

IN THE MATTER OF
LILLIE DIANA JOHNSON
RESPONDENT
License Number: M00319

* BEFORE THE
* STATE BOARD OF
* MORTICIANS AND
* FUNERAL DIRECTORS
* Case No. 13-017A

* * * * *

PRE-CHARGE CONSENT ORDER

In approximately July, 2013, the Maryland State Board of Morticians and Funeral Directors (the "Board") opened an investigation into Lillie Diana Johnson (the "Respondent"), a licensed mortician in the State of Maryland, license number M00319. The Board has grounds to charge the Respondent with violations of the Maryland Morticians and Funeral Directors Act (the "Act"), Md. Code Ann., Health Occ. I ("Health Occ.") § 7-101 *et seq.* (2014 Repl. Vol.).

Specifically, the Board has grounds to charge the Respondent with violating the following provisions of the Act:

§ 7-316. Denials, reprimands, suspensions, and revocations -- Grounds

(a) In general. -- 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:

(26) Commits an act of unprofessional conduct in the practice of mortuary science;

...

§ 7-405. Pre-need contracts

(d) Deposit of funds; status and requirements of account. --

(1) Within 10 days after receiving a payment under a pre-need contract, the seller shall deposit into an interest bearing, escrow or trust account:

(i) For services, 100% of the payment under the pre-need contract; and

(ii) For goods:

1. An amount from the payment that is equal to 80% of the selling price of a casket or casket vault under the pre-need contract; and

2. 100% of the payment that is for all other goods under the pre-need contract.

(2) The interest bearing, escrow or trust account shall be with:

(i) A banking institution that is insured by an agency of the federal government; or

(ii) A savings and loan association that is insured by an agency of the federal government.

(3) (i) A pre-need escrow or trust account may not be deemed an asset of:

1. The individual licensee; or

2. The licensed funeral establishment.

(ii) A pre-need escrow or trust account with a banking institution or savings and loan association described in paragraph (2) of this subsection shall be:

1. Established using the name, address, and Social Security number of the buyer; and

2. Held in trust for the licensed funeral establishment.

(4) (i) Any interest or dividends earned by the escrow or trust account prior to service being rendered belong to the buyers of the pre-need contracts.

(e) Administration of accounts; irrevocable trusts; notice. --

- (2) (i) Except as otherwise provided in this subsection, a seller may not withdraw from the account any money received from a buyer unless the services and merchandise have been provided as agreed in the contract.

...

(f) Scope of section; funding by life insurance policy or annuity contract. --

...

- (3) (i) A pre-need contract that is a guaranteed contract, a guaranteed in part contract, or a nonguaranteed contract may be funded by a life insurance policy or an annuity contract if:

1. The mortician, funeral director, licensed funeral establishment, or surviving spouse is not the owner of or beneficiary under the life insurance policy or annuity contract.

In lieu of the Board issuing charges, the Respondent and the Board agreed to enter into this public Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds the following facts:

Background

1. At all times relevant to this Consent Order, the Respondent has been a licensed mortician in the State of Maryland. On or about May 1, 1983, the Board initially granted the Respondent a license to practice mortuary science in the State of Maryland, number M00319. The Respondent's license is current through April 30, 2016.

2. At all times relevant to this Consent Order, the Respondent has been employed as the Supervising Mortician at a funeral establishment located in Baltimore, Maryland (the "Funeral Home").

3. In approximately July, 2013, the Board received a complaint (the "Complaint") from a former employee of the Funeral Home alleging that embalming work was being performed there without proper supervision by a licensed mortician. The Complaint did not name the individual performing the unauthorized embalming work.

6. Based on the Complaint, the Board began an investigation of the Funeral Home and the Respondent.

First Inspection

7. On or about October 8, 2013, Board inspectors performed an inspection at the Respondent's Funeral Home.

8. The Board inspectors identified numerous violations of the Board's sanitation requirements at the Respondent's facility, including but not limited to: signs of serious rodent infestation; missing sharps container; a regular trash container misused for bio-hazardous waste materials; and failure to properly tag corpses.

