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|------------------------|---|-------------------|
| IN THE MATTER OF       | * | BEFORE THE        |
| JOHN O. MITCHELL, IV   | * | STATE BOARD OF    |
| Respondent             | * | MORTICIANS AND    |
| License Number: M01055 | * | FUNERAL DIRECTORS |

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**CONSENT ORDER**

On February 21, 2014, the State Board of Morticians and Funeral Directors (the "Board"), charged John O. Mitchell, IV, License Number M01055 (the "Respondent"), 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. and 2013 Supp.).

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:

- (5) Aids or abets an unauthorized person in the practice of mortuary science;
- (24) Violates any rule or regulation adopted by the Board;
- (26) Commits an act of unprofessional conduct in the practice of mortuary science[.]

H.O. § 7-101(u) (iii) (1) Practice mortuary science means:

- (iii) For compensation, to arrange for or make final disposition of a dead human body.

H.O. § 7-405 Pre-need contracts

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(b) (1) Only a licensed mortician, a licensed funeral director, or a holder of a surviving spouse license may offer or agree, directly or indirectly, to provide services or merchandise under a pre-need contract.

The Board rule or regulations which the Board charged Respondent with violating are following pre-need contract provisions of Code Md. Regs. tit. 10, § 29.06:

**.03 Execution of Pre-need Contract.**

A. Only a licensed mortician, licensed funeral director, or holder of a surviving spouse license shall execute a pre-need contract with a buyer.

**.10 Prohibitions.**

A. The following individuals may not enter into a pre-need contract with a buyer:

(4) An individual who is not licensed by the Board as a mortician, funeral director, or surviving spouse license holder.

On April 9, 2014, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Board and 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:

**I. Background**

1. At all times relevant to the 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 August 30, 1995, being issued license number M01055. Respondent last renewed his license on or about April 23, 2013, which license will be valid until April 30, 2015.

2. At all times relevant to the charges, Respondent was and is a co-owner of Mitchell-Wiedefeld Funeral Home, Inc. (the "Funeral Home"), 6500 York Road, Baltimore, Maryland 21212, which has been licensed as a corporate funeral entity in Maryland since 1931; and, licensed as a funeral establishment since 1971. Respondent is the President and supervising mortician of the Funeral Home, which employs five licensed morticians, including Respondent. Individual A<sup>1</sup>, the co-owner of the Funeral Home is the Treasurer. Individual A is not licensed to practice mortuary science in Maryland or in any other state.

## **II. Complaint and Investigation**

3. On or about September 20, 2013, an unnamed individual left a package in the lobby of the building where the Board maintains an office. The package, which was delivered to the Board, contained approximately thirty-three (33) at-need and pre-need agreements between the Funeral Home and various clients, which had been signed or initialed by Individual A, co-owner of the Funeral Home and an unlicensed individual.

4. On November 26, 2013, Board staff conducted an annual inspection and audit of the Funeral Home. Board staff served Respondent with a subpoena for "The entire original files pertaining to At-Need and/or Pre-Need funeral contracts/arrangements made by your business establishment..." for thirty-three (33) named individuals, hereinafter Clients A through GG. The names of the individuals

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<sup>1</sup> Respondent is aware of the identity of Individual A

were selected from the documents which had been provided to the Board by the anonymous complainant.

5. On November 26, 2013, Respondent submitted to Board staff the thirty-three (33) subpoenaed original files. Respondent retained copies of the files.

