

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

**Corporations, Securities & Commercial
Licensing Bureau,
Petitioner**

v

**Compassion Funeral Home & Cremation
Service, LLC,
Respondent**

Docket No.: 22-006013

Case No.: 342629 & 341479

**Agency: Corp. Securities
Commercial
Licensing Bureau**

**Case Type: Board of Examiners
in Mortuary Science**

Filing Type: Formal Complaint

IN THE MATTER OF:

**Corporations, Securities & Commercial
Licensing Bureau,
Petitioner**

v

**John N. Olszewski, Jr.,
Respondent**

Docket No.: 22-006014

Case No.: 342630 & 341643

**Agency: Corp. Securities
Commercial
Licensing Bureau**

**Case Type: Board of Examiners
in Mortuary Science**

Filing Type: Formal Complaint

**Issued and entered
this 23rd day of August 2022
by: David B. Marmon
Administrative Law Judge**

CORRECTED HEARING REPORT¹

This matter commenced with the filing by the Corporations, Securities & Commercial Licensing Bureau (“Petitioner”) of its First Superseding Formal Complaint (“the Complaint”) against both Compassion Funeral Home & Cremation Service LLC, (“CFH”), and John N. Olszewski, Jr., (“Olszewski”), Respondents, on October 19, 2021.²

¹ The caption on the original order incorrectly identified the Complaint number, case type and filing type.

² An earlier Formal Complaint covering these same matters and additional complaint numbers was issued April 5, 2021, and also listed as an additional Respondent, Gerald John Ruffin, Jr. Complaints specific to Mr. Ruffin were separately resolved by the Board of Examiners in Mortuary Science before the issuance of the First Superseding Formal Complaint at issue here. The earlier complaint against the remaining respondents was dismissed without prejudice upon request of Petitioner on October 18, 2021. Docket No. 21-020356.

Two separate docket numbers were assigned, per the case captions above. The complaint alleges Respondents violated general provisions of Michigan's Occupational Code ("Code"), PA 299, MCL 339.101, *et seq.*, as well as Chapter 18, 339.1801-1812, the Vital Records part of Michigan's Public Health Code, PA 368 MCL 333.2801 *et seq.*, and/or the Administrative Rules ("Rules") promulgated thereunder. A Request for Hearing was received from Petitioner on March 2, 2022. On March 2, 2022, a Notice of Telephone Hearing scheduling this matter for hearing on April 26, 2022 was sent to the parties. On April 20, 2022, Olszewski (through his daughter) requested an adjournment because Olszewski, Respondent, and Principal for co-Respondent CFH, was undergoing a medical emergency. Respondent's request was granted, and an order consolidating both dockets and adjourning this matter to June 21, 2022 was issued on April 26, 2022.

The undersigned presided at hearing which commenced by telephone on June 21, 2022. Daniel Kelly and Eric St. Onge, Assistant Attorneys General appeared on behalf of Petitioner. Olszewski represented himself and CFH. Petitioner presented the testimony of Olszewski, whom it called as an adverse witness, as well as the testimony of Department Regulatory Agent Thomas W. Colborn. Olszewski testified on his own behalf. He called no other witnesses and offered no exhibits.

The hearing was completed on June 21, 2022, but the record was kept open for the parties to file written closing arguments. An order was issued on June 28, 2022, setting a deadline of July 12, 2022 to file and exchange written closing arguments. Petitioner timely filed its closing argument on July 12, 2022. Olszewski stated at hearing that he did not wish to file a written closing argument. While given an opportunity to do so, no closing argument was received on behalf of either Respondent. With the passing of the July 12, 2022 deadline, the record in this matter is now closed.

Summary of Exhibits

The following exhibits were offered by Petitioner and admitted into evidence without objection at the commencement of the hearing:

<u>Petitioner Exhibit 1</u>	Memorandum of Findings in Complaint Nos. 314179, 341532, 341643 prepared by Thomas W. Colborn.
<u>Petitioner Exhibit 2</u>	Complaint from Tri-County Cremation Services.
<u>Petitioner Exhibit 3</u>	Certification of License for CFH.
<u>Petitioner Exhibit 4</u>	Certification of License for Olszewski.

<u>Petitioner Exhibit 5</u>	Photographs of CFH from September 24, 2019 Inspection.
<u>Petitioner Exhibit 6</u>	Funeral Establishment Inspection Report dated September 24, 2019.
<u>Petitioner Exhibit 7</u>	Documents from a file given by Respondents regarding T.H. ³
<u>Petitioner Exhibit 8</u>	CSCLB certification of non-licensure of Leniear Funeral Services LLC, ("Leniear").
<u>Petitioner Exhibit 9</u>	Memorandum from former Regulation Agent Jennifer Kinsey to Thomas Colborn dated September 25, 2019 with attached emails with Kent Hairston.
<u>Petitioner Exhibit 10</u>	CSCLB license history of Mortuary Science Trainee Gerald Ruffin, Jr., showing lapsed license.
<u>Petitioner Exhibit 11</u>	Photographs of CFH taken December 7, 2020 pursuant to reinspection showing facility appearing to be closed.
<u>Petitioner Exhibit 12</u>	Memorandum of Findings dated December 9, 2020 prepared by Thomas W. Colborn.
<u>Petitioner Exhibit 13</u>	Emails from Complainant regarding T.S.'s remains.
<u>Petitioner Exhibit 14</u>	Emails from Complaint regarding T.S. with attached text from Ruffin, death certificate of T.S., DHS State Emergency Relief Decision.
<u>Petitioner Exhibit 15</u>	4/1/2020 email from Olszewski to Colborn.
<u>Petitioner Exhibit 16</u>	Email from Bill Hudson of Tri-County Cremation Services regarding remains of T.S., death certificate, pick-up, and delivery dates of T.S. remains, out of state transit permit for T.S., Authorization for Cremation, Kansas Coroner's Permit to Cremate.
<u>Petitioner Exhibit 17</u>	Photos of October 3, 2019 Reinspection.
<u>Petitioner Exhibit 18</u>	Death Certificate of D.H. electronically signed by Olszewski, showing remains buried at Gethsemane Cemetery.