9. During the same inspection, Board staff examined several of the Respondent's files including three (3) pre-need contracts.¹ Two of the contracts had been pre-paid and the third was to be funded by a life insurance policy. The Board inspector sought the account records related to the pre-paid contracts, in order to document that the contract buyers' funds were properly deposited and kept in a trust or escrow account as required by the Board's statute. However, the Respondent was unable to provide any.

¹ A pre-need contract is "an agreement between a consumer and a licensed funeral director, licensed mortician, or surviving spouse to provide any goods and services purchased prior to the time of death." *Health Occ. § 7-101(v)*.

10. On or about October 9, 2013, the next day, the Funeral Home's corporate manager (the "Manager") presented bank statements to Board staff that she claimed pertained to the funds received from the buyers of the contracts. However, upon examination by Board staff, the records contained no indication that they were related to any specific pre-need contract. Instead, the documents simply showed business accounts in the Funeral Home's name. It is impossible to determine whether the pre-need contract buyers' funds are or were ever held in those accounts. In any case, the Manager could not produce records indicating proper management of the funds in trust or escrow accounts.

11. When Board staff inquired further, the Manager admitted that she "had the cash pre-funding accounts in my bank accounts." Nevertheless, she insisted to Board staff that she was able to keep track of "[whose] money was where" by memory.

Second Inspection

12. On or about January 24, 2014, Board staff performed a follow-up inspection of the Respondent's facility. By this time, the Respondent had sufficiently addressed the previously flagged sanitation issues. Board staff also reviewed an additional five (5) pre-need contracts selected randomly from the Respondent's files. These five were funded by life insurance policies.

13. Upon review, it was determined that for two (2) of the insurance-funded pre-need contracts, the Funeral Home was listed as both owner and primary beneficiary, in violation of the Board's requirements, and that in two (2) more of the contracts, the Funeral Home had submitted requests to the insurance company

attempting to become primary beneficiary on the policies without the respective policy owners' signatures, and so the insurance company refused to grant with requests.

Third inspection

14. On or about January 12, 2015, Board staff reviewed an additional five (5) pre-need contracts to which the Funeral Home was a party. Three (3) of the buyers had paid in advance, yet the Respondent could produce no records showing that the buyers' funds were in a trust or escrow account, or indeed in any account.

Fourth Inspection

15. On or about March 4, 2015, Board staff conducted another examination of the Funeral Home's pre-need contracts. This time, Board staff reviewed an additional eleven (11) pre-need contracts. At least seven (7) were cash-funded contracts, yet the Respondent could produce no records showing that the funds received from the buyers were properly deposited and held in trust or escrow accounts.

16. Instead, the Board was simply provided a document that listed several pre-need contract buyers' names next to the names of various banks. Along with this document was a haphazard collection of monthly bank statements and balances for various accounts in Funeral Home's name.

17. Moreover, the deposit amounts shown in these accounts do not match the amounts buyers paid the Funeral Home. Therefore, it is apparent that the Funeral Home deposited and held the buyers' pre-need contract funds in its own business accounts with no accounting controls.

Fifth Inspection

18. On or about March 19, 2015, Board staff reviewed five (5) more pre-need contracts of the Funeral Home. For two (2) cash-funded contracts, the Respondent was unable to produce records showing that the funds had been properly deposited and held in escrow or trust accounts as required under the Board's statute.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Respondent's conduct, as described above, constitutes acts of unprofessional conduct in the practice of mortuary science, in violation of Health Occ. § 7-316(a)(26). Specifically, the Respondent, knowingly acting on behalf of the Funeral Home as the responsible party, failed to properly ensure that proceeds from at least fourteen (14) cash-funded pre-need contracts it sold to consumers were held in trust or escrow accounts, rather than the Funeral Home's own bank accounts, in violation of Health Occ. § 7-405(d) & (e) as cited above. Further, the Respondent, knowingly acting on behalf of the Funeral Home as the responsible party, failed to ensure that the Funeral Home was not designated as the owner and/or beneficiary of insurance policies taken out by consumers for the purpose of funding fund pre-need contracts, in violation of Health Occ. § 7-405(f) as cited above .

