

BEFORE THE WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS

**WEST VIRGINIA BOARD OF
FUNERAL SERVICE EXAMINERS,**

RECEIVED OCT 14 2020

Complainant,

v.

Complaint No. 2020-09

**DAVID W. BOLYARD, JR.
Funeral Director License #3703
Embalmer License #4203
Crematory Operator License #0129**

Respondent.

CONSENT AGREEMENT

Respondent David W. Bolyard, Jr. (“Respondent”), and the West Virginia Board of Funeral Service Examiners (“Board”) enter into the following Consent Agreement for the purpose of resolving the above-styled complaint. As reflected in this Consent Agreement, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact, Conclusions of Law, and disposition of this matter. The Board, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. Respondent holds active licenses to practice funeral directing, embalming, and cremation in this State.

2. In February of 2020, the Board received a complaint against Respondent from Ross Marano and Sharon Berenda of Wexford, Pennsylvania. The Board docketed this complaint as Complaint 2020-07.

3. At its May 19, 2020, meeting, the Board dismissed Complaint 2020-07, finding that there was no probable cause to believe that the conduct alleged by Mr. Marano and Ms. Berenda violated the *West Virginia Funeral Services Examiners Act*, West Virginia Code § 30-6-1 through 31.

4. However, the Board discovered in its review of Complaint 2020-07 that Tyler Spicer, an individual operating under the direction and supervision of Respondent, had affixed his name to a Certificate of Cremation on January 3, 2020. By affixing his name to the Certificate of Cremation, Mr. Spicer certified that he was the person in charge of Mountain Cremation Service, LLC; that the remains of Michael Thomas Marano were cremated on January 3, 2020; and that Michael Thomas Marano died on December 28, 2019, at the age of 57 years.

5. It is undisputed that Mr. Spicer was not licensed by the Board in any capacity at the time he affixed his name to the Certificate of Cremation.

6. On May 19, 2020, along with its vote to dismiss Complaint 2020-07, the Board voted unanimously to initiate a complaint against Respondent for permitting or directing Mr. Spicer to engage in the unlicensed practice of cremation. By letter dated May 27, 2020, the Board issued the above-styled complaint (Complaint 2020-09) against Respondent and requested a response from Respondent within 30 days.

7. On June 10, 2020, Respondent submitted a response to the Board. Respondent stated that Mr. Spicer assisted licensed individuals in the cremation and that Mr. Spicer handled the

paperwork as part of his training to become licensed. Respondent acknowledged that he failed to notice that Mr. Spicer had affixed his name to the cremation certificate.

8. No other name besides Tyler Spicer appears on the Certificate of Cremation.

9. At its July 23, 2020, meeting, the Board considered the response and determined that probable cause existed to believe that Respondent's conduct violated the *West Virginia Funeral Services Examiners Act*.

10. Rather than set the matter for a formal disciplinary hearing, the Board elected to attempt to resolve the complaint through the instant Consent Agreement.

CONCLUSIONS OF LAW

1. Pursuant to the *West Virginia Funeral Services Examiners Act*, West Virginia Code § 30-6-1 through 31, the Board is charged with the regulation of the practice of embalming, funeral directing, and cremation, and the operation of funeral establishments and crematories in this State.

2. To this end, the Board is authorized to impose disciplinary action on a licensee in the form of a reprimand, censure, probation, suspension of license, a fine of up to \$1,000 per day per violation, and/or mandatory attendance at continuing education seminars. W.Va. Code § 30-6-23(c).

3. West Virginia Code § 30-6-23(a)(10) authorizes the Board to discipline a licensee if the licensee "knowingly permits a person not licensed, not certified, or not registered to engage in the profession of embalming, funeral directing or cremation."

4. By allowing Mr. Spicer to affix his name to a cremation certificate while Mr. Spicer was not licensed by the Board, Respondent violated West Virginia Code § 30-6-23(a)(10), rendering Respondent's license subject to discipline by the Board.

CONSENT

By signing below, Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Agreement voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein. Respondent acknowledges that he may pursue this matter through appropriate administrative proceedings and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent acknowledges the Findings of Fact set forth above, consents to the Board's finding that probable cause exists to conclude that the violations set forth above in the Conclusions of Law occurred, and agrees to the entry of the following Order:

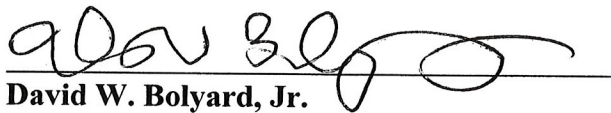
ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. Respondent is hereby reprimanded.
2. Respondent shall pay a fine in the amount of \$2500.00. Respondent shall pay such fine by cashier's check or money order, made payable to the State of West Virginia, and submitted to the Board within 60 days of the entry of this Consent Agreement by the Board.
3. Any deviation from the requirements of this Consent Agreement, without the prior written consent of the Board, shall constitute a violation of an order of the Board and may result in further disciplinary action, including, but not limited to, suspension of Respondent's license. The Board shall immediately notify Respondent via certified mail of the alleged violation of the Consent

Agreement. In the event Respondent contests the alleged violation of the Consent Agreement, Respondent is entitled to a hearing to challenge the alleged violation. The hearing shall be scheduled and conducted in accordance with the provisions of W. Va. Code §§ 30-1-8 and 30-6-1, *et seq.* and any rules promulgated by the Board.

CONSENT AGREEMENT AGREED TO BY:

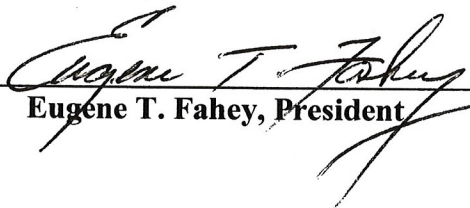

David W. Bolyard, Jr.

9/29/20
Date

ENTERED into the records of the Board of Funeral Service Examiners this:

19th day of October, 2020.

WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS,

By: 
Eugene T. Fahey, President