³ To protect privacy, decedents will be referred to by their initials rather than their names.

Issue

Whether the Respondents violated the Occupational Code, MCL 339.101 *et seq.* or the rules promulgated thereunder, as alleged in the First Superseding Formal Complaint.

Applicable Law

MCL 339.513 states:

Sec. 513.

(1) Except as provided in subsection (3), at the conclusion of a hearing conducted under section 511, the administrative law hearings examiner shall submit a determination of findings of fact and conclusions of law to the department and the department of the attorney general and the appropriate board in a hearing report. The submitted hearing report may recommend the penalties to be assessed as prescribed in article 6.

(2) A copy of a hearing report shall be submitted to the person who made the complaint and to the person against whom the complaint was lodged.

(3) For a complaint involving professional standards of practice under article 7, a majority of the members of the board who have not participated in an investigation of the complaint or who have not attended an informal conference, shall sit to make findings of fact in relation to the complaint.

MCL 339.604 states in pertinent part:

339.604 Violation of article regulating occupation or commission of prohibited act; penalties.

Sec. 604.

A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

* * *

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

(c) Violates a rule of conduct of an occupation.

(d) Demonstrates a lack of good moral character.

(e) Commits an act of gross negligence in practicing an occupation.

* * *

(g) Commits an act which demonstrates incompetence.

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

* * *

(l) Aids or abets another person in the unlicensed practice of an occupation.

MCL 339.104(9) states, "Incompetence" means a departure from, or a failure to conform to, minimal standards of acceptable practice for an occupation.

MCL 339.1801(e), (f), and (g) give the following definitions under the Occupational Code:

(e) "Practice of funeral directing" means engaging in or representing oneself as engaging in the supervising of the burial and disposal of a dead human body, managing a funeral establishment for the preparation, disposition, and care of a dead human body, or using, in connection with the user's name or funeral establishment, the word "funeral director", "funeral service professional", "undertaker", or "mortician", or any other title embodying the words "mortuary science" or otherwise implying that the individual is engaged as a funeral director.

(f) "Practice of mortuary science" means the practice of embalming or the practice of funeral directing, or both.

(g) "Resident trainee" means an individual who is engaged in learning the practice of embalming or funeral directing or the practice of mortuary science under the instruction and personal supervision of a holder of a license for the practice of mortuary science in this state.

MCL 339.1806(5) states in pertinent part:

An applicant for an establishment license issued under subsection (3) shall disclose the ownership interests in the funeral establishment as follows:

* * *

(f) If the owner is a limited liability company, the applicant shall disclose the names and addresses of all members and managers.

MCL 339.1808(4) provides:

(4) Not more than 1 resident trainee shall be supervised by a licensee. The supervisor for a trainee shall be actively connected with a funeral establishment.

MCL 339.1809 states in pertinent part:

Sec. 1809.

(1) All of the following apply to the ownership and management of a funeral establishment:

(a) A funeral establishment shall be managed by an individual who is the holder of a license for the practice of mortuary science. The manager shall ensure that the funeral establishment complies with all applicable laws.

(b) A funeral establishment shall notify the department in writing of the name of the individual appointed as the manager of the funeral establishment and conspicuously display the name of the manager at the entrance of the funeral establishment.

(c) A manager of a funeral establishment shall not reside more than 75 miles from that funeral establishment.

(d) Except as provided in subsection (2), an individual shall not manage more than 1 funeral establishment.

* * *

(6) A funeral establishment shall contain a preparation room equipped with tile, cement, or composition floor and necessary drainage and ventilation, and contain each necessary instrument or supply for the preparation and embalming of a dead human body for burial, transportation, or other disposition.

MCL 339.1810 states in pertinent part:

Sec. 1810.

(1) A person shall be subject to the penalties of article 6 if the person commits 1 of the following:

(a) Solicitation of a dead human body by a licensed person or an agent, assistant, representative, employee, or person acting on behalf and with the knowledge and consent, express or implied, of the licensed person, whether the solicitation occurs after death or while death is impending, or the procuring or allowing directly or indirectly of a person to call upon an institution or individual by whose influence a dead human body may be turned over to the licensed person or funeral establishment.

(b) Procuring a person known as capper, steerer, or solicitor to obtain funeral directing or embalming, or allowing or permitting a capper, steerer, or solicitor to obtain funeral directing or embalming for a licensed person or funeral establishment.

(c) The direct or indirect payment or offer of payment of a commission by a licensed person or an agent, representative, assistant, or employee of the licensed person for the purpose of securing business.

(d) Aiding or abetting an unlicensed person to engage in the practice of funeral directing or embalming.

* * *

(h) A violation of any of the following:

(i) Section 2652, 2653, 2659, 2663, 2836, 2842, 2843, 2848, 2850, 2851, 2853, or 2854 of the public health code, 1978 PA 368, MCL 333.2652, 333.2653, 333.2659, 333.2663, 333.2836, 333.2842, 333.2843, 333.2848, 333.2850, 333.2851, 333.2853, and 333.2854, or the rules promulgated under those sections.

(i) Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody.

(j) Failure to secure a permit for removal or burial of a dead human body before interment or disposal.

MCL 333.2848 states in pertinent part:

Sec. 2848.

(1) Except as otherwise provided in sections 2844 and 2845, a funeral director or person acting as a funeral director, who first assumes custody of a dead body, not later than 72 hours after death or the finding of a dead body and before final disposition of the body, shall obtain authorization for the final disposition. The authorization for final disposition of a dead body shall be issued on a form prescribed by the state registrar and signed by the local registrar or the state registrar.

