

**IN THE MATTER OF
BENNIE SMITH**

License Number M00537!

*** BEFORE THE MARYLAND
* STATE BOARD OF MORTICIANS
* AND FUNERAL DIRECTORS
* Case Numbers: 9-015, 10-023,
11-010, 11-037, 11-041, 12-010**

PRE-CHARGE CONSENT ORDER

PROCEDURAL BACKGROUND

The Maryland State Board of Morticians and Funeral Directors (the "Board") and the Bennie Smith Funeral Home, Hurlock Maryland (the "Respondent") have agreed, in lieu of the Board's filing formal charges, to enter into to this Pre-Charge Consent Order (the "Order"). The Respondent waives its right to a hearing and agrees to be sanctioned by the Board. This Order is based upon the Board's belief that the Respondent violated provisions of the Maryland Morticians and Funeral Directors Act ("the Act"), Md. Code Ann., Health Occ. ("H.O.") §§ 7-101 et seq. (2009 Repl. Vol.).

FINDINGS OF FACT

1. At all times relevant, the Respondent was and is licensed to practice mortuary science in the State of Maryland under license number M00537.
2. At all times relevant, the Respondent owned and operated the Board licensed Maryland funeral establishments located in: Salisbury E-00361; Hurlock E-00285; Pocomoke E-00321; Chestertown E-00473; Princes Anne – E00296; Easton E-00298; and Cambridge- E00377.
3. The Respondent entered into a Consent Order with the Board on July 25, 2007 which is in full force and effect and which is incorporated by reference as if fully set forth herein. The Board concluded that the Respondent violated the Act when he acted unprofessionally by aiding and

abetting the unlicensed and unauthorized practice of mortuary science by allowing persons not licensed to offer or agree to provide services and or merchandise under a pre-need contract. For this offense, the Board reprimanded the Respondent and placed him on probation.

4. The Board's investigation of the matters captioned above, which included sworn eye witness testimony, revealed that over the years unlicensed individuals, Vance Bolden Jr. and Keith Brown, performed embalming at Bennie Smith Funeral Home locations, including Hurlock and Salisbury.

5. Further investigation allegedly revealed that unlicensed persons, including Michael Kellum, Willie Savage and Sissy Holmes among others, continue to offer and agree to provide services or merchandise at Bennie Smith Funeral Home locations, including Salisbury, Hurlock, and Pocomoke.

6. As recently as on or about July 2011, families entering into pre-need arrangements at the Bennie Smith Funeral Home located in Salisbury have been converting their private life insurance policies to Bennie Smith ownership to cover funeral expenses.

7. On or about March 28, 2011, the Board opened a complaint number 11-041 when it received a complaint from the Division of Vital Records regarding the late filing by the Respondent of a death certificate.¹ The date of death was November 8, 2010. The Certificate of Death was filed on March 16, 2011. Additionally, the body had been transported to Delaware and cremated without the required burial transit permit.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board, notwithstanding the Respondent's denials to the contrary, finds that the Respondent violated H.O §§ 7-316(a): (5) aided and abetted unauthorized individuals in the practice of mortuary science; (26) acted in an unprofessional manner in the practice of mortuary science by aiding and abetting unlicensed individuals to perform embalming, by taking ownership of private life insurance policies under pre-need contacts, itself a

¹ Death certificates are to be filed with the Division of Vital Records within 72 hours of death.

violation of H.O. § 7-405(f)(3)(i)(1); and by violating the terms and conditions of the Consent Order dated July 25, 2007.

ORDER

ORDERED that the Respondent's license to practice mortuary science in Maryland shall be **SUSPENDED** for a period of one year with all but seventy five (75) days stayed beginning 30 days from the effective date ² of this Order; and it is further

ORDERED that the Respondent, while suspended, shall not engage in the practice of mortuary science in the State of Maryland, including communications with consumers; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for a period of two (2) years to commence on the date his license is reinstated. The Respondent may not petition the Board for termination of probation before one (1) year of probation has elapsed. It shall be within the Board's discretion to grant such a petition; and it is further

ORDERED that for the foreseeable future, but for the Salisbury location, no individual Board approved supervising mortician shall supervise more than three (3) Maryland Bennie Smith Funeral Homes. The Salisbury supervising mortician shall not supervise any other establishment; ³ and it is further

ORDERED that within thirty (30) days from the effective date of this Order, the Respondent shall submit for Board approval the names of the three (3) Maryland licensed morticians who will act as supervising morticians for the seven (7) Bennie Smith Funeral homes located in Maryland. One shall be assigned to Salisbury, one to Easton and one to Cambridge. The part time

² The effective date of the Order is the date the order is signed by the Board.

