



## II. FINDINGS OF FACT

### A. Factual Background

1.

The Respondent is licensed in Georgia as both a funeral director (license number FD004206) and an embalmer (license number EMB03800). Both licenses were issued on May 28, 1996, and were in effect until September 19, 2012, when the Board issued an Order of Summary Suspension based on the allegations that are the subject of this proceeding. (Statement of Matters Asserted [“Matters Asserted”], ¶ 1; Answer, ¶ 1; Exhibits P-1, P-2.)

2.

At all times relevant to this proceeding, the Respondent was a co-owner of Metro Embalming & Crematory, Inc. (“Metro”), a funeral establishment and crematory located in Conyers, Georgia. The Respondent’s partner in this enterprise was Wendy Eidson. Ms. Eidson is also licensed in Georgia as both a funeral director and an embalmer. (Matters Asserted, ¶ 2; Answer, ¶ 2; T. 8-10.)

### B. Decedent K.O.<sup>2</sup>

3.

During the night of June 29-30, 2012, Metro employee Kenneth Cooper received the body of K.O., a deceased female, at the Metro facility. K.O.’s body was delivered to Metro from another funeral home, where her surviving family members had requested that her remains be cremated. (T. 16-18, 54-55; Exhibit P-5.)

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<sup>2</sup>To protect the privacy of the decedent and her family, she is referred to herein by her initials.

4.

K.O.'s weight was estimated at 1,100 pounds or more. Due to her size, eight paramedics were enlisted to move her body on backboards from the transport vehicle to Metro's embalming room. In the embalming room, K.O.'s body was placed upon a gurney and an embalming table that had been pushed together to accommodate her weight and girth. (T. 16-17, 55-56.)

5.

When a large body is prepared for cremation, it is customarily placed in an oversized wooden box known as an "air tray."<sup>3</sup> The air tray confines the girth of the deceased and enables the body to fit through the opening to the retort,<sup>4</sup> where it is incinerated. A very large body like K.O.'s is difficult to maneuver into an air tray. In such cases, a funeral director may cross the deceased's legs, fold the deceased's arms across the chest, and/or tie linens around the torso, similar to a girdle. The funeral director may also use tape to hold the body in place. However, if the body cannot fit through the retort opening, the funeral director must notify the family that the deceased should be buried. (T. 20, 24, 96.)

6.

On June 30, 2012, Ms. Eidson and the Respondent discussed K.O.'s cremation. Ms. Eidson asked the Respondent to help her prepare the body and place it in an air tray. The Respondent declined, stating, "I'm going to cut her up." (T. 20-21.)

7.

Later that day, the Respondent excised tissue from K.O.'s body and amputated her legs. The Respondent was assisted in this endeavor by Mr. Cooper and another individual named

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<sup>3</sup> Air trays are more commonly used as containers for caskets during air travel. (T. 20-21, 96.)

<sup>4</sup> A retort is a furnace-like chamber where remains are cremated. A retort opening typically measures thirty-two inches. (T. 18-19, 91, 93-94.)

Kevin, with whom the Respondent played golf.<sup>5</sup> The Respondent used a scalpel to remove sections of tissue weighing between sixty and eighty pounds each from the sides of K.O.'s torso. The Respondent then removed K.O.'s legs. Using the scalpel, he sliced through her tissue below the hip joint, then cut through the bone with a hacksaw that Kevin provided. Mr. Cooper placed the excised tissue and severed legs in a body bag. (T. 56-60.)

8.

K.O.'s remains were cremated in two cycles.<sup>6</sup> The body bag containing K.O.'s excised tissue and legs was placed in the retort and incinerated during the first cycle. When the first cycle was completed, the rest of her body was enclosed in another body bag and placed in the retort on top of the cremains from the first cycle. The previously-separated portions of K.O.'s remains were incinerated simultaneously during the second cycle. (T. 60.)

9.