MCL 333.2894 states in pertinent part:

Sec. 2894.

(1) A person shall not:

(a) Wilfully [sic] and knowingly refuse to provide vital records information required by this part or the rules promulgated pursuant to this part.

(b) Wilfully and knowingly make a false statement in a vital record or report required to be filed under this code, or in an application for an amendment or for a certified copy of a vital record.

(c) Wilfully and knowingly supply false information intending that the information be used in the preparation of a vital record or amendment thereof.

* * *

Mich Admin Code R 339.18901(1)(b) and (c) give the following definitions under the Code:

(b) "Full-time" means not less than 40 hours per week.

(c) "Sponsor" means a mortuary science licensee who has held a mortuary science license for not less than 5 years, who has agreed to supervise and instruct a resident trainee as required by R 339.18925, and

who has not had any disciplinary action taken against him or her within the last 5 years.

Mich Admin Code R 339.18925 provides:

Rule 25. A resident trainee shall perform, under the supervision of his or her sponsor, all of the following minimum services during resident training:

- (a) Not less than 25 embalmings.
- (b) All of the following services not less than 20 times each:
 - (i) Removing remains from the place of death.
 - (ii) Securing information for a death certificate and newspapers.
 - (iii) Completing and filing a death certificate and obtaining the burial transit permit.
 - (iv) Contacting newspapers for placement of a death notice.
 - (v) Arranging for clergy.
 - (vi) Checking in and placing flowers.
 - (vii) Receiving visitors.
 - (viii) Assisting in selling funeral merchandise.
 - (ix) Assisting in making funeral arrangements.
 - (x) Arranging cemetery details.
 - (xi) Assisting at the funeral.
 - (xii) Applying cosmetics to, and arranging the hair of, a deceased person.
- (c) All of the following services not less than 3 times each:
 - (i) Arranging for or providing music.
 - (ii) Completing and filing social security forms.
 - (iii) Completing and filing veterans' forms.

- (iv) Performing restorative work.
- (v) Arranging the receiving or transferring of human remains by common carrier.
- (vi) Contacting the deceased's lodge, club, or place of employment concerning the death.

Mich Admin Code, R 339.18931 states in pertinent part:

Rule 31.

* * *

- (2) Each licensed establishment shall have an embalming room. The embalming room shall not have a direct connection to any living quarters located on the same floor or to the chapel or any other area accessible by the public. For the purposes of this rule, a direct connection has not been made if an area that is not less than 9 square feet in floor area has been provided between the entrance to the embalming room and the entrance to an area accessible by the public.
- (3) The embalming room shall be kept in a clean and sanitary condition at all times. Instruments shall be cleaned and sterilized after each use.
- (4) An embalming room shall have all of the following:
 - (a) A linoleum or tile floor.
 - (b) Walls and ceilings made of or covered by washable and waterproof material.
 - (c) Hot and cold running water.
 - (d) A plumbing system as required by the provisions of R 325.11401 through R 325.11407.
 - (e) A fan that is capable of moving 250 cubic feet of air per minute.
- (5) An embalming room shall be equipped with a porcelain or stainless steel embalming table, the instruments necessary to embalm a body, and a means of sterilizing equipment, such as an autoclave, a gas sterilizer, or an instrument solution sterilizer that is large enough to accommodate a normal, adult-sized trocar.

(6) An embalming room shall not be used as a storage area.

Mich Admin Code, R 339.18937 states in pertinent part:

Rule 37.

(1) Each funeral establishment shall have in its direct employment a mortuary science licensee who is designated as the establishment's manager.

(2) A manager shall be employed on a full-time basis and shall be available at all times for funeral-related purposes.

* * *

Findings of Fact

Based upon the entire record in this matter, including the witness testimony and admitted exhibits, this Tribunal finds the following:

1. Olszewski originally became a Mortuary Science Licensee on December 28, 1987 until May 24, 2011, when his license was suspended. His license was again active from October 18, 2011 through October 31, 2011 when his license lapsed. Olszewski's license was suspended from that date through August 26, 2013. Olszewski was relicensed on September 9, 2013 and has been continuously licensed to October 31, 2021. (Petitioner Exhibit 4; Testimony of Olszewski).
2. CFH, located at 21551 Fenkell Ave. in Detroit, was licensed as a mortuary science establishment from February 23, 2015 through October 31, 2019 when the license lapsed. (Petitioner Exhibit 3).
3. Olszewski was the owner of CFH, along with a partner who was not named on any of the "paperwork" or licensure documentation.⁴ (Testimony of Olszewski).
4. Olszewski also confirmed in testimony that he was the designated manager of CFH
5. Olszewski has undergone significant health problems, which since the spring of 2018 have prevented him from working at CFH. (Testimony of Olszewski).

⁴ While not charged in the Superseding Formal Complaint, it appears that CFH and/or Olszewski were also in violation of MCL 339.1806(5) by not disclosing the silent partner.

