

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
BOARD OF MORTUARY SCIENCE EXAMINERS

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS,
CORPORATIONS, SECURITIES &
COMMERCIAL LICENSING BUREAU

Complainant,

v

BARKSDALE FUNERAL HOME, INC.
Mortuary Science Establishment
License No. 45-02-003400

Complaint Nos. 332412 & 334421

and

MILLIE L. STEWART
Mortuary Science
License No. 45-01-006862

Complaint Nos. 333582 & 334422

Respondents.

NOTICE AND ORDER TO CEASE AND DESIST

Based on an investigation conducted under §§ 502, 503, and 504 of the Michigan Occupational Code, (Occupational Code), MCL 339.502 to 339.504, the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau (Department), determined that Respondents violated the Occupational Code.

Section 506 of the Occupational Code, MCL 339.506, authorizes the Department to issue orders as follows:

- (1) After an investigation has been conducted, the director may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.
- (2) A person ordered to cease and desist shall be entitled to a hearing before the Department if a written request for a hearing is filed within thirty (30) days after the effective date of the order.
- (3) Upon a violation of a cease and desist order issued under this act, the Department of the Attorney General may apply in the circuit court of this state to restrain and enjoin, temporarily or permanently, or both, a person from further violating a cease and desist order.

ACCORDINGLY, YOU ARE ORDERED TO CEASE AND DESIST from any and all activity requiring a mortuary science license, including sales of funeral goods and services, while your licenses are subject to the Order of Summary Suspension issued by the Department, unless you obtain a license under the Occupational Code or prior written approval from the Department.


Any future violations of the Occupational Code may lead to civil, criminal, or administrative sanctions.

Under § 506(2) of the Occupational Code, MCL 339.506(2), you are entitled to a hearing to consider this Cease and Desist Order if you file a written request with the Department within thirty (30) days after the mailing date of this Order. Otherwise, your right to a hearing to consider this Cease and Desist Order will be forfeited. Your right to request a formal administrative hearing to answer the charges set forth in the Formal Complaint in this matter will not be forfeited for failure to request a hearing on this Cease and Desist Order.

This Order is effective five dates after its mailing date.

MICHIGAN DEPARTMENT OF LICENSING
AND REGULATORY AFFAIRS
Shelly Edgerton, Director

BY


Michael Beamish, Director
Licensing Division
Corporations, Securities & Commercial
Licensing Bureau

Dated: 1/16/18

Responsive Pleadings Should Be Filed With:

Department of Licensing and Regulatory Affairs
Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

and

Bruce Charles Johnson (P62645)
Assistant Attorney General
Michigan Department of Attorney General
Licensing & Regulation Division
525 W. Ottawa, 3rd Floor, Wms Bldg.
P.O. Box 30758
Lansing, Michigan 48909

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
BOARD OF EXAMINERS IN MORTUARY SCIENCE

DEPARTMENT OF LICENSING AND
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ORDER OF SUMMARY SUSPENSION

1. Attorney General Bill Schuette, through Assistant Attorney General Bruce Charles Johnson, on behalf of the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau (Department) filed a Formal Complaint (Complaint) against the above referenced Respondents, under the Occupational Code, MCL 339.101 *et seq.* (Occupational Code), the Prepaid Funeral and Cemetery Sales Act, MCL 328.211 *et seq.*, their associated administrative rules, and the Administrative Procedures Act of 1969 (APA), MCL

24.201 *et seq.*

2. Section 505 of the Occupational Code, MCL 339.505, provides the Department the authority to summarily suspend a license or registration if, after an investigation, based upon an affidavit of a person with knowledge of the facts, it determines an imminent threat to the public health, safety, or welfare exists requiring emergency action.

3. Based on Respondents' conduct, as detailed in the Affidavit and the Complaint, the Department finds that the public health, safety, or welfare requires emergency action.

IT IS ORDERED THAT:

A. Respondents' licenses to engage in the practice of mortuary science and as a mortuary science establishment in the State of Michigan are summarily suspended beginning five days after the mailing date of this Order.