The Respondent did not seek or obtain permission from K.O.'s family for the excision of tissue from her torso, the amputation of her legs, or the cremation of her remains in two cycles. The Respondent's treatment of K.O.'s body, as detailed above, was unprofessional and unethical, and his actions amounted to gross negligence that fell below the minimal standards of his profession. (T. 21-25, 95-97; Exhibit P-5.)

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<sup>5</sup> Kevin was not a Metro employee, and his surname is unknown. Neither Mr. Cooper nor Kevin is licensed by the Board in any capacity. (T. 52-53, 57.)

<sup>6</sup> For a typical body weighing approximately two hundred pounds, a cremation cycle takes between two and two and one-half hours. (T. 91.)

C. Respondent's Mental Instability

10.

In November 2011, the Respondent and Ms. Eidson began experiencing financial difficulties with the Metro facility. In May 2012, they opened a new business, Ellenberg Funeral Services, Inc., a funeral establishment located in Loganville, Georgia. However, the financial difficulties persisted, and they had a number of disputes regarding the operation and finances of the two establishments. Over time, the Respondent's behavior grew increasingly erratic. He began using large quantities of prescription medications, including Lortab and Ambien, and he displayed unusual mood swings. (T. 26, 29-31, 72-74, 77-78.)

11.

On August 12, 2012, the Respondent and Ms. Eidson engaged in a heated confrontation at Metro. During the argument, the Respondent shouted profanities and threw a pair of welding gloves at the wall next to Ms. Eidson's head. He then pushed her with his chest. Ms. Eidson separated herself from the Respondent, gathered her personal belongings, and left the building. The following day, August 13, 2012, she informed him that she was terminating their business partnership. (T. 27-29, 31-32.)

12.

On August 14, 2012, the Respondent held a meeting with Metro employees. During the meeting, he became upset and began crying. The Respondent told his employees that Ms. Eidson had abandoned the business and that if he were to become sick like his brother, who had been diagnosed with terminal cancer, he would "blow Wendy's head off." The employees were concerned by this statement but did not report it to Ms. Eidson. (T. 74-75; Exhibit P-7.)

13.

On August 15, 2012, at 7:34 p.m., the Respondent sent a text message to Ms. Eidson.

The message stated:

By the time you get this it will all be over what a ride I am so sorry I failed. Tell angela deb will pay you 28000.00 and ang her money and Brenda hers again I am so so sorry. Please keep metro going

(T. 34; Exhibit P-10 [punctuation and syntax in original].)

14.

Ms. Eidson received the Respondent's text message shortly alter 8:00 p.m. She showed the text message to her mother, Maria Bryans, and asked Ms. Bryans to accompany her to the Respondent's residence. The two women then drove to the Respondent's apartment, which was located within the Ellenberg Funeral Services facility. Ms. Eidson also called Mr. Cooper and asked him to meet them there. (T. 34-35, 47-48, 61.)

15.

When all three had arrived at Ellenberg Funeral Services, Ms. Eidson knocked on the window to the apartment and asked the Respondent to come outside. The Respondent walked out of the building through the garage door. He appeared disheveled and disoriented, and he stumbled as he walked. (T. 36-37, 48, 61-62.)

16.

Ms. Eidson, Ms. Bryans, and Mr. Cooper followed the Respondent into his apartment, where he slumped onto his bed. At Ms. Eidson's request, Mr. Cooper stepped into the hallway outside the apartment to call 911. Ms. Eidson asked the Respondent what type of medication he had consumed and where he kept his gun. The Respondent then retrieved a nine-millimeter handgun from a drawer, returned to the bed, engaged a bullet in the chamber, and placed the gun

to his temple. Ms. Eidson, Ms. Bryans, and Mr. Cooper left the building immediately. (T. 37-39, 48-50, 62-63.)

17.

A short time thereafter, they heard a gunshot from inside the apartment. Mr. Cooper reported the shot to the 911 operator, and they remained outside the building until police officers arrived on the scene. When the officers entered the building, they discovered that the Respondent had shot himself in the right leg. He was transported to Athens Regional Hospital for medical treatment. (T. 40-41, 50-51, 64-65; Exhibit P-6.)

