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BEFORE THE WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS

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

Petitioner,

v.

**BASIL W. SMITH, JR.
Funeral Service licenses No. FD3606
Embalmer License No. EM4106**

Complaint # 2024-03

Respondent

CONSENT AGREEMENT

At its meeting on November 9, the West Virginia Board of Funeral Service Examiners voted unanimously to initiate the following consent agreement for purpose of resolving the failure of the continuing education audit by Basil W. Smith, Jr.. This consent agreement is based on the following allegations:

1. Prior to July 1, 2023, Basil W. Smith, Jr., PO Box 549, Clay, West Virginia 25043, held an active funeral service license in the State of West Virginia.
2. Under W. Va. Code § 30-6-15(b), "Compliance with the requirements of continuing education, as specified by the board, is a prerequisite for license renewal."
3. Under the Board's 6 CSR 1 Rule, 19.3.1 states "Licensed Funeral directors and funeral service licensees shall attend approved continuing education programs as a prerequisite to license renewal. A funeral director licensee and a funeral service licensee shall obtain three hours every two years of general funeral service education, in which one of these hours must be in ethics, and four hours every two years of occupational safety or health-related training"
4. Respondent, having been licensed since 1994, renewed his license in a timely manner and signed his renewal application stating that the information "was true and correct" (See Exhibit 1).
5. Respondent's name was randomly drawn for the 2023 Continuing Education (CE) audit. Upon checking respondent's file and account in CE Broker, the official Continuing Education tracker for the Board, documentation of the required Continuing Education for the

2021-2023 renewal period could not be located.

6. Respondent was notified, by letter, that documentation of the required continuing education credits would need to be submitted to the board office to show compliance with W. Va. Code § 30-6-15(b).

FINDING OF FACT

1. Respondent submitted documentation of three (3) hours of General CE credits and four (4) hours of OSHA CE credits obtained **by self study** on September 14, 2023 (*See Exhibit 2*) and September 13, 2023 (*See Exhibit 3*), respectively. Respondent did not submit any documentation of receiving any Continuing Education during the renewal cycle of July 1, 2021 to June 30, 2023.

2. The Board's Series 1 Rule, 6 CSR1.19.3.2. states, in part, "Licensees may get one-quarter of required continuing education credits through audio or video media." Whereas the above continuing education credits were obtained entirely by self study, the Respondent did not comply with the requirements of 6 CSR1.19.3.2.

3. The Board is empowered to take disciplinary action against a licensee for violations of applicable laws, rules or regulations. *See* W. Va. Code § 30-6-5(10) and W. Va. Code § 30-6-23(a)(2).

CONSENT

By signing below, Respondent agrees to the following:

1. Respondent has had the opportunity to consult 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 to obtain 5.25 hours of continuing education credits in person within six (6) months of executing of this Consent Agreement.
2. Respondent is to submit documentation of completion of the 5.25 hours of continuing education to the Board's office upon completion.
3. By complying with items 1 and 2 of this ORDER within six (6) months, the Consent Agreement will be completed and dismissed.
4. Respondent will pay a fine of \$ 150.00 and administrative cost of \$ 100.00.

CONSENT AGREEMENT AGREED TO BY:



Basil W. Smith, Jr.

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

9th day of November, 2023

WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS

By:



Eugene T. Fahey, President