

STATE OF NEW JERSEY
 DEPARTMENT OF LAW & PUBLIC SAFETY
 DIVISION OF CONSUMER AFFAIRS
 BOARD OF MORTUARY SCIENCE

CERTIFIED TRUE COPY

IN THE MATTER OF THE)
 APPLICATION FOR REINSTATEMENT)
 OF THE LICENSE OF)
)
 CAROLYN M. WHIGHAM)
 License No. JP3888)
)
 TO PRACTICE MORTUARY SCIENCE)
 IN THE STATE OF NEW JERSEY)
 _____)

Administrative Action

ORDER.

FILED WITH THE BOARD
 OF MORTUARY SCIENCE
 ON February 28, 2001

This matter was initially opened to the State Board of Mortuary Science (the "Board") upon receipt of information that respondent Carolyn M. Whigham allegedly violated certain administrative regulations promulgated by the New Jersey Department of Human Services governing the receipt of monies from County Welfare agencies for publicly subsidized funerals and burials. Those regulations provided for county monies from the Supplemental Security Income (SSI), Medicaid, Aid to Families with Dependent Children (AFDC) and the General Public Assistance programs to be paid for the funerals and burials of eligible individuals. See N.J.A.C. 10:83-1.3; 10:81-7.21; 10:85-4.8. At the time of the alleged misconduct, all of those programs established identical eligibility criteria and conditions. The maximum reimbursable allowance was \$1,970 for funeral expenses and \$460 for cemetery expenses for a total maximum allowance of \$2,430. Any public monies expended for the funeral and cemetery expenses were to be reduced by the combined

available resources of the decedent and any and all contributions from next of kin and other interested parties: those resources included cash and life insurance.¹

Following negotiations, and without making admissions with respect to the alleged conduct, respondent and her counsel, Morton S. Bunis, Esq., entered into a Consent Order filed by the Board on August 29, 1997 (the "Consent Order"). The Consent Order provided for the voluntary surrender of respondent's license to practice mortuary science, along with payment of civil penalties and the costs of investigation in the amount of \$59,347.69, and restitution to the County of Essex in the amount of \$44,164. In addition, the Consent Order recognized the existence of a lawsuit concerning the ownership of the funeral home and respondent's right to sell the funeral home. Pursuant to the terms of the Consent Order, in the event respondent was deemed to have the right to sell the funeral home, she agreed to use her best efforts to sell it within six months of the entry of the Consent Order. Moreover, she agreed that upon sale of the funeral home, and following a brief period in which she would be permitted to act as an uncompensated advisor to the purchaser of the funeral home, respondent agreed not to have "any ownership interest in, or employment with, any registered mortuary in the State of New Jersey."

The Consent Order was subsequently amended by two later consent orders. The First Amended Consent Order, filed July 7, 1998, permitted respondent to act as a consultant, advisor or

¹ Subsequently, the regulations were superseded by the provisions of the statute known as "Work First New Jersey" (WFNJ), N.J.S.A. 44:10-55 et seq. and regulations promulgated thereunder, N.J.A.C. 10:90-1.1 et seq. The WFNJ regulations permit licensees to accept contributions from next of kin and other interested parties not to exceed \$1,570, provided the monies are not derived from decedent's estate or insurance proceeds. See N.J.A.C. 10:90-8.5. In contrast, the prior regulations required that all contributions from next of kin or other interested persons be forwarded to the welfare agency to offset the cost of funerals and burials subsidized by the county.

employee of any purchaser of the funeral home. That order restated that respondent was not permitted to be present during or participate in the making of any funeral arrangements or to engage in any activities requiring a license to practice mortuary science. The Second Amended Consent Order, filed October 14, 1999, was entered following receipt of a report from a special fiscal agent appointed by the Superior Court in connection with the dispute over the ownership of the funeral home. Following a review of the record, and the agent's report, the Board agreed to modify the Consent Order to permit respondent to retain her ownership of the funeral home. That order also restated that respondent must not engage in any activities requiring a license to practice mortuary science. Random inspections were to occur for five years following entry of the order, to ensure respondent's compliance with its terms.

Respondent has now filed an application seeking reinstatement of her license. In her application, respondent notes that although she originally agreed to a voluntary surrender of her license with prejudice, that provision was amended due to intervening circumstances, most particularly the adoption of WFNJ by the Department of Human Services. Therefore she agreed to surrender her license, but without prejudice to future application to the Board for reinstatement. In the time since she surrendered her license, respondent claims to have performed no tasks that require a license: she has performed removals of remains, dressing and casketing, preparation and completion of death notices and obituaries, merchandise ordering, services as a driver, attendant at funerals, and office work. Respondent asserts that she wishes to continue ownership of the Whigham Funeral Home, but entrust the management to persons licensed by the Board. She alleges that she has complied with all of the Board's conditions, and paid the full civil penalty and restitution amounts assessed by the Board. Finally, she argues that the change in the applicable regulations

have authorized the acts for which she was disciplined and that reinstatement of her license is appropriate and in the best interest of the public at this time.

The Board has considered the application of respondent to reinstate her license to practice mortuary science. In particular, it has reviewed all documents submitted by respondent, as well as the transcript of the settlement placed upon the record on June 3, 1997 and has also considered the transcripts of additional inquiries conducted in 1997 as part of the investigation into the matter.

Having completed that review, the Board has determined that it is not in the interests of the public to reinstate respondent's license at this time.

At the time respondent allegedly committed the conduct for which she surrendered her license, acceptance of any monies from next of kin or other interested persons for funerals that were subsidized by social service programs and agencies was absolutely forbidden. In violation of then-existing law, respondent allegedly accepted monies, in the form of cash only, in order to "upgrade" the items provided for in subsidized funerals. In her application to the Board, respondent argues that the change in applicable regulations now authorizes the conduct for which respondent was disciplined. However, the Board believes that this assertion demonstrates respondent's lack of understanding of the applicable law governing subsidized funerals and burials. N.J.A.C. 10:90-8.5 permits the acceptance of up to \$1,570 from next of kin and other interested persons; that amount would be excluded in determining the amount to be paid by the relevant social service agency. In a number of cases, respondent allegedly accepted amounts far in excess of that permitted even by the current law, and thus her conduct would still be in violation of the applicable regulations.

Respondent surrendered her license approximately three and a half years ago. Based upon the seriousness of the conduct for which respondent was disciplined and her apparent continued

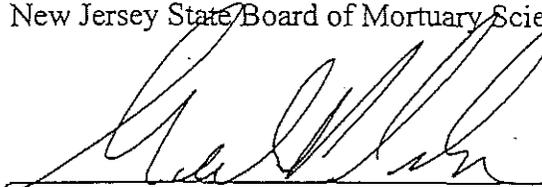
failure to understand the laws applicable to subsidized funerals, the Board finds that reinstatement of respondent's license after such a relatively short period of time would not serve the public interest.

Therefore,

IT IS ON THIS 16 DAY OF FEBRUARY, 2001,

ORDERED that respondent's application for reinstatement of her license is denied. The Board will entertain another application for reinstatement no sooner than August 29, 2003.

New Jersey State Board of Mortuary Science



Gerald P. Scala, Esq.
Board President