³ The Parties understand that the Board does not expect a supervising mortician be on the premises of the so-called part time facilities at all times. The Board does expect that a Maryland licensed mortician or funeral director will be on the premises during working hours and that only Maryland licensed mortician or funeral directors will be making funeral arrangements and that only Maryland licensed morticians will be embalming at the Maryland locations.

locations shall be covered on an as need basis by the supervising morticians assigned to the Easton and Cambridge locations which are also part time locations; and it is further

ORDERED that embalming shall be done only in the Salisbury, Hurlock and Cambridge locations. The Cambridge preparation room shall be inspected by the Board prior to its use; and it is further

ORDERED that that until October 1, 2012, the date when Senate Bill 415/house Bill 540⁴ becomes effective, there shall be no transporting of human remains across the Maryland State line for the purpose of embalming and storage for later return to Maryland for final disposition; and it is further

ORDERED that only Maryland licensed Morticians may embalm in Maryland Bennie Smith Funeral Homes; and it is further

ORDERED that only Maryland licensed morticians or Maryland licensed funeral directors may arrange for or make final disposition of a dead human body in this State; and it is further

ORDERED that each and every original active pre-need contract file shall be returned to the Maryland Bennie Smith Funeral Home location where services will be provided; and it is further

ORDERED that original pre-need and at need contracts for funeral goods and services and related documents shall be maintained on file at the Maryland Bennie Smith Funeral Home where the contracts were written; and it is further

ORDEERED that each pre-need contract funded by a private life insurance policy that had been converted to Bennie Smith ownership and beneficiary, shall be corrected no later that sixty (60) days from the effective date of this consent Order; and, if not, the Respondent shall immediately notify the Board of those policies that have not been corrected and the reasons therefor. The Board will then provide the Respondent with reasonable time, not to exceed sixty (60) days, to correct any

⁴ Handling Human Remains With Dignity Act of 2012.

remaining policies⁵; and it is further

ORDREED that at a minimum the Respondent's Maryland funeral homes shall be subject to random Board audits beginning from the effective date of this Order throughout the Respondent's probation. It shall be within the Board's discretion to continue random audits beyond probation; and it is further

ORDERED that at a minimum the Respondent's Maryland funeral homes shall be subject to random Board inspections beginning from the effective date of this Order throughout the Respondent's probation. It shall be within the Board's discretion to continue random audits beyond probation; and it is further

ORDERED that the Respondent shall, prior to reinstatement of his license to practice mortuary science, document to the Board that he has made an anonymous donation to the Family Security Trust Fund in the amount of three thousand dollars (\$3000.00); and it is further

ORDERED that the Respondent shall return his Maryland Morticians license number M00537 to the Board to be held for the duration of the period of suspension; and it is further

ORDERED that the Respondent shall comply with and practice within all statutes and regulations governing the practice of mortuary science and funeral direction in the State of Maryland; and it is further

ORDERED that any violation of the terms and conditions of this Order shall constitute unprofessional conduct in addition to any applicable grounds under the Act; and it is further

ORDERED that this Consent Order resolves all open complaints against Bennie Smith and the Bennie Smith Funeral Homes located in Maryland as well as complaints alleging wrong doing, known or unknown, except where complaints, after initial review, lead to Board authorized investigations involving theft or fraud; and it is further

⁵ The Board shall extend additional time if the Respondent accesses the court system in an effort to correct any policies. The additional time shall be a reasonable period of time and be dependent on the court's schedule.

ORDERED that this Pre- Charge Consent Order is a PUBLIC DOCUMENT as defined in Md. State Gov't Code Ann. §§ 10-611 et seq. (2009).

7/19/12
Acceptance Date


Hari Close
President

CONSENT

I, Bennie Smith, license number M 00537 by signing this Consent agree to be bound by the terms and conditions of the foregoing Pre-Charge Consent Order as resolution to this matter. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity and enforceability of this Pre-Charge Consent Order as if it were made after a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections to which I am entitled by law. I also recognize that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing and am also waiving any other legal remedies I may have regarding resolution of this matter.

I have had the opportunity to review this Pre-Charge Consent Order with an attorney of my choice and sign it voluntarily, understanding its terms, meaning and effect.

7-17-12
Date


Bennie Smith

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Caroline

I HEREBY CERTIFY that on this 17th day of July, 2012, before me, a Notary Public of the State of Maryland and the City/County aforesaid, personally appeared Bennie Smith on behalf of the Bennie Smith Funeral Home , Hurlock Maryland, and made oath in due form of law that the foregoing Consent was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Notary Public *Travis W. Gates*

My Commission Expires

January, 2013