6. A review of all of these documents revealed that Individual A, on behalf of Respondent and the Funeral Home, engaged in pre-need and at-need discussions with individuals and accepted and signed a number of pre-need and at-need agreements, as follows:

| <b>Client<sup>2</sup></b> | <b>Date</b> | <b>Written &amp;/or Accepted by</b> | <b>Type</b> | <b>Documents</b>  |
|---------------------------|-------------|-------------------------------------|-------------|---|
| A & B <sup>3</sup>        | 01/21/80    | Indiv A                             | Pre-Need    | Two unsigned cremation arrangement sheets & note to file initialed by Indiv A   |
| C                         | 10/25/90    | Indiv A                             | Pre-Need    | Funeral Purchase Agreement of 10.25.90 signed by Indiv A  |
| D                         | 09/21/94    | Indiv A                             | Pre-Need    | Pre-Need Funeral Purchase Agreements of 8.15.94 and 9.21.94, signed by Indiv A as "Director", Pre-Arrangement Escrow Agreement of 9.21.94, signed by a licensee |
| E,F <sup>4</sup>          | 10/25/95    | Indiv A                             | Pre-Need    | Pre-Need discussion notes and arrangement sheet of 10.25.95 written by Indiv A but not signed   |
| G                         | 12/06/95    | Indiv A                             | Pre-Need    | Pre-Need arrangement sheet of 12.6.95 initialed by Indiv A  |
| H                         | 02/01/96    | Indiv A                             | At-Need     | At-Need arrangement sheet initialed by Indiv A  |
| I                         | 02/21/96    | Indiv A                             | Pre-Need    | Pre-Need Funeral Purchase Agreement of 2.21.96, signed by Indiv A. Prepaid Funeral Contract Statement of Funeral Goods and Services signed by Indiv A 9.3.10    |
| J                         | 11/11/74    | Indiv A                             | At-Need     | Arrangement sheet of 11.11.74 w/ costs, initialed by Indiv A  |
| K & L                     | 11/04/96    | Indiv A                             | Pre-Need    | Handwritten notes of 11.04.96 by Indiv A for Pre-Need arrangements from meeting w husband   |

<sup>2</sup> The names of the clients are confidential. Respondent may obtain a Confidential Client Identification List from the Administrative Prosecutor.

<sup>3</sup> Two clients are listed on the same line when they are husband and wife.

<sup>4</sup> Client E was single. There is no "Client F."

|       |          |         |           |  |
|-------|----------|---------|-----------|--|
| M & N | 05/10/00 | Indiv A | Pre-Need- | Undated handwritten notes by Indiv A of discussion w both spouses about pre-need arrangements and at-need arrangement sheet of 5.10.00 regarding the wife initialed by Indiv A         |
| O     | 09/25/00 | Indiv A | Pre-Need  | Pre-Need Funeral Purchase Agreement "estimates" completed by Indiv A, unsigned and mailed by Indiv A to client on 9.25.00  |