6. Kent Hairston, a companion of Olszewski, told Investigator Colborn that Kirk Lytwyn and Bishop Ruffin were responsible for the day-to-day operation of the funeral home. (Petitioner Exhibit 1, p 2, Petitioner Exhibit 9, p 1).
7. A sign out front of CFH lists "BISHOP RUFFIN JR." Underneath that name, the sign reads, "JOHN OLSZEWSKI · MANAGER." (Petitioner Exhibit 11, p 5).
8. Gerald Ruffin Jr. was issued a Mortuary Science Resident Trainee License on October 23, 2015 until January 31, 2019 when the license lapsed. The Trainee license was reissued on April 29, 2019 and lapsed again on January 31, 2020. (Petitioner Exhibit 10).
9. Gerald Ruffin Jr. referred to himself as "Bishop" or Bishop Ruffin.⁵ (Testimony of Olszewski, Petitioner Exhibit 14, p 4).
10. Olszewski also agreed under oath that Ruffin was managing CFH's day-to-day activities in his absence.
11. Olszewski was aware that Ruffin continued to take care of families and conducted embalming in his absence. Olszewski also confirmed that the funeral establishment's telephone rang to Ruffin's cell phone, that Ruffin performed funeral services, and that Ruffin opened a new bank account for receiving payments for services. (Testimony of Olszewski).
12. Olszewski testified that Ruffin was not supposed to handle the day-to-day business and that he protested Ruffin handling the day-to-day business; however, despite being the designated manager and the sole owner of CFH, Olszewski did not fire Ruffin.
13. Agent Colborn testified that Ruffin told him that the telephone number for the CFH rang directly to his cellphone, that Ruffin performed all the funeral services at CFH, that Olszewski was never at CFH, and that Ruffin opened a new bank account for the funeral home. (Testimony of Colborn, Petitioner Exhibit 1, p 2).
14. Olszewski explained under oath that in his over 30 years as a mortuary science licensee, he had experience sending bodies for cremation and that he was familiar with the process, including how a reasonable and competent funeral establishment would do so, as well as the required paperwork. Olszewski agreed that before a funeral home sends a body to a crematory for cremation, it must first obtain approval for final disposition and send the body

⁵ The record evidence does not show what religious denomination or entity, if any, may have ordained Mr. Ruffin as a bishop.

- with a burial transit permit. Olszewski also agreed that a funeral establishment's designated manager is responsible for obtaining authorization for disposition before a body is ever transported.
15. Olszewski confirmed under oath that transporting bodies to a crematory without authorization for disposition would be a violation of the Code. When asked if it would be a violation of the Code to deliver bodies to a crematory in February of 2019 and March of 2019 and still have failed to provide paperwork by October of 2019, Olszewski said that it would and that "there is no reason for that." Olszewski also agreed that sending bodies to a crematory without the necessary documentation would constitute acts of incompetence and gross negligence.
 16. Olszewski also agreed under oath that if a funeral home tried to pay for cremation but bounced checks, that would constitute dishonesty.
 17. On December 11, 2018, D.H. died in Highland Park, Michigan. Olszewski electronically signed her death certificate as Mortuary Science Licensee on April 17, 2019, stating that D.H.'s remains were buried in Gethsemane Cemetery in Detroit. (Petitioner Exhibit 18).
 18. CFH sent D.H.'s remains to Tri-county Cremation Services ("TCS") for cremation on May 29, 2019, (Petitioner Exhibit 5, p 8) and she was cremated on August 7, 2019. (Petitioner Exhibit 5, p 10-11).
 19. Colburn testified that a thumb print was required to electronically sign a death certificate.
 20. On May 1, 2019, T.S. died in Kansas City, Kansas. (Petitioner Exhibit 14, p 10).
 21. T.S.'s mother had been in contact with Ruffin and had T.S.'s remains shipped to CFH for cremation. She made plans for a memorial service to be held on May 18, 2019. As of March 24, 2020, T.S.'s remains were never delivered to T.S.'s mother, and no explanation was given to her as to where T.S.'s remains were located. (Petitioner Exhibit 13).
 22. On September 12, 2019, TCS sent a note to CFH stating, in bold hand-written print, "We need money & paperwork or Mary will be contacting the State for Permission to Return these bodies." "URGENT." The note was written on a spreadsheet excerpt showing five corpses picked up from CFH between February 5, 2019 and June 26, 2019 which did not have transit papers, family approval, or were not paid for cremation. (Petitioner Exhibit 2, p 4).

23. On various spreadsheets sent to CFH by TCS, one of the corpses was identified as T.H. (Petitioner Exhibit 2, pp 3, 4, 11,14, 16, 19, 21, 23).

24. Petitioner Exhibit 2 shows four bodies and one casket were picked up by TCS on the following dates without required authorizations from CFH. The following chart summarizes the evidence regarding these bodies:

Body ID #	Pick up date	Date of death	Date disposed or mentioned
64775 (C.H.)	2/15/19	?	10/25/19 not auth*
64816	9/9/19	8/3/19	unknown
64898	4/9/19	?	unknown
65080 (T.H.)	6/28/19	5/29/19	Released 10/2/19 to Leniear*
Casket (D.H.)	3/25/19	?	6/2021 not auth**

* Investigator's Report, Petitioner's Exhibit 1, p 3

** Testimony of Colborn.

25. TCS was given a check by CFH in the amount of \$300.00, which was returned for insufficient funds or "bounced" twice. (Petitioner Exhibit 2, p 7-12).

26. As of August 31, 2019, CFH owed a balance of \$7,272.15 to TCS, of which \$3,072.15 was past due. (Petitioner Exhibit 2, p 28-29).

27. On November 14, 2019, Agent Colborn contacted TCS and learned that Respondents had yet to provide the paperwork necessary for the cremation of the two remaining bodies. TCS had received D.H.'s body on March 22, 2019 and C.H.'s body on February 15, 2019. (Testimony of Colborn; Petitioner's Exhibit 1, p 3).

28. After Petitioner received a complaint from TCS, Agent Colburn conducted an inspection of CFH's premises in the presence of Olszewski on September 24, 2019. (Testimony of Colborn, Petitioner Exhibit 6).

29. The September 24, 2019 inspection revealed that the embalming room was used for the storage of dead flowers and other miscellaneous items in violation of Mich Admin Code, R 339.18931(6). (Petitioner Exhibit 6, Testimony of Colborn, photos, Petitioner Exhibit 5, pp 1, 3,13, 19).

30. The September 24, 2019 inspection revealed that the embalming room lacked necessary equipment, including a functioning embalming machine and embalming fluid as required by Mich Admin Code, R 339.18931(5). (Petitioner Exhibit 6, Testimony of Colborn).

