

agreed not to engage in this type of writing again. No disciplinary action was taken against respondent by the school.

3. In or about March 2002, respondent applied to the Board for registration as an intern. A period of internship is a prerequisite to licensure by the Board.

4. By memo dated March 11, 2002, the Board returned respondent's application to be notarized, as the original application had been signed by respondent's father, an attorney in the State of New Jersey.

5. Respondent answered the Board's memo by writing a return letter on the back of the memo from the Board. That response read:

Dear Moron,

If you cannot see that my application has already been notarized then maybe you should check again. My father who is an attorney and can notarize any document in the entire U.S. has signed it. It is not my problem that my father happens to be an attorney. So, stop being an idiot and process my registration application. Thank you for wasting my time.

Never truly yours,

Victor Azar.

6. Following receipt of the letter, the Board requested that respondent appear for an inquiry before the Board to discuss his application and the reason for the response quoted in paragraph 5.

7. Prior to respondent's appearance, the Board subpoenaed his records from McAllister. Included in those documents was the English assignment referred to in paragraph 2 above.

8. Respondent appeared before the Board, represented by his father, counsel Victor F. Azar, Esq., on May 14, 2002. During his appearance, respondent was questioned concerning his response to the Board's return of his application. Respondent's only explanation was that he was frustrated. He testified that he "was just fed up. I guess I needed to retaliate or something." He claimed that this was not his typical response to frustration, but that the application was returned to him "at the wrong time."

9. Respondent also testified that during his time at McAllister, he was never called into a dean's office or anyone else's office regarding a disciplinary incident, but admitted that as a result of the assignment referred to in paragraph 2 above, he was interviewed by a teacher and administrator. He denied that they suggested psychological counseling, or suggested that in another setting he might have been sent for psychological counseling.

10. Records received from McAllister indicate that the administrators who spoke with respondent suggested that in another setting, psychological counseling and testing might have been recommended.

11. Following respondent's appearance, and a review of all of the materials submitted, the Board required that respondent obtain a psychological evaluation to determine whether respondent was able to discharge the functions of a funeral director. The Board requested that respondent submit the names of several psychologists for the Board to consider to perform the evaluation. Respondent submitted the names of three psychologists, and the Board selected Robert D. Kanen, Psy.D., to perform the evaluation.

12. Dr. Kanen's report, dated July 12, 2002, concludes that respondent has "severe personality problems" which make him "not suitable for a career in funeral service."

Psychological testing demonstrated that respondent is "severely deficient in empathy, warmth and the interpersonal skills necessary to perform the duties of a funeral director." His interpersonal traits are described as "aloof, reserved, arrogant, calculating and especially cold and unfeeling." The report indicates that respondent may become hostile when faced with too many demands or when under stress, and has few coping skills for dealing with psychological stressors. His responses to certain situations and stresses could lead to situations where "he would be very offensive to individuals during a time when they are grieving and under stress due to the loss of a loved one." Finally, Dr. Kanen opines that respondent's personality problems are enduring and unlikely to change to any significant degree.

13. Having considered the nature and duties of a funeral director, the letter sent by respondent to the Board, respondent's school records from McAllister, respondent's testimony and demeanor at the inquiry, and the psychological evaluation performed by Dr. Kanen, one of the psychologists chosen by respondent, the Board finds there is adequate evidence to deny respondent an intern registration based on his inability to discharge the functions of a licensee of the Board in a manner consistent with the public's health, safety and welfare.

CONCLUSIONS OF LAW

1. Based upon the evidence presented, respondent is incapable of discharging the functions of a licensee of the Board in a manner consistent with the public's health, safety and welfare, and denial of an intern registration is appropriate pursuant to N.J.S.A. 45:1-21(i).