D. Unlicensed Practice

18.

When the Respondent was discharged from the hospital, he moved into an apartment that was adjacent to the Metro facility. Ms. Eidson was no longer involved with the businesses.<sup>7</sup> The Respondent resumed management of the Metro operations, but he was present at the facility only intermittently and did not fulfill his professional duties. Instead, he directed an unlicensed employee, Elizabeth Duncan, to carry out the duties of a funeral director. (T. 44-46, 65, 67-69, 71, 80-83; Exhibit P-4.)

19.

At the Respondent's direction, Ms. Duncan negotiated contracts with the families of deceased individuals, signed the Respondent's name to the contracts, and accepted payment for cremation services.<sup>8</sup> (T. 67-69, 81-83.)

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<sup>7</sup> On September 11, 2012, Ms. Eidson obtained a Stalking Ex Parte Protective Order against the Respondent. Subsequently, on September 14, 2012, the Respondent consented to a six-month injunction that prohibits him from contacting Ms. Eidson. (T. 44-45; Exhibits P-8, P-9.)

<sup>8</sup> Mr. Cooper performed all cremations that were authorized pursuant to the contracts. (T. 68.) Under Georgia law, a crematory must hold a license issued by the Board and must operate under the supervision of a Funeral Director in

E. Summary Suspension

20.

On September 19, 2012, after determining that the Respondent's conduct posed a threat to the public health, safety, and welfare, the Board issued an Order of Summary Suspension. The Order of Summary Suspension suspended the Respondent's licenses to practice as a funeral director and an embalmer pending an evidentiary hearing on the allegations that are the subject of this proceeding. (Matters Asserted, ¶ 14; Answer, ¶ 14; Exhibit P-2.)

21.

On September 20, 2012, the Respondent requested an expedited hearing.<sup>9</sup> The Board seeks the revocation of both licenses held by the Respondent. (Matters Asserted, ¶ 14; Answer, ¶ 14; T. 99; Exhibit P-3.)

**III. CONCLUSIONS OF LAW**

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The Board is authorized to impose disciplinary action against a licensee for violations of O.C.G.A. § 43-1-19 and/or O.C.G.A. § 43-18-46. The disciplinary sanctions available to the Board are set forth in O.C.G.A. § 43-1-19(d), as follows:

- (1) Refuse to grant or renew a license to an applicant;

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Full and Continuous Charge. O.C.G.A. §§ 43-18-71, 43-18-72. However, independent licensure of retort operators is not required. Id.; see also O.C.G.A. §§ 43-18-1, 43-18-46.

<sup>9</sup> The Respondent's legal counsel subsequently withdrew the request, and the hearing was continued several times on the Respondent's motion. See Court file.



- (2) Administer a private or public reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or
- (8) Impose on the licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

O.C.G.A. § 43-1-19(d).

3.

Pursuant to O.C.G.A. § 43-18-46, a licensee may be sanctioned upon, *inter alia*, the following grounds:

- (8) Gross or willful malpractice or gross neglect in the practice of embalming, funeral directing, or cremating;  
...
- (13) Disregarding a decedent's dignity, right to privacy, or right to confidentiality unless compelled by law to do otherwise;  
...
- (18) Aiding or abetting an unlicensed person to practice under this article;  
...
- (22) Willfully violating any state law or regulation . . . that affects the handling, custody, care, or transportation of dead human bodies . . . ;  
...

- (27) Engaging in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or registrant to practice in the funeral business, or is of a nature likely to jeopardize the interest of the general public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of funeral directing or embalming but shows that the person has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from or failure to conform to the minimal reasonable standards of acceptable and prevailing practice of funeral services . . . .

O.C.G.A. § 43-18-46.

4.