31. The September 24, 2019 inspection revealed that the embalming room was missing several floor tiles in violation of Mich Admin Code, R 339.18931(a). (Petitioner Exhibit 5, pp 2, 4, 8).
32. The September 24, 2019 inspection revealed that the embalming room was filthy and unsanitary, with insects on the floor and in the ceiling light, a filthy embalming table, dried blood on the floor, a filthy drain bowl, clumps of human hair on the open shelves, blood stains on the floor and embalming table, open buckets, unstored instruments, dead flowers, and the room in general disarray in violation of Mich Admin Code, R 339.18931(3). (Testimony of Colborn, Petitioner Exhibit 5, pp 1- 21).
33. When asked by Colborn about the five bodies listed in TCS's complaint, Olszewski produced a file on T.H. (Testimony of Colborn).
34. The file on T.H. contains photographs of documentation that Olszewski produced related to T.H, which is signed by Corey Leniear, Sr. and indicates that various funeral home services were provided by Leniear Funeral Services, LLC, ("Leniear") and the LLC's designated manager, Tiana Richardson. (Testimony of Colborn, Petitioner Exhibit 7).
35. Agent Colborn testified that Corey Linear did not currently possess and had never possessed a license to practice mortuary science under the Code, which was confirmed by a certification of licensure and license history for Leniear, found in Petitioner's Exhibit 8.
36. Agent Colborn testified that CFH performing funerals for an unlicensed entity would constitute a violation of the Code, specifically aiding and abetting the unlicensed practice of an occupation. Agent Colborn also explained that by allowing Corey Leniear and Leniear Funeral Services, LLC to obtain and send business to it, CFH allowed or permitted a capper or steerer to obtain funeral directing or embalming for a licensed funeral establishment. Agent Colborn described a "steerer" or a "capper" as someone who, for a fee or other consideration, steers business to a particular funeral home.
37. Agent Colborn reinspected CFH on or about October 3, 2019. Most of the violations that Agent Colborn identified during the September 24, 2019 inspection remained unaddressed and Agent Colborn again photographed the embalming room's condition. (Testimony of Colborn, Petitioner Exhibit 17).
38. On March 30, 2020, Agent Colborn contacted Complainant D.C., the mother of T.S., via email and D.C. responded, stating that she never had any contact with Olszewski. (Petitioner Exhibit 14).

39. On April 1, 2020, Agent Colborn contacted Olszewski via email to inquire about the remains of T.S. Olszewski replied to the email stating that he would look for T.S.'s remains, ensure that the family received them, and update Agent Colborn; however, Agent Colborn received no further communications from Olszewski regarding T.S.'s remains. (Testimony of Colborn, Petitioner Exhibit 15).
40. On April 20, 2020, Agent Colborn contacted Bill Hudson from TCS via email, and Mr. Hudson stated that Ruffin was the only individual from CFH that TCS did business with. Mr. Hudson confirmed that T.S. was cremated on August 7, 2019 and the remains delivered to Ruffin on August 9, 2019. Agent Colborn testified that to his knowledge, CFH has never delivered T.S.'s cremated remains to D.C. (Testimony of Colborn, Petitioner's Exhibit 16).
41. Agent Colborn attempted to reinspect CFH on December 7, 2020, but found the building to be locked, the security door down, and the parking lot vacant and unkempt. (Photos, Petitioner Exhibit 11). An attempt to call the phone number on CFH's sign resulted in an automated message stating, "call cannot be completed... The called party is temporarily unavailable." (Petitioner Exhibit 12).
42. Olszewski was asked by this tribunal, "[t]here have been a number of allegations stated in the disciplinary complaint before me today. Do you disagree with any of them?" Olszewski did not deny any of the allegations, instead stating, "[w]ell, I didn't do any of this on purpose . . .".

Conclusions of Law

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Petitioner to prove by a preponderance of the evidence that grounds exist for the imposition of sanctions upon Respondents. The Michigan Supreme Court has stated: "proof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A "preponderance of evidence" is best described as that evidence having the greatest weight.

Allegations Against CFH

Petitioner's First Superseding Formal Complaint sets forth allegations of violations under the Code against Respondent CFH in paragraphs 32-45. The following are this tribunal's conclusions for each allegation.

32. By repeatedly attempting to pay for cremation services with insufficient funds, Compassion Funeral Home engaged in fraud, deceit, or dishonesty in the practice of an occupation, in violation of MCL 339.604(b).

Section 604(b) of the Code subjects a licensee to discipline when the licensee “Practices fraud, deceit, or dishonesty in practicing an occupation.” As found above in the findings of fact, CFH repeatedly submitted checks to TCF for services which were returned for insufficient funds. Each check is a representation by the issuer that there are sufficient funds to cover it. The fact that one \$300.00 check bounced twice establishes intentional behavior on the part of CFH. Accordingly, it is established that CFH engaged in deceit and dishonesty, if not outright fraud. Paragraph 32 of the Complaint is therefore established.

33. By failing to provide the required authorizations for final disposition to the crematory, resulting in months-long delays in achieving final disposition for at least five bodies, and failing to provide the cremated remains of T.S. to her family, despite repeated demands for their return, Compassion Funeral Home committed acts of gross negligence in the practice of an occupation, in violation of MCL 339.604(e).

Section 604(e) of the Code subjects a licensee to discipline for committing “an act of gross negligence in practicing an occupation.” Here, the findings of fact establish that CFH received five bodies for cremation, including T.S.’s body, sent the bodies to TCS for cremation, and failed to provide proper authorizations or transit documents to allow TCS to cremate the bodies. MCL 339.2848(1) requires a funeral director, or one acting as a funeral director to provide proper authorizations within 72-hours after death. This provision establishes a standard, which funeral homes must uphold. Here, Petitioner Exhibit 2 shows that CFH’s acting director(s) failed to provide authorizations for months after the dates of death.