B. Respondents may complete funeral services based on current at need funeral services contracts for any bodies presently at its premises.

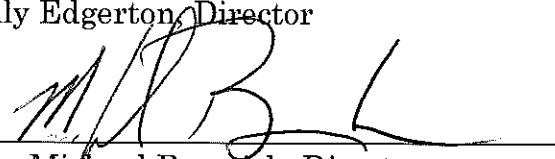
C. The Michigan Vital Records Office within the Department of Health and Human Services will be notified of these license suspensions, which may affect Respondents' access to the Electronic Death Registration System (EDRS) and the ability to file death certificates throughout the state during the period of suspension.

Respondents have the right to petition the Department to dissolve this Order, under MCL 339.505. If Respondents request a dissolution hearing, the request must

clearly state it is a Petition to Dissolve Summary Suspension and must be filed with Department at the address indicated below.

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS
Shelly Edgerton, Director

BY



Michael Beamish, Director
Licensing Division
Corporations, Securities &
Commercial Licensing Bureau

Dated: 1/16/18

Responsive Pleadings Should Be Filed With:

Department of Licensing and Regulatory Affairs
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Regulatory Compliance Division
P.O. Box 30018
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and

Bruce Charles Johnson (P62645)
Assistant Attorney General
Michigan Department of Attorney General
Licensing & Regulation Division
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STATE OF MICHIGAN)
COUNTY OF INGHAM)

AFFIDAVIT OF MICHAEL BEAMISH

Michael Beamish, being first duly sworn, deposes and says that:

1. He makes this Affidavit in support of the Department of Licensing and Regulatory Affairs' request for summary suspension of Respondents' licenses set forth above; that the following facts are within his personal knowledge or his knowledge and belief; that he is competent to testify to the facts and will do so if called as a witness.

2. He is the Director of the Licensing Division within the Corporations, Securities & Commercial Licensing Bureau within the Department of Licensing and Regulatory Affairs ("Department"), and has the responsibility of directing the investigation of complaints from the general public and the Department alleging violations of the Michigan Occupational Code ("Occupational Code"), MCL 339.101 *et seq.* and the associated administrative rules and reviewing records of mortuary science establishments and individuals and other documents involving persons and entities issued a license under Article 18 of the Occupational Code, MCL 339.1801 *et seq.*

3. In the course of his duties, he reviewed reports and other documents and substantiated the following facts:

- a. Barksdale Funeral Home, Inc. (Barksdale) was licensed as a mortuary science establishment under the Occupational Code from February 26, 1999 until October 31, 2017 when its license expired.
- b. Millie L. Stewart (Stewart) was, at all relevant times, Barksdale's designated manager.
- c. Barksdale obtained registration under the Prepaid Funeral and Cemetery Sales Act on October 29, 2015 and that registration remains active.
- d. On July 31, 2017, a Department Investigator presented to Barksdale's facility located at 1120 East State Fair Street in Detroit, Michigan, based upon a tip that the funeral home had several hundred cremated remains stored in its basement.
- e. The inspection verified that Barksdale's embalming room was not clean and sanitary. Specifically, the ceiling tiles were missing, stained, and sagging, and the room was being used to store various items.