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Denial of Internship Registration was entered on August 20, 2002 and a copy served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor. Counsel for respondent submitted a two-page letter for the Board's consideration. Respondent's attorney asserts that counsel for the Board informed him that if the psychological report requested by the Board was not satisfactory, then respondent would be required to undergo psychological counseling subject to further determination by the Board. Respondent also asserts that the Provisional Order was arbitrary, capricious, and overly broad, and entered without a hearing and a right to cross examine Dr. Kanen, the psychologist who performed respondent's evaluation.

Respondent accurately asserts that the Provisional Order denying his intern registration was entered without the benefit of a full evidentiary hearing held in a contested matter. However, he fails to note that the Board's standard practice in an initial application process is consistent with case law and the Administrative Procedure Act. A license or registration application is typically determined in a less formal manner than a disciplinary proceeding involving a licensee. Respondent has a lesser expectation in a constitutionally protected property interest in the internship registration sought than a licensee has in a

license already obtained. It is well recognized that due process does not require a hearing where there is a mere "expectation" in a property interest. Furthermore, the grant of a professional license is a privilege, not a right.

A protected property right comes into existence only after a license has been obtained. Thus before a medical license is issued there is no property right which must be safeguarded by due process. [Valdes v. N.J. State Board of Medical Examiners, 205 N.J. Super. 398 (App. Div. 1985)].

Although the Valdes case involved an application for a medical license, the court's reasoning is equally applicable to a license or registration sought from any of New Jersey's professional licensing Boards under the auspices of the Division of Consumer Affairs. Moreover, New Jersey law imposes no requirement for a trial-type proceeding in these types of administrative proceedings. The Administrative Procedure Act, N.J.S.A. 45:14B-1 et seq., requires adversarial hearings only in contested cases. This matter is not a "contested case" within the meaning of that Act. Therefore, there is no statutory or constitutional right to a hearing. However, in this case respondent was afforded an opportunity to be heard at the May 14, 2002 appearance before the Board. Further, he was permitted to submit anything he chose in support of his application at two critical junctures: at the appearance before the Board, and in response to the Provisional Order. Additionally, the psychologist who evaluated respondent was selected from names respondent provided to the Board. Thus, even in the absence of a statutory right to a hearing, respondent had ample opportunity to set forth his position before the Board for its consideration.

Respondent incorrectly asserts that the Provisional Order was arbitrary, capricious and overly broad. The Board is charged with the responsibility of ensuring the public's

protection and confidence in those it licenses to practice mortuary science. The Board must consider whether an applicant is capable "of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare" [N.J.S.A. 45:1-21i.]

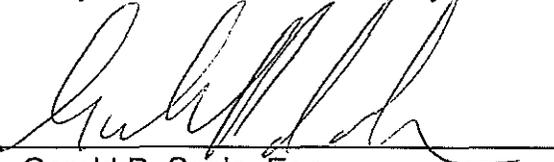
In this case, the Board carefully considered the applicant's past behavior, including his letter to the Board and the answers to his English assignment. The Board also carefully considered respondent's testimony and demeanor at the inquiry, including respondent's failure to explain adequately why he sent his letter to the Board, how he would respond differently when exposed to the pressures and demands placed upon him by a grieving family, and failure to express any regret for his letter. The Board also reviewed the report of the evaluation of respondent conducted by Dr. Kanen, which concluded that respondent is lacking in the interpersonal skills necessary to perform a funeral director's duties, and that his responses to certain situations could lead to situations where respondent could be very offensive to a grieving family. All of this information, considered together, provided sufficient basis for the Board's conclusion that denial of respondent's application for intern registration is appropriate for the protection of the public. Respondent has failed, despite the opportunities provided to him, to refute any of the Board's findings or conclusions as to respondent's ability to discharge the functions of a licensee. The Board therefore finds that entry of a Final Order is appropriate at this time.

ACCORDINGLY, IT IS on this 21 day of JANUARY, 2003,

ORDERED that:

1. Respondent's application for intern registration is hereby denied.

New Jersey State Board of Mortuary Science

By: 
Gerald P. Scala, Esq.
Board President