Gross negligence is not defined in the Occupational Code. In order to establish gross negligence, the licensee must have a legal duty of care. A legal duty of care may derive from either a statute or “the basic rule of the common law, which imposes on every person engaged in the prosecution of any undertaking an obligation to use due care, or to so govern his action as not to unreasonably endanger the person or property of others.” (Internal citations omitted). *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 364; 663 NW2d 514 (2003). Failure to meet this standard by months establishes a breach of duty. In *Becker-Witt*, the Court of Appeals also held that a legal duty is not always limited to a licensee’s client but may extend to other persons under the law in which the legal duty arises. *Id.*, p 365. Here, CFH had a legal duty not only to the families of the 5 departed persons entrusted to it, CFH also has a legal duty to the public under the Code. The public has an interest in ensuring that only

bodies with proper authorization are cremated, including the prevention of possible coverups of criminal activity, and to give the families of the departed some closure.

Moreover, CFH's failure to provide the remains to the families in a timely manner is also grossly negligent, in that it violates the very purpose of funerals, and the duty owed by funeral establishments to the families who entrust the bodies of departed family to these establishments. Here, CFH never returned the cremated remains to the family of T.S., to whom it had a duty to do so. Gross negligence is established. Accordingly, the allegations in paragraph 33 of the Complaint have been established.

34. By failing to provide the required authorizations for final disposition to the crematory, resulting in months-long delays in achieving final disposition for at least five bodies and failing to provide the cremated remains of T.S. to her family, despite repeated demands for their return, Compassion Funeral Home committed an act of incompetence in the practice of an occupation, in violation of MCL 339.604(g).

MCL 339.104(9) defines "Incompetence" as a departure from, or a failure to conform to, minimal standards of acceptable practice for an occupation. MCL 339.604(g) allows for sanctions when a licensee commits an act which demonstrates incompetence. Olszewski agreed in his testimony that failing to provide authorizations for final disposition for months after the body was shipped to a crematory falls below minimal standards of acceptable practice. Further, MCL 339.2848(1) sets the standard of 72 hours for authorizations. In T.S.'s case, the family waited over a year from the date of her death and still was not provided with her remains. The family was forced to conduct a memorial service without her body or ashes being present.

Because authorizations for remains listed in Petitioner Exhibit 2 were not provided within 72 hours, incompetence has been established. Further, the handling of T.S.'s remains also shows an additional act of incompetence. The allegations in paragraph 34 of the Complaint are established.

35. Compassion Funeral Home was not managed by an individual who is the holder of a license for the practice of mortuary science when it failed to ensure that its designated manager, Olszewski, was actively involved in the management of the establishment and employed an unsupervised resident trainee, Ruffin, to manage the establishment, contrary to MCL 339.1809(1)(a), in violation of MCL 339.604(h).

MCL 339.1809(1)(a) requires a funeral establishment to be managed by an individual who is the holder of a license for the practice of mortuary science. This section further requires that the manager ensure that the funeral establishment complies with all applicable laws. Mich Admin Code, R 339.18937(2) requires that "[a] manager shall be

employed on a full-time basis and shall be available at all times for funeral-related purposes.” Full-time is defined by Mich Admin Code, R 339.18901(1)(b) as not less than 40 hours per week.

Olszewski testified that he was not able to be on the premises on a regular basis due to his ongoing health problems beginning in the spring of 2018. He admitted that Ruffin, along with a partner whose name was not on any of the paperwork, managed CFH in his absence. His testimony also indicated that he was unaware of unpaid bills to TCS, unaccounted-for bodies, and the unsanitary state of the embalming room. He blamed Ruffin and the unnamed partner for these problems. This testimony clearly established that Olszewski was not able to ensure that CFH complied with applicable laws. In addition to Olszewski's admissions, Agent Colborn's testimony and Petitioner's Exhibits 1 and 9 demonstrate that Olszewski was not actively involved in the management of Compassion Funeral Home at the times relevant to this Complaint. A violation of any provision of the article regulating this profession is also a violation of MCL 339.604(h), when a penalty is not otherwise prescribed. Accordingly, the allegations in paragraph 35 of the Complaint are established.

36. Compassion Funeral Home failed to have a preparation room equipped with tile, cement, or composition floor and necessary drainage and ventilation, and that contained 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(6), in violation of MCL 339.604(h).

Section 1809(6) of the Code provides that a funeral establishment must contain a preparation room equipped with tile, cement, or composition floor and necessary drainage and ventilation, and must contain each necessary instrument or supply for the preparation and embalming of a dead human body for burial, transportation, or other disposition.

Although Olszewski initially contested whether the embalming room was missing floor tiles, he admitted that the embalming room was missing at least one floor tile. Additionally, Agent Colborn testified that when he inspected CFH on September 24, 2019, there were missing floor tiles, there were missing supplies such as embalming fluid, and Olszewski told him that the embalming machines were not operational. Further, the Funeral Establishment Inspection Report admitted as Petitioner Exhibit 6 and the photographs taken at that time admitted as Petitioner Exhibit 5 established CFH's non-compliance with these requirements as pages 2, 4, and 8 show multiple missing floor tiles, and page 10 shows that the storage cabinet where embalming fluid would be stored is empty.

Therefore, Compassion Funeral Home failed to have a preparation room equipped with tile, cement, or composition floor and each necessary instrument or supply for the preparation and embalming of a dead human body, in violation of MCL 339.1809(6). The allegations in paragraph 36 of the Complaint are therefore established.

37. By allowing Corey Leniear, Sr. and Leniear Funeral Services, LLC to obtain and send business to its establishment for performance of funeral services, Compassion Funeral Home allowed or permitted a capper, steerer, or solicitor to obtain funeral directing or embalming for a licensed person or funeral establishment, contrary to MCL 339.1810(1)(b), in violation of MCL 339.604(h).