- f. Additionally, the Department Investigator observed that in one of the two preparation rooms, various items were stored including a blood-stained box used to transport a body to the facility. The preparation room's ceiling tiles were missing, stained, and sagging. The floor, walls, sink, and countertops were not clean and sanitary.
- g. The Department Investigator verified that Barksdale was storing cremated remains in its garages.
- h. The Department Investigator returned to Barksdale's facility on August 2, 2017 to take an inventory of the cremated remains.
- i. In addition to the cremated remains being stored in its garages, the Department Investigator found additional cremated remains being stored inside the funeral home. The Department Investigator verified that as of August 2, 2017, approximately 237 cremated remains were stored at Barksdale.
- j. The Department Investigator observed many of the cremated remains to be in poor condition. Four containers lacked any label or other form of identification. Some cremated remains had sustained water damage or damage due to suspected rodent infestation.
- k. During the August 2, 2017 inspection, the Department Investigator also observed that the ventilation system in Barksdale's embalming room was not operational. Specifically, the ventilation fan in the embalming room was not operational, and Barksdale was using a portable air conditioning unit as a ventilation system.
- l. On September 5, 2017, the Department asked Stewart if she or Barksdale had an up-to-date list identifying the identities of the deceased's cremated remains in Barksdale's possession that included their next-of-kin's contact information and their designation as veterans. Stewart was unable to provide the Department any such list or other paperwork at that time.
- m. Barksdale was unable to provide the list identifying the identities of the deceased's cremated remains and an identification of which belonged to veterans until October 25, 2017.

- n. Barksdale's license to operate as a Mortuary Science establishment expired on October 31, 2017.
- o. Department Investigators returned to Barksdale for a reinspection on November 7, 2017.
- p. During the November 7, 2017 inspection, Barksdale was found to be operating as a mortuary science establishment, notwithstanding the expiration of its license on October 31, 2017. Specifically, Department Investigators observed at least three embalmed bodies in the facility, one of which had been placed in a suit and was ready for viewing.
- q. Department Investigators observed that Barksdale had made little to no progress in cleaning up the embalming room. The embalming room was still being used as a storage space for various items, including medical waste bins. The ceiling tiles remained missing, stained, and sagging. The ceiling fan was repaired and operational during the November 7, 2017 inspection.
- r. Barksdale had replaced the ceiling tiles in the preparation room and had made some progress towards cleaning up that room.
- s. From November 13, 2017 through November 20, 2017, a Department Auditor examined Barksdale's books, records, contracts, and other documents related to prepaid funeral contracts and discovered that Barksdale failed to deposit at least \$2,036.00 received for prepaid funeral goods or services related to three prepaid contracts with an authorized escrow agent.

4. Respondents' above conduct shows that they committed acts of gross negligence in practicing an occupation, given their failure to maintain a clean and sanitary embalming room and preparation room and their failure to properly store and document deceased's cremated remains stored at Barksdale's facility.

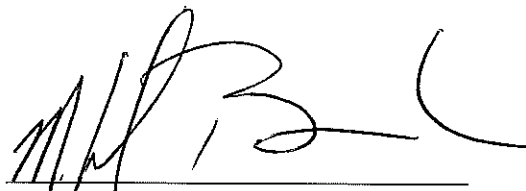
5. Respondents' above conduct proves that they committed an act which demonstrates incompetence in the practice of mortuary science.

6. Respondents' above conduct demonstrates a violation of the Prepaid Funeral and Cemetery Sales Act.

7. Respondents' above conduct in failing to deposit prepaid funeral contract funds with an authorized escrow agent constitutes fraud, deceit, or dishonesty in the practice of mortuary science.

8. Respondents' above conduct demonstrates an inability to serve the public in a fair, open, and honest manner in the practice of mortuary science.

9. Respondents' above conduct proves that they conducted themselves in a manner that justifies summary suspension of the licenses set forth above, under § 505 of the Occupational Code, MCL 339.505.



Michael Beamish, Director
Licensing Division
Corporations, Securities &
Commercial Licensing Bureau

Subscribed and sworn before me this
16th day of January, 2018

Linda M. LeCureux

Linda LeCureux

Notary Public, State of Michigan

County of Shiawassee

My commission expires 02-12-2021

Acting in the County of Ingham

STATE OF MICHIGAN
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Respondents.

FORMAL COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General Bruce Charles Johnson, on behalf of Complainant Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau (the Department), files this Formal Complaint against Respondents Barksdale Funeral Home, Inc. (Barksdale) and Millie L. Stewart (Stewart), alleging upon information and belief as follows:

1. The Board of Examiners in Mortuary Science is an administrative agency established under Article 18 of the Occupational Code, MCL 339.1801 to 339.1812.