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the Board hereby:

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **one (1) year** and until the following terms and conditions are satisfied:

1. The Respondent shall successfully complete a course, approved in advance by the Board, equivalent to 8 hours of continuing education (CE) credit focusing on the ethics of Mortuary Science practice, and shall submit documentation to the Board of her successful completion of this course; and
2. Within 90 days from the effective date of this Consent Order, the Respondent shall complete **EITHER** (a) **OR** (b) below:
 - a) Permanently cease all employment at any funeral establishment operated by the Manager of the Funeral Home, and submit a letter so notifying the Board; **or**
 - b) Submit to the Board a detailed report documenting the status of all pre-need contracts the Funeral Home has been a party to in the three (3) years previous to the effective date of this Consent Order. The report shall contain the Respondent's written certification that the report is comprehensive and accurate. Specifically, the report shall clearly explain and provide appropriate documentation to demonstrate the following:
 - i. For all cash-funded pre-need contracts: that all monies received by the Funeral Home under the contract are held within a trust or escrow account according to the requirements of the Act; **and**
 - ii. For all insurance-funded pre-need contracts: that the Funeral Home is neither an owner nor a beneficiary of any insurance policy that is the source of funding for a contract; and it is further

ORDERED that the Board shall have sole discretion to determine whether any report submitted pursuant to this Consent Order satisfactorily complies with the terms of this Consent Order; and it is further

ORDERED that after a minimum period of one (1) year from the effective date of this Consent Order, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation

may be terminated through an order of the Board. The Board shall grant termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending investigations or outstanding complaints related to the facts outlined in this Consent Order; and it is further

ORDERED that the Respondent shall comply with the Act; and it is further

ORDERED that the Respondent shall at all times cooperate with the Board, any of its agents or employees, and with the Board-assigned inspector, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that no part of the training or education that the Respondent receives in order to comply with this Consent Order may be applied to her required continuing education credits; and it is further

ORDERED that if the Respondent violates any of the terms or conditions of the Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose an additional probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty, said violation of probation being proved by a preponderance of the evidence; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-101 et seq. (2014 Repl. Vol.).

10/14/15
Date


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

CONSENT

I, Lillie Diana Johnson, acknowledge that I have had the opportunity to consult with counsel at this and all stages of this matter but freely and voluntarily have elected not to do so. I understand that this Consent Order will resolve the investigation against me in this matter in lieu of Charges and a formal evidentiary hearing. By this Consent, I agree to be bound by the terms of this Consent Order. I acknowledge under oath that I in fact committed the specific violations as set forth above. I acknowledge under oath the accuracy of the Findings of Fact and the validity of the Conclusions of Law contained in this Consent Order. I acknowledge that for all purposes, the Findings of Fact and Conclusions of Law will be treated as if proven and/or as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these Findings of Fact and Conclusions of Law. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I waive my right to any appeal in this matter. I affirm that I have asked and received satisfactory answers to all my questions regarding the language, meaning, and terms of this Consent Order. I sign this Consent Order voluntarily and

without reservation, and I fully understand and comprehend the language, meaning, and terms of this Consent Order.

Sept 25 2015
Date

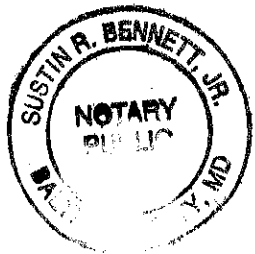
Lillie Diana Johnson
Lillie Diana Johnson
The Respondent
Maryland Licensed Mortician
License No. M00319

NOTARY

STATE OF Maryland
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 25th day of September 2015, before me, a Notary Public of the foregoing State and City/County personally appeared Lillie Diana Johnson, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.



Justin R. Bennett, Jr.
Notary Public

My commission expires: 10-19-2015