Similarly, under O.C.G.A. § 43-1-19(a), the Board may impose disciplinary action against a licensee if the licensee has:

- (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness;
- (7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;
- (8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule;

...

- (10) Displayed an inability to practice a business or profession . . . with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material . . . .

O.C.G.A. § 43-1-19(a).

5.

Georgia law prohibits the unlicensed practice of funeral directing pursuant to O.C.G.A.

§ 43-18-3, which provides, in pertinent part:

- (b) It shall be unlawful for any person to engage in the business or profession of funeral directing or to represent to the public that such person is a funeral director, undertaker, or mortician without first complying with this article.
- (c) Any person who actively engages or participates in any way in the business or profession of funeral directing shall be considered to be practicing as a funeral director and must be a licensed funeral director under the terms of this article.

O.C.G.A. § 43-18-3. A “funeral director” is “a person who practices funeral directing.”

O.C.G.A. 43-18-1(11). The term “practice of funeral directing” means “making or directing . . . arrangements for the preparation . . . of dead human bodies for final disposition and the supervision and direction of all funeral services.” O.C.G.A. § 43-18-1(19).

6.

The Board proved, by a preponderance of the evidence, that the Respondent excised tissue from the torso of K.O., amputated her legs, and cremated her body in two cycles without her family’s permission, as set forth in detail in the Findings of Fact, above. This conduct disregarded K.O.’s dignity, in violation of O.C.G.A. § 43-18-46(13); amounted to gross or willful malpractice and/or gross neglect in the practice of cremation, in violation of O.C.G.A. 43-18-46(8); and constituted unprofessional and unethical conduct that was harmful to the public

and departed from the minimal reasonable standards of acceptable and prevailing practice of funeral services, in violation of O.C.G.A. §§ 43-18-46 and 43-1-19(a)(6). Further, the Respondent willfully violated laws affecting the handling of dead bodies and regulating the practice of funeral services, in violation of O.C.G.A. §§ 43-18-46(22) and 43-1-19(a)(8), by committing the offense of Abuse of a Dead Body. See O.C.G.A. § 31-21-44.1(a)(1) (“A person commits the offense of abuse of a dead body if . . . such person willfully defaces a dead body while the dead body is . . . prepared for . . . cremation . . .”).

7.

The Board proved, by a preponderance of the evidence, that the Respondent shot himself with a handgun while under the influence of prescription drugs and on the premises of a funeral establishment, as set forth in the Findings of Fact, above. This conduct exhibited the Respondent’s inability to practice as a funeral director or an embalmer with reasonable skill and safety to the public, in violation of O.C.G.A. §§ 43-1-19(10).

8.

The Board proved, by a preponderance of the evidence, that the Respondent violated O.C.G.A. §§ 43-18-46(18) and 43-1-19(a)(7) by aiding and abetting Elizabeth Duncan’s unlicensed practice of funeral directing, as set forth in detail in the Findings of Fact, above. See O.C.G.A. §§ 43-18-1(1), (11), 43-18-3(b), (c).

9.

The Board further alleged that the Respondent violated O.C.G.A. §§ 43-18-46(23), (30) and 43-1-19(a)(2). However, the evidence offered was insufficient to support a finding that the Respondent violated these statutory provisions.

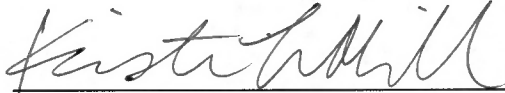
10.

The Board seeks the revocation of the Respondent's licenses to practice as a funeral director and an embalmer. Given the gravity of the Respondent's violations of the laws governing his profession, and in particular his decision to prepare K.O.'s body for cremation in a uniquely gruesome manner without her family's consent, the sanction of revocation is plainly warranted.

#### IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent's licenses to practice as a funeral director and an embalmer in the State of Georgia are hereby **REVOKED**.

**SO ORDERED**, this 27<sup>th</sup> day of February, 2013.

  
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**KRISTIN L. MILLER**  
**Administrative Law Judge**