2. Barksdale has, at sometimes relevant to this Complaint, been licensed as a mortuary science establishment pursuant to the Code. Attached as Exhibit 1 is a certificate of Barksdale's license status. Barksdale has, at all times relevant to this Complaint, been registered under the Prepaid Funeral and Cemetery Sales Act, MCL 328.211 *et seq.* (Prepaid Act).

3. Stewart, has, at all times relevant to this Complaint, been licensed as a mortuary science practitioner and is the designated manager of Barksdale Funeral Home, Inc. under Article 18 of the Occupational Code. Attached as Exhibit 2 is a certificate of Stewart's license status.

4. A complaint against the mortuary science establishment license of Barksdale conforming to the requirements of MCL 339.501, alleging violations of the Occupational Code was filed with the Department based upon unsatisfactory inspections of the mortuary science establishment conducted by Department personnel on July 31, 2017, August 2, 2017, and November 7, 2017.

5. A complaint against the mortuary science establishment license of Barksdale conforming to the requirements of MCL 339.501, alleging violations of the Prepaid Act was filed with the Department based upon an unsatisfactory audit of Barksdale's books, records, contracts, and other documents relating to prepaid funeral contracts from November 13, 2017 through November 20, 2017.

6. MCL 339.601(1), states that "[a] person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation."

7. MCL 339.604(b), states that a person who “[p]ractices fraud, deceit, or dishonesty in practicing an occupation” is subject to the penalties prescribed in MCL 339.602.

8. MCL 339.604(c), states that a person who “[v]iolates a rule of conduct of an occupation” is subject to the penalties prescribed in MCL 339.602.

9. MCL 339.604(e) states that a person who “[c]ommits an act of gross negligence in practicing an occupation” is subject to the penalties prescribed in MCL 339.602.

10. MCL 339.604(g) states that a person who “[c]ommits an act which demonstrates incompetence” is subject to the penalties prescribed in MCL 339.602.

11. MCL 339.604(h) states that a person who “[v]iolates any other provision of [the Code] or a rule promulgated under [the Code] for which a penalty is not otherwise prescribed” is subject to the penalties prescribed in MCL 339.602.

12. MCL 339.604(l) states that a person who “[a]ids or abets another person in the unlicensed practice of an occupation” is subject to the penalties prescribed in MCL 339.602.

13. MCL 339.1809(5) requires a funeral establishment to have a preparation room equipped with tile, cement, or composition floor and necessary drainage and ventilation, and contain necessary instrument or supply for the preparation and embalming of a dead human body for burial, transportation, or other disposition.

14. Rule 339.18931(3) states that “the embalming room shall be kept in a clean and sanitary condition at all times. Instruments shall be cleaned and sterilized after each use.”

15. Rule 339.18931(4)(e) states that an embalming room shall have a fan capable of moving 250 cubic feet of air per minute.

16. Rule 339.18931(6) prohibits an embalming room from being used as a storage area.

17. Rule 339.18943 requires a funeral establishment to display a current funeral establishment license and mortuary science license of each individual affiliated with the establishment in the funeral establishment in a place accessible to the public.

18. MCL 328.222(1) requires registrants under the Prepaid Act to deposit all monies received in connection with a prepaid funeral arrangement to be deposited with an authorized escrow agent.

19. MCL 328.222(6) requires registrants under the Prepaid Act to deposit all monies received in connection with a prepaid funeral arrangement to be deposited with an authorized escrow agent within thirty (30) days of receipt.

20. MCL 328.231 provides that a violation of the Prepaid Act by a person licensed under Article 18 of the Occupational Code is considered a violation of the Occupational Code, and the person is subject to the penalties prescribed in MCL 339.602.

21. MCL 339.513 and 339.514 authorize the Board to make a determination of the penalties to be assessed under Article 6 of the Occupational Code after receiving a hearing report submitted by the administrative law hearings examiner containing findings of fact and conclusions of law.

