

BEFORE THE WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS

**IN RE: Charles Hartwell, Licensee-in-Charge
Tyler Mountain Funeral Home and Tyler Mountain Memory Gardens**

COMPLAINT NO. 2023-11

CONSENT AGREEMENT AND ORDER

The West Virginia Board of Funeral Service Examiners (hereinafter “Board”), determined there is probable cause to believe Tyler Mountain Funeral Home and Tyler Mountain Memory Gardens (hereinafter “Respondent”) failed to comply with the *West Virginia Funeral Service Examiners Act*, and renders its funeral establishment license subject to discipline by the Board.

Following an inspection of its facility which revealed violations of the *West Virginia Funeral Service Examiners Act*, the Board issued a Board-Initiated Complaint on March 21, 2023, which provided the Respondent with written notice of the allegations against them. Brian Brooks, General Manager for Respondent, responded to the Board-Initiated Complaint on May 16, 2023, denying any violation of the *West Virginia Funeral Service Examiners Act*.

In lieu of a hearing, the parties have reached an agreement for the resolution of this matter and agree to the following Order:

FINDINGS OF FACT

1. Respondent holds an active funeral establishment license in the State of West Virginia, License No. WV-0322.
2. Pursuant to West Virginia Codes of State Rules Section 6-1-13, an inspection was performed on January 4, 2023, based upon the Board’s inquiry into a violation of the *West Virginia Funeral Service Examiners Act*:

- a. **An allegation was made that an unlicensed funeral director performed funeral directing services.** On July 7, 2023, Brian Brooks, an unlicensed funeral director, made funeral arrangements for Brenda Smith's funeral. The funeral contract for Ms. Smith's funeral was signed by Mr. Brooks.

Respondent's actions in allowing an unlicensed funeral director to practice funeral directing would violate West Virginia Code Section 30-6-1, which provides, "The practice of preparing dead human bodies for burial or cremation and the subsequent burial or cremation thereof has serious public health and safety considerations and should only be practiced by a person who has specific training in those fields. *Therefore, the Legislature hereby finds that to protect the public interest a person must have a license, as provided in this article, to practice embalming, funeral directing, and cremation and to operate a funeral establishment and crematory in the state of West Virginia.*" (Emphasis added).

3. The above allegation renders Respondent's establishment license subject to discipline by the Board. The Board is empowered to take disciplinary action against a licensee for violations of applicable laws, rules or regulations or where a licensee willfully departs from acceptable standards in professional conduct. *See* W.Va. Code § 30-6-5(10) and W.Va. Code § 30-6-23.

4. The parties agree to resolve this matter as set forth below.

BOARD'S CONCLUSION OF LAW

1. Respondent, at all times relevant hereto, held an active funeral establishment license, and is subject to the jurisdiction and authority of the Board and applicable licensing requirements.

2. That the Board has jurisdiction to take disciplinary action against the Respondent pursuant to W. Va. Code § 30-6-5.

3. The Board is empowered to suspend, revoke or otherwise discipline a licensee for violation of the West Virginia Funeral Service Examiners Act, W. Va. Code § 30-6-1 *et seq.*, and the rules promulgated thereunder.

4. Respondent acknowledges the Findings set forth above, though denying a violation, consents to the following Order:

CONSENT OF LICENSEE

Respondent acknowledges the following:

1. Respondent executes this Consent Agreement and Order voluntarily, freely, with the advice of counsel, and without compulsion or duress and mindful that it has legal consequences.

2. 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.

3. Respondent acknowledges that it may pursue this matter through appropriate administrative and/or court proceedings, and is aware of its legal rights regarding this matter, but intelligently, knowingly and voluntarily waive such rights.

4. Respondent waives any defense of laches, statute of limitations, estoppel, lack of jurisdiction, lack of due process, and waiver that he may have otherwise claimed as a condition of this agreement.

5. Respondent consents and agrees to the following terms and conditions:

ORDER

On the basis of the foregoing, the Board does hereby **ORDER** and **DECREE**:

1. That Respondent's funeral establishment license is placed on probation for a period of six (6) months subject to the following terms and conditions:


a. During the probation period, Respondent shall not engage in any violations of the *West Virginia Funeral Service Examiners Act*;

- b. During the probation period, Respondent will be subject to unannounced inspections for a period of six (6) months;
- c. Respondent must pay a fine in the amount of \$500.00.

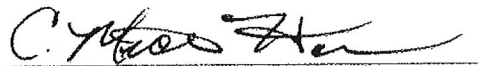
2. Respondent's failure to comply with the terms and conditions of this Consent Agreement and Order hereby imposed shall be deemed a violation of this Consent Agreement and Order, and should Respondent violate any of the terms of this Consent Agreement and Order, the Board may take further disciplinary action against Respondent's license.

3. This document is a public record as defined in W. Va. Code § 29B-1-2(5).

Entered this 2ND day of October, 2023.


_____, President
West Virginia Board of Funeral Service Examiners

Reviewed and Agreed to by:



Charles Hartwell, Licensee-in-Charge
Tyler Mountain Funeral Home and
Tyler Mountain Memory Gardens,
Respondent

9-28-2023

Date