| P     | 05/12/95 | Indiv A | At Need   | At-Need arrangement sheet w/ costs, initialed by Indiv A on 5.12.95  |
| Q     | 09/25/03 | Indiv A | Pre-Need  | Pre-Need Statement of Funeral Goods and Services signed by Indiv A on 9.25.03 and pre-need Funeral Purchase Agreement of 9.6.02 and arrangement sheet written and initialed by Indiv A |
| R & S | 03/16/06 | Indiv A | Pre-Need  | Notes of pre-need discussion initialed on 3/16/06 by Indiv A who met with both spouses   |
| T     | 04/13/07 | Indiv A | At Need   | Funeral Purchase Agreement of 4.13.07 signed by Indiv A and arrangement sheet initialed by Indiv A   |
| U     | 04/27/07 | Indiv A | At Need   | At-Need Funeral Purchase Agreement of 4.27.07 initialed by Indiv A and arrangement sheet initialed by Indiv A  |
| V     | 09/22/07 | Indiv A | At Need   | At-Need arrangement sheet w/ costs, initialed by Indiv A   |
| W     | 10/15/07 | Indiv A | At Need   | Funeral Purchase Agreement of 10.15.07 signed by Indiv A and arrangement sheet initialed by Indiv A  |
| X     | 12/21/09 | Indiv A | At Need   | Funeral Purchase Agreement of 12.21.09 signed by Indiv A and arrangement sheet initialed by Indiv A  |
| Y     | 08/21/10 | Indiv A | At Need   | At-Need Funeral Purchase Agreement signed by Indiv A and arrangement sheet completed by Indiv A  |
| Z     | 02/10/11 | Indiv A | At Need   | At-Need Funeral Purchase Agreement of 2.10.11 signed by Indiv A and arrangement sheet initialed by Indiv A   |
| AA    | 11/19/11 | Indiv A | At Need   | At-Need Funeral Purchase Agreement and arrangement sheet of 11.19.11 initialed by Indiv A, not signed by family  |
| BB    | 12/01/11 | Indiv A | At Need   | At-Need Funeral Purchase Agreement of 12.1.11 signed by Indiv A and arrangement sheet initialed by Indiv A   |
| CC    | 09/19/12 | Indiv A | At Need   | At-Need Funeral Purchase Agreement of 9.19.12 signed by Indiv A and arrangement sheet initialed by Indiv A   |
| DD    | 11/05/12 | Indiv A | At Need   | At-Need statement of costs of funeral good and services and arrangement sheet prepared by Indiv A on 11.25.12 but not signed or initialed. Did not meet w family.                      |
| EE    | 12/13/12 | Indiv A | Pre-Need  | Notes of meeting and discussion of 12.13.12 of pre-need arrangements, written and initialed by Indiv A   |
| FF    | 12/20/12 | Indiv A | At Need   | Funeral Purchase Agreement of 12.20.12 signed by Indiv A. Did not meet w family  |
| GG    | 03/07/13 | Indiv A | At Need   | At-Need Funeral Purchase Agreement of 3.7.13 and arrangement sheet of w/ costs, initialed by Indiv A   |
| HH    | 03/31/69 | Indiv A | Pre-Need  | Pre-Need arrangement sheet w/ costs, initialed by Indiv A, undated "Order of Cremation" witnessed by Indiv A   |
| II    | 09/22/69 | Indiv A | Pre-Need  | Pre-Need arrangement sheet w/ costs, initialed by Indiv A  |