FACTUAL ALLEGATIONS

22. On July 31, 2017, a Department Investigator presented to Barksdale, located at 1120 East State Fair Street in Detroit, to conduct an inspection based upon a tip that the funeral home had several hundred cremated remains stored in its basement.

23. During the inspection on July 31, 2017, it was verified that the embalming room was not clean and sanitary, in that it was being used as storage for various items, and ceiling tiles were missing, stained, and sagging.

24. It was also observed during that inspection that, in one of the two preparation rooms, various items were stored, including a blood-stained box used to transport a body to the facility. The preparation room's floor, ceiling tiles, walls, sink, and countertops were not clean and sanitary with ceiling tiles missing, stained, and sagging.

25. It was further verified that Barksdale was storing cremated remains in its garages.

26. On August 2, 2017, the Department Investigator returned to Barksdale to take an inventory of the cremated remains and discovered that additional cremated remains were being stored inside of the funeral home. The Department verified that approximately 237 cremated remains were being stored at Barksdale, as of August 2, 2017. Four containers of cremated remains lacked a label or any other form of identification on them.

27. It was also observed on August 2, 2017 that the condition of many of the cremated remains was poor, with some having sustained water damage or

damage due to suspected rodent infestation. Attached as Exhibit 3 are photographs of the cremated remains at issue.

28. The Department also verified on August 2, 2017, that the embalming room's ventilation system was not operational. Specifically, the ventilation fan in the embalming room was not operational, and Barksdale was using a portable air conditioning unit as a ventilation system.¹

29. On September 5, 2017, the Department Investigator inquired with Stewart if she or Barksdale had a list identifying the identities of the deceased's cremated remains, their next-of-kin's contact information, or their designation as veterans to date. Stewart informed the Department Investigator that she would have to look for paperwork, and she was unable to provide the Department Investigator a list at that time.

30. On October 25, 2017, Barksdale provided the Department with the list of names identifying the identities of the cremated remains stored at its facilities including an identification of which of the remains belonged to veterans.

31. Barksdale's license to operate as a Mortuary Science establishment expired on October 31, 2017.

32. Department investigators returned to Barksdale for a re-inspection on November 7, 2017.

¹ Following the Department's inspections on July 31, 2017 and August 2, 2017, the Department made a referral to the Michigan Occupational Safety and Health Administration, which conducted its own inspection of Barksdale's facilities on October 6, 2017.

33. During that inspection, Department investigators observed at least three embalmed bodies in the facility, one of which was placed in a suit and ready for viewing, when Barksdale's license had previously expired.

34. Department investigators verified that Barksdale had made little to no progress in cleaning up the embalming room. The embalming room was still being used as storage for various items, including medical waste bins. The ceiling tiles in the embalming room were still missing, stained, and sagging.

35. During the November 7, 2017 re-inspection, Department investigators did observe that Barksdale had made some progress towards cleaning up the preparation room, and the ceiling tiles in that room had been replaced. Additionally, Barksdale did repair the ceiling fan in the embalming room.

36. Department investigators also noticed that the only establishment license Barksdale had posted at a place accessible to the public in the facility was the license that had expired on October 31, 2017.

37. From November 13, 2017, through November 20, 2017, Department personnel conducted an investigation of Barksdale's activities and an examination of books, records, contracts, and other documents relating to prepaid funeral contracts, under § 20(1) of the Prepaid Act, MCL 328.230(1), and MCL 339.502.

38. As of November 20, 2017, Barksdale failed to deposit at least \$2,036.00 received for prepaid funeral goods or services related to three prepaid contracts with an authorized escrow agent, contrary to MCL 328.222(1).

39. As of November 20, 2017, Barksdale failed to deposit at least \$2,036.00 received for prepaid funeral goods or services related to three prepaid funeral

contracts with an authorized escrow agent within thirty (30) days of receipt, contrary to MCL 328.222(6).

40. The allegations contained in paragraphs 2 to 39 above are incorporated by reference against Stewart, as manager of Barksdale.