Section 1810(b) of the Code prohibits a funeral establishment from “[p]rocur[ing] a person known as capper, steerer, or solicitor to obtain funeral directing or embalming, or allowing or permitting a capper, steerer, or solicitor to obtain funeral directing or embalming for a licensed person or funeral establishment.” Agent Colborn testified that a "steerer" or a "capper" is someone who, for a fee or other consideration, will steer business to a particular funeral home and that it is a violation of the Code for a licensee to pay a fee to an unlicensed individual for a referral.

TCS’s invoices establish that CFH sent it the body of T.H. for cremation. Testimony of Colborn establishes that Olszewski handed him CFH’s file for T.H. The documents in this file, admitted as Petitioner Exhibit 7, show that Leniear conducted a funeral service, embalmed the body, allowed use of their facilities for a funeral, provided a casket, obituaries, and flowers for T.H. for a fee of \$7,600.00. Petitioner Exhibit 7 also shows disposition of T.H.’s remains by burial at “D.M.H. West” (Detroit Memorial Park West cemetery) in Redford on June 18, 2019. (Petitioner Exhibit 7 p 4).

It is not clear what services, if any, were provided by CFH. None of the documents found in Petitioner Exhibit 7 show that cremation of T.H. was planned or charged for. Petitioner Exhibit 2, which shows TCS’s invoice for bodies including T.H. indicates that the family never provided authorization for the cremation of T.H. It also shows that a body identified as T.H. was picked up on June 28, 2019, 10 days after the remains were reported to be buried at Detroit Memorial Park West. While it is clear that Leniear was unlicensed, it is not clear that it steered business to CFH; that CFH provided any services, or that Leniear received any consideration from CFH to provide any services.

The presence of remains identified as T.H. at TCS, as well as a file folder for T.H.’s funeral in CFH’s possession raise many disturbing questions, including who is buried at Detroit Memorial Park West, and who was sent to TCH awaiting cremation without family authorization. However, this record does not establish that CFH employed Leniear as a capper, steerer, or solicitor to obtain funeral directing or embalming for a

licensed person or funeral establishment. Accordingly, the allegations in paragraph 37 have not been established.

38. By sending at least five bodies to the crematory without the required burial transit permits or authorizations for final disposition, Compassion Funeral Home failed to obtain the authorizations for their final disposition, contrary to MCL 339.1810(1)(h) and MCL 333.2848(1), in violation of MCL 339.604(h).

Section 2848(1) of the Code requires a funeral director or person acting as a funeral director, who first assumes custody of a dead body, not later than 72 hours after death or the finding of a dead body and before final disposition of the body, to obtain authorization for the final disposition. Petitioner Exhibit 2, along with the report in Petitioner Exhibit 1, establish that CFH failed to timely obtain authorizations for the remains of five persons. A violation of Section 2848 is also a violation of Section 1810(1)(h), as well as Section 604(h) of the Code. The allegations in paragraph 38 of the Complaint are therefore established.

39. By sending at least five bodies to the crematory without the required burial transit permits or authorizations for final disposition, Compassion Funeral Home failed to secure a permit for removal or burial of a dead human body before interment or disposal, contrary to MCL 339.1810(1)(j), in violation of MCL 339.604(h).

Section 1810(1)(j) of the Code provides that a person shall be subject to penalties under Article 6 of the Code if they fail to secure a permit for the removal or burial of a dead human body before interment or disposal. As stated directly above, it is undisputed that CFH sent at least five bodies to TCS for cremation, without obtaining authorization for final disposition or the accompanying burial transit permit. Therefore, CFH failed to secure a permit for removal of a dead human body before disposal. In the case of T.H., it is unclear if her remains were buried or cremated. In any case, the allegations in paragraph 39 of the Complaint are established.

40. By stating on D.H.'s death certificate that she was buried at Gethsemane Cemetery after sending her body to the crematory, Compassion Funeral Home willfully and knowingly made a false statement in a vital record, contrary to MCL 339.1810(1)(h) and MCL 333.2894(1)(b), in violation of MCL 339.604(h).

Section 2894(1)(b) prohibits a person from “wilfully and knowingly” making a false statement in a vital record or report required to be filed under the Code, or in an application for an amendment, or for a certified copy of a vital record. Testimony from

Colborn establishes that the electronic death certificate with Olszewski's electronic signature contained untrue information concerning the disposition of D.H., who as of June of 2021, was still awaiting cremation.⁶ The death certificate states that D.H. was buried in Gethsemane Cemetery in Detroit. Colborn's testimony also establishes that as the electronic signature requires a thumbprint to activate, Olszewski in fact authorized his electronic signature on the death certificate. However, Petitioner has not established that Olszewski's actions were willful and knowing. Per the record in this case showing his absence from the facility, and his lack of participation in the day-to-day activities, it is more likely that he had no knowledge as to the disposal of D.H.'s remains. While Olszewski's likely ignorance of the situation is hardly an exoneration of his conduct, as he should have known the facts of D.H.'s disposition, it does not establish that he knowingly and willfully made a false statement on this document. As the elements of willfully and knowingly were not established as to the signatory on the death certificate, a violation under this paragraph cannot be imputed to CFH. Accordingly, the allegations in paragraph 40 of the Complaint have not been established.

41. Compassion Funeral Home failed to keep its embalming room in a clean and sanitary condition, contrary to Mich Admin Code, R 339.18931(3), in violation of MCL 339.604(c).

