

BEFORE THE WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS

IN RE: Nixon Funeral Home

COMPLAINT NO. 2023-08

West Virginia Board of
Funeral Service Examiners

FEB 05 2024

CONSENT AGREEMENT AND ORDER

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The West Virginia Board of Funeral Service Examiners (hereinafter "Board"), determined there is probable cause to believe Nixon Funeral Home (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.

On February 6, 2023, a Complaint was filed against Respondent alleging violations of the *West Virginia Funeral Service Examiners Act*. Thereafter, on February 9, 2023, an inspection was performed upon the Board's inquiry into said violation. On June 7, 2023, Respondent filed a response thereto. The Board has considered this matter and at its meeting on June 27, 2023, the Board found probable cause to believe that Respondent violated West Virginia Code of Reg. § 6-1-7 in that it failed to maintain its preparation room in a sanitary manner consistent with public health requirements. The Board issued a Board Initiated Complaint on August 14, 2023.

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

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BACKGROUND

1. Respondent is subject to the jurisdiction and authority of the Board and applicable licensing requirements.
2. There is probable cause to believe that Respondent failed to maintain the funeral home's preparation room in sanitary condition consistent with public health requirements. *See* W. Va. Code of Reg. § 6-1-7. The above allegation renders Respondent's establishment license subject to discipline by the Board. *See* W. Va. Code § 30-6-5(10) and W. Va. Code § 30-6-23.
3. The parties agree to resolve this matter as set forth below.

BOARD'S CONCLUSION OF LAW

1. That the Board has jurisdiction to take disciplinary action against the Respondent pursuant to W. Va. Code § 30-6-5.
2. The Board is empowered to suspend, revoke or otherwise discipline a license for violations of the West Virginia Funeral Service Examiners Act, W. Va. Code § 30-6-1 *et seq.*, and the rules promulgated thereunder.
3. That the actions of the Respondent in failing to maintain the funeral home's preparation room in sanitary condition consistent with public health requirements constitute violations of W. Va. Code § 30-6-1 *et seq.* and W. Va. Code of Reg. § 6-1-7 and such conduct are grounds for disciplinary action.

CONSENT OF LICENSEE

Respondent acknowledges the following:

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

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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**:

That Respondent's funeral establishment license is suspended for six (6) months. The six month suspension is hereby **STAYED**, and Respondent's funeral establishment license is placed on probation for a period of twelve (12) months, subject to the following terms and conditions:

1. During the probation period, Respondent shall not engage in any violations of the *West Virginia Funeral Service Examiners Act*;
2. During the probation period, Respondent will be subject to random, unannounced inspections for a period of one year;
3. Respondent must comply with all health regulations, in particular those addressing cleanliness, sanitation, and medical waste;¹
4. Respondent must obtain an updated air quality test within 30 days of entry of this agreement;

¹ An inspection report is attached to this order, which shall serve as a checklist to ensure that the preparation room is maintained in accordance with health requirements.

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5. Respondent's licensee-in-charge must complete blood-borne pathogen OSHA training within 60 days of entry of this agreement;
6. Formaldehyde levels must be tested within 30 days of entry of this agreement;
7. Within 30 days of entry of this agreement, Respondent's owner must update the Board in writing regarding his progress in taking measures to ensure that the funeral home is maintained in a healthy and sanitary condition for the public.

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 the Respondent violate any of the terms of this Consent Agreement and Order, the Board may take further disciplinary action, including imposition of the six (6) month suspension, against the Respondent's license.

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

Entered this 27th day of September, 2023.

 on Behalf of Board²
West Virginia Board of Funeral Service Examiners

Reviewed and Agreed to by:



Mitchell C. Nixon
Licensee-in-Charge
Nixon Funeral Home

2-3-24

Date

² The Board's President has recused himself from participation, consideration, and decision in this matter.