COUNT I

41. Respondent-Barksdale's conduct as described above demonstrates engaging in the practice of an occupation regulated under Article 18 of the Occupational Code without a Mortuary Science Establishment license issued by the Department, contrary to MCL 339.601(1).

COUNT II

42. Respondent-Stewart's conduct as described above demonstrates aiding or abetting Barksdale in the unlicensed practice of Mortuary Science, contrary to MCL 339.604(l).

COUNT III

43. Respondents' conduct as described above, specifically the failure to deposit prepaid funeral contract funds with an authorized escrow agent, demonstrates their inability to serve the public in the practice of mortuary science for practicing fraud, deceit, or dishonesty in practicing an occupation, contrary to MCL 339.604(b).

COUNT IV

44. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for violating a rule of conduct of an occupation, contrary to MCL 339.604(c).

COUNT V

45. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for committing acts of gross negligence in practicing an occupation, contrary to MCL 339.604(e).

COUNT VI

46. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for committing acts which demonstrates incompetence, contrary to MCL 339.604(g).

COUNT VII

47. Respondents' conduct as described above demonstrates their violation of provisions of the Code or associated rules for which a penalty is not otherwise prescribed, contrary to MCL 339.604(h).

COUNT VIII

48. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science by failing to maintain the embalming room in a clean and sanitary condition at all times, contrary to Rule 339.18931(3) in violation of MCL 339.604(c).

COUNT IX

49. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science by failing to equip the embalming room with a fan that is capable of moving 250 cubic feet of air per minute, contrary to Rule 339.18931(4)(e) in violation of MCL 339.604(c).

COUNT X

50. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for using the embalming room as a storage area, contrary to Rule 339.18931(6) in violation of MCL 339.604(c).

COUNT XI

51. Respondents' conduct as described above demonstrates that Barksdale's preparation room was not equipped with tile, cement, or composition floor and necessary drainage and ventilation and each necessary instrument or supply for the preparation and embalming of a dead human body for burial, transportation, or other disposition, contrary to MCL 339.1809(5).

COUNT XII

52. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for failing to have a current funeral home establishment license conspicuously displayed at Barksdale's facility in a place accessible to the public, contrary to Rule 339.18943 in violation of MCL 339.604(c).

COUNT XIII

53. Respondents' conduct as described above demonstrates their inability to serve the public in the practice of mortuary science for violating the Prepaid Act, contrary to MCL 328.231.

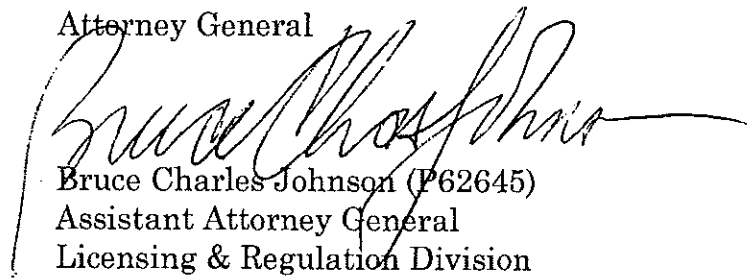
THEREFORE, Complainant Department of Licensing and Regulatory Affairs hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, the Occupational Code, *supra*, and the associated

administrative rules to determine whether disciplinary action should be taken by the Department of Licensing and Regulatory Affairs, pursuant to the Occupational Code, for the reasons set forth herein.

Any written response shall be submitted to the Corporations, Securities & Commercial Licensing Bureau, Regulatory Compliance Division, Department of Licensing and Regulatory Affairs, P.O. Box 30018, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general.

Respectfully submitted,

BILL SCHUETTE
Attorney General



Bruce Charles Johnson (P62645)
Assistant Attorney General
Licensing & Regulation Division
525 W. Ottawa, 3rd Floor, Wms Bldg.
P.O. Box 30758
Lansing, Michigan 48909
(517) 373-1146

Dated: January 9, 2018

LF: 2017-0203967-B/Barksdale Funeral Home, 332412/Complaint -- Formal -- 2017-12-26