7. On December 4, 2013, pursuant to a subpoena, Board staff interviewed Respondent. Respondent stated under oath:

- a. Respondent was aware that since approximately 1995, there were times that Individual A met with clients to make funeral arrangements;
- b. This conduct occurred approximately a few times a year;
- c. This conduct occurred if a close personal friend or family member of Individual A would call the Funeral Home and request to speak with Individual A;
- d. This conduct did not occur if another funeral director called the Funeral Home and requested someone to take care of a family who needed services;
- e. Individual A had discussions with families on the telephone and in-person at the Funeral Home;
- f. In the majority of cases, Individual A met with families by himself and without a licensed mortician being present;
- g. On a few occasions, either Respondent or another licensed mortician in the Funeral Home met with the families and Individual A;
- h. Respondent permitted Individual A to make funeral arrangements because he believed families were not being harmed and families specifically requested Individual A who they personally knew; and
- i. Respondent denied that Individual A ever conducted funerals, completed the contracts, or signed death certificates; and that these activities were all performed by licensed morticians.

8. On December 4, 2013, pursuant to a subpoena, Board staff interviewed Individual A. Individual A stated under oath:

- a. He is not a licensed mortician;
- b. He is "Chairman of the Board" and treasurer of the Funeral Home;

- c. He began owning and operating the Funeral Home in July 1965 when he and a licensed funeral director purchased the property at the present location;
- d. Since July 1965, Individual A has been involved in making funeral arrangements solely with families of friends and relatives;
- e. He would become involved when he was called by a friend or relative and asked to help with the death in the family;
- f. In 2013, he met with the mother of the deceased and made funeral arrangements with the family of his wife's best friend from college;
- g. In 2012, he made funeral arrangements with two families. In one of the cases, he met with the son, an attorney he had been working with, regarding the funeral of the son's mother. Individual A signed the purchase agreement. In the other case, he made pre-need arrangements with a fellow alumnus of his high school;
- h. In 2011, he made funeral arrangements with five families, which included the funeral arrangements for his mother-in-law;
- i. In 2010, he made pre-need arrangements with a member of his church, including discussion of a whole life insurance annuity. He signed the purchase agreement. Respondent signed the whole life insurance annuity agreement;
- j. In 2009, he prepared and signed a funeral purchase agreement for an individual who is a member of his church;
- k. In 2007, he met with the personal representative of an individual and signed the statement of funeral goods and services. In another case in 2007, he met with the son of the deceased and initialed the statement of goods and services;
- l. In 2006, he made pre-need arrangements;
- m. In 2003, he made pre-need arrangements for a friend from the Rotary club; although he did not sign the funeral purchase agreement;
- n. In 2002, he made funeral arrangements for his mother's brother;
- o. In 1996, he made funeral arrangements for the friend of a trustee of the Board of Directors of a private school for which he was also a board member;

- p. In 1995, he made funeral arrangements for an employee of the Funeral Home for whom he had previously made pre-need arrangements;
- q. In 1994, he made pre-need funeral arrangements with an individual;
- r. In 1980, he made pre-need arrangements with a husband and wife who were neighbors of his;
- s. On most of the agreements which he did sign, he crossed off the line which states "licensed mortician" because he does not hold himself out as a licensee;
- t. On some agreements he used the initials of his full name;
- u. In one case, he completed the cost of goods and services and an application for insurance annuity payment, which he signed, as "a representative of the funeral home." In addition, Respondent, who is a licensed insurance agent signed it; and
- v. In most instances, Individual A met with the individuals or families by himself. If the family member, relative, or neighbor knew Respondent, Respondent would sit in on the meeting.

### **III. Summary of Findings**

9. Permitting Individual A, an unlicensed individual, to make funeral arrangements, both pre-need and at-need, which is the practice of mortuary science as defined in H.O. § 7-101(u), is evidence that Respondent aided and abetted an unauthorized person in the practice of mortuary science, in violation of H.O. § 7-316(a)(5), evidence that Respondent violated the Board's rules and regulations in regard to the execution of pre-need contracts, in violation of H.O. § 7-316(a)(24), and evidence that Respondent committed an act of unprofessional conduct in the practice of mortuary science, in violation of H.O. § 7-316(a)(26).

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent aided or abetted an unauthorized person in the practice of



mortuary science, in violation of § 7-316(a)(5); violated any rule or regulation adopted by the Board, specifically by allowing an unlicensed individual to enter into and execute pre-need contracts, in violation of § 7-316(a)(24); 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 11 day of December, 2014, 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 for **thirty (30) days**, and it is further

**ORDERED** that effective thirty (30) days from the date of this Consent Order, Respondent shall be placed on **PROBATION** under the following terms and conditions for a minimum of one (1) year:

1. Within two (2) months of the date of the Consent Order, Respondent shall successfully complete a Board-approved course in professional ethics;
2. The above course 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 his license;
3. Respondent shall pay a monetary penalty of \$5,000.00 payable in full by June 30, 2015; and
4. 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 one (1) year from the date of this Consent Order, and provided that Respondent has complied with the terms of the Consent Order during Respondent's period of one year 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.*

  
Victor C. March, Sr., President  
State Board of Morticians and  
Funeral Directors 12/11/14

## CONSENT

I, John O. Mitchell, IV, acknowledge that I am represented by counsel and have reviewed this Consent Order with my attorney, Thomas J. Whiteford, 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 twelve (12) pages.

12/11/14  
Date

John O. Mitchell, IV  
Respondent

12/11/14  
Date

Thomas J. Whiteford, Esquire  
Respondent's counsel

**NOTARY**

STATE OF MARYLAND

CITY/COUNTY OF \_\_\_\_\_ :

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public of the State and County aforesaid, personally appeared John O. Mitchell, IV, License No M01055, 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.

\_\_\_\_\_  
Notary Public

My commission expires: