees to perform services for the Respondent as an independent contractor. Section III, Paragraph D. of the Agreement also indicates that the Respondent is not liable for Workers' Compensation for individuals that signed the Agreement.

7. The Respondent also produced a certificate of insurance given to the Respondent by its insurance agent to demonstrate the Respondent's belief that the insurance carried by the Respondent would also cover the subcontracting transporters as required by law. Specifically, the owner produced a Certificate of Liability Insurance, which stated that the Respondent's general liability coverage applied to Respondent's 1099 sub-contractors. Since the initiation of the Board's investigation, the Respondent has, according to its owner, altered its arrangements with its associated registered transporters to establish an employer – employee relationship,

rather than an independent contractor relationship. Further, Respondent will only use permitted transport service companies on an independent contractor basis.

8. The Maryland Morticians and Funeral Directors Act (the “Act”) regulates mortuary transport services and their associated registered transporters in the State of Maryland. *See* Md. Code Ann., Health Occ. (“HO”) §§ 7-601 *et seq.* The Act defines “mortuary transport service” as “an individual or a business entity that, for compensation, removes and transports human remains or *employs* a transporter to remove or transport human remains.” *See* HO § 7-601(b)(1) (emphasis added). The Act defines “registered transporters” as “an *individual employee* of a mortuary transport service who has registered with the Board to remove and transport human remains.” HO § 7-601(e) (emphasis added). Moreover, the Act requires that the mortuary transport service have liability insurance that covers each transporter “employed” by the mortuary transport service. HO § 7-602(b)(1)(iii). Furthermore, several requirements set forth in the Board’s regulations state that an employer – employee relationship is necessary between the transport service and its associated transporters. *See* COMAR 10.29.21.03.F (“The permit holder shall be responsible for registering all transporters in their employ”); COMAR 10.29.21.04.E. (“The permit of the mortuary transport service that employs the registered transporter shall be prominently displayed on the person of the registered transporter by means of an identification card”); COMAR 10.39.21.04.F (“The permit holder shall confiscate the identification card of a transporter who is no longer in the permit holder’s employ and return it to the Board”). As such, the Board interprets its statute and regulations to believe that an employer – employee relationship must be established between a mortuary transport service and its associated registered transporters. As set forth in the Agreement that the Respondent maintained

with its transporters, no such relationship existed. Moreover, based upon the Agreement, the Respondent was contracting with entities that were not permitted with the Board. Thus, the Board finds that the Respondent's establishment of independent contractor relationships with individuals not permitted as transport services was unprofessional conduct within the meaning of HO § 7-604(24).

9. In addition, the Board considers the Respondent's practice of re-using body bags also to be unprofessional conduct within the meaning of HO § 7-604(24). The Board finds that the re-use of body bags to be outside of generally accepted standards in the practice of mortuary science and mortuary transportation in that it is potentially unsanitary. Respondent, through its owner, respectfully disagrees with the Board's contention in this regard. Respondent contends that clean body bags are routinely re-used in the business of mortuary transportation so long as the bags have not come into contact with any bodily fluid and have been sanitized.

10. The Respondent, through its owner, has stated that it does not believe that the conduct set forth above violates any provision of the Act, however acknowledges the totality of the Board's evidence and accepts the Board's findings, conclusions of law, and sanction in order to resolve this matter without the necessity and expense of a formal hearing.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 7-604(24) ("Commits an act of unprofessional conduct while removing and transporting human remains").

ORDER

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

ORDERED that the permit of the Respondent to practice as a mortuary transport service in the State of Maryland is hereby placed on **PROBATION** for a minimum of **SIX (6) MONTHS**. During the **SIX (6) MONTH** probationary period, the Respondent shall comply with the Maryland Morticians and Funeral Directors Act and the Board's regulations with respect to the operation of a mortuary transport service in the State of Maryland. Any alleged violation of the Maryland Morticians and Funeral Directors Act or the Board's regulations with respect to the operation of a mortuary transport service in the State of Maryland may constitute unprofessional conduct and a violation of probation; and it is further

ORDERED that if the Respondent is alleged to have violated probation, 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. § 7-604 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

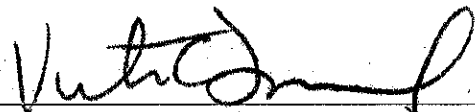
ORDERED that no earlier than **SIX (6) MONTHS** after the effective date of this Consent Order, the Board will consider a petition for termination of the Respondent's probationary status, provided that the Respondent has been compliant and has no complaints pending with the Board; and it is further

ORDERED that there shall be no early termination of the six (6) month probationary

period. As such, the Board will not consider any requests from the Respondent to terminate probation any earlier than six (6) months 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).

5/10/17
Date

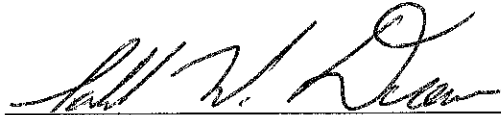


Victor C. March, Sr., President
Maryland State Board of Morticians and Funeral Directors

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.



**TODD DREW, on behalf of
DREW REMOVAL SERVICE, LLC (MT0012)**