

BEFORE THE WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS

WEST VIRGINIA BOARD OF
FUNERAL SERVICE EXAMINERS,

Complainant,

v.

Complaint No. 2021-00

DAVID DEAL,
Funeral Director License #
Embalmer License #
Crematory Operator License #

Respondent.

CONSENT AGREEMENT

Respondent David Deal (“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. Respondent is the Licensee-in-Charge at Deal Funeral Home in Point Pleasant, West Virginia.

2. On July 15, 2020, the Board received a Complaint against Respondent from Chelsie Bush of Dallas, Texas. Ms. Bush also named Brad Deal, Respondent's son, in her Complaint. However, at the time of the activities relevant to the Complaint, Brad Deal was neither licensed nor was he a registered apprentice with the Board. The Board docketed this Complaint as Complaint 2021-00.

3. The Complaint concerns the arrangement conference and funeral service for Ms. Bush's grandfather, who died on June 26, 2020, for which Respondent was responsible.

4. An "arrangements conference" means "the time spent with the next-of-kin, or other Duly or legally authorized person or representative, planning and making financial arrangements for the funeral services, embalming, or final disposition of a dead human body." W.Va. Code R. § 6-1- 2.2 (2008).

5. Respondent was not present at Deal Funeral Home for the arrangements conference. Instead, the arrangements conference was handled by Greg Walker, a Deal Funeral Home employee who is not licensed by the Board in any capacity. At the time of the arrangements conference June 2020, Respondent had been hospitalized since January 2, 2020.

6. Respondent enlisted the assistance of another licensed funeral director in the area, Dennis Nunley, to be present at the funeral service. Greg Walker attended the funeral service with Mr. Nunley.

7. Ms. Bush alleges that, at the time of the arrangements conference, she was told that Brad Deal had been overseeing Respondent's business while Respondent was hospitalized. However, Brad Deal did not personally participate in the arrangements conference. In any event, at

the time of the arrangements conference, Brad Deal's application to the Board for an apprenticeship license was pending. The Board has since approved Brad Deal's apprenticeship application.

8. Ms. Bush alleges that there was no one onsite at Deal Funeral Home during the arrangements conference who was able to adequately guide or direct the process or answer the family's questions; that there was confusion concerning the costs for various aspects of the service and casket; that there was confusion concerning the flag to be used for the service (military); that the decedent's body was not properly positioned nor was he shaved or presentable for viewing with an open casket; and that attempts to discuss and resolve these matters with the Deal Funeral Home after the service were unsuccessful.

9. On August 21, 2020, Respondent, Brad Deal, and Greg Walker submitted responses to the Complaint.

10. Brad Deal, in relevant part, stated that Respondent was "present via telephone" during the arrangements conference; however, based on the responses, Respondent did not communicate directly with the family during the arrangements conference.

11. In his response to the Complaint, Respondent stated only as follows: "I was hospitalized January 2, 2020 through July 17, 2020." He provided no substantive response to Ms. Bush's allegations regarding the deficient arrangements conference or funeral service.

12. At its November 17, 2020, meeting, the Board considered the Complaint and responses and determined that probable cause existed to believe that Respondent's failure to properly supervise the arrangements conference violated the West Virginia Funeral Services Examiners Act.

13. 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)(4) authorizes the Board to discipline a licensee if the licensee “[v]iolat[es] any provision of this article or any rule, including the violation of any professional standard or rule of professional conduct, or public health laws.”

4. “A funeral director, licensed by this state, shall be responsible for and generally supervise any arrangements conference conducted within this state. A registered apprentice may be present and participate in the arrangements conference under the general supervision of a licensed funeral director.” W.Va. Code R. § 6-1-11.6 (2008).

5. “General supervision” is defined as “general oversight or overall responsibility for an activity by a licensed funeral director or licensed embalmer. General supervision does not require the physical presence of the licensed funeral director or licensed embalmer.” W.Va. Code § 6-1-2.11 (2008).

6. Although a licensed funeral director need not be physically present for an arrangements conference, the above-cited rules read together require (1) that he or she still provide general oversight for the conference, and (2) if not physically present, then a registered apprentice may be present in his or her place.

7. In the present Complaint, Respondent was hospitalized, and, therefore, unable to be physically present for the arrangements conference. However, Respondent still failed to provide general oversight of the arrangements conference by delegating the conference to an unlicensed individual who could not adequately guide and direct the process for the family.

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 \$1,000.00. 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 Deal

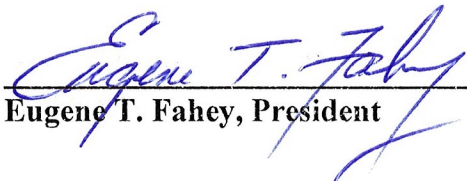
12/14/20

Date

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

21st day of December, 2020

WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS,

By: 

Eugene T. Fahey, President