Rule 339.18931(3) of the applicable administrative rules requires that an embalming room be kept in a clean and sanitary condition at all times. Here, the photos and report show the embalming room to be anything but sanitary. Photos were admitted into evidence showing blood, hair, and insects, along with clutter and filth on the embalming table and in the drain bowl. Olszewski admitted under oath that CFH's embalming room was a mess during the September 24, 2019 inspection. Agent Colborn also testified to the state of the embalming room when he inspected it on both September 24, 2019 and again on October 3, 2019, which is summarized in Petitioner Exhibits 1 and 6. Additionally, the photos contained in Petitioner Exhibit 5 and 17 speak for themselves; the embalming room was unclean by any standard. The evidence shows CFH failed to keep its embalming room in a clean and sanitary condition at all times, thus violating Mich Admin Code, R 339.18931(3). A violation of applicable rules is also a violation of MCL 339.604(c). Accordingly, the allegations contained in paragraph 41 of the Complaint are established.

42. Compassion Funeral Home failed to equip its embalming room with a porcelain or stainless-steel embalming table, the instruments necessary to embalm a body, and a means of sterilizing equipment, such as an

⁶ While established based upon testimony for purposes of this hearing, it is also possible that the body sent to the crematory were not those of D.H., and the death certificate was accurate. This also raises troubling questions with criminal implications as to whose body was shipped to the crematory.

autoclave, a gas sterilizer, or an instrument solution sterilizer that is large enough to accommodate a normal, adult-sized trocar, contrary to Mich Admin Code, R 339.18931(5), in violation of MCL 339.604(c).

Rule 339.18931(5) of the applicable administrative rules states that an embalming room must be equipped with, among other things, the instruments necessary to embalm a body. Agent Colborn testified that during the September 24, 2019 inspection, Olszewski told him that the embalming machines in the embalming room were not operational. This was also noted in Petitioner Exhibit 1 and 6. Therefore, Compassion Funeral Home failed to equip its embalming room with all the instruments necessary to embalm a body. Failure to have an operational embalming machine violates this rule. A violation of an applicable occupation rule is also a violation of MCL 339.604(c). Therefore, the allegations in paragraph 42 of the Complaint are established.

43. Compassion Funeral Home used its embalming room as a storage area, contrary to Mich Admin Code, R 339.18931(6), in violation of MCL 339.604(c).

Rule 18931(6) of the Occupation Code rules states that an embalming room must not be used as a storage area. Here, Colborn's testimony, report and accompanying photographs establish that CFH's embalming room was being used to store many items, including dead and dried funeral flowers, potted plants, miscellaneous articles of clothing, and gardening supplies. Olszewski testified that the embalming room was being used for storage as of September 19, 2019, and that his resident trainee had failed to clean it up as was requested. Additionally, Agent Colborn testified that on September 19, 2019 and again on October 3, 2019, there were old memorial flowers and potted plants being stored in the embalming room as summarized in Petitioner Exhibit 1 and 6 and depicted in Petitioner Exhibit 5 and 17. It is established that CFH used its embalming room as a storage area in violation of Rule 18931(6). A violation of an applicable occupation rule is also a violation of MCL 339.604(c). Accordingly, the allegations in paragraph 43 of the Complaint are established.

44. Compassion Funeral Home aided or abetted Ruffin in the unlicensed practice of mortuary science, contrary to MCL 339.1810(1)(d), in violation of MCL 339.604(h) & (l).

Section 1810(d) prohibits a licensee from aiding or abetting an unlicensed person to engage in the practice of funeral directing or embalming. Petitioner Exhibit 10 shows that Gerald Ruffin, Jr. was only licensed as a Mortuary Science Resident Trainee. Section 1801(g) defines a Resident Trainee as follows:

"Resident trainee" means an individual who is engaged in learning the practice of embalming or funeral directing or the practice of mortuary science under the instruction and personal supervision of a holder of a license for the practice of mortuary science in this state.

Subsections (e) and (f) of this same Code section give the following definitions:

(e) "Practice of funeral directing" means engaging in or representing oneself as engaging in the supervising of the burial and disposal of a dead human body, managing a funeral establishment for the preparation, disposition, and care of a dead human body, or using, in connection with the user's name or funeral establishment, the word "funeral director", "funeral service professional", "undertaker", or "mortician", or any other title embodying the words "mortuary science" or otherwise implying that the individual is engaged as a funeral director.

(f) "Practice of mortuary science" means the practice of embalming or the practice of funeral directing, or both.

The evidence in this case establishes that Gerald Ruffin, Jr. was practicing funeral directing and mortuary science without supervision from Olszewski since the spring of 2018. Per Colborn's report, Bill Hudson of TCS only dealt with "Bishop Ruffin." (Petitioner Exhibit 1). Complainant D.H.'s emails show that she only dealt with "Bishop Ruffin" [sic], and never dealt with Olszewski, CFH's designated manager and licensee. (Petitioner Exhibit 14 p 1-4). Olszewski himself testified that Ruffin and Olszewski's unnamed partner ran the funeral home's day-to-day business in his absence. Per Colborn and his report, the funeral home's telephone number rang directly to Ruffin. Ruffin took care of all of the families, did the embalming, and all of the clients were his. The sign in front of the funeral home lists Ruffin's name and purported title of "Bishop" ahead of Olszewski, who is listed below as "manager." (Petitioner Exhibit 11, p 5). While Olszewski was unhappy with Ruffin, he did nothing to stop Ruffin from continuing to run the home and practicing mortuary science as defined in the Code. It has therefore been established that the licensee funeral home aided and abetted Ruffin in practicing mortuary science without the proper license. Aiding and abetting an unlicensed person in the practice of an occupation subjects the licensee to sanctions under Section 604(l) of the Code. It may also subject him to sanctions under Section 604(h), as it violates Section 1810(d). Accordingly, the allegations in paragraph 44 of the Complaint are established.

45. Compassion Funeral Home aided or abetted Corey Leniear, Sr. and Leniear Funeral Services, LLC in the unlicensed practice of mortuary science, contrary to MCL 339.1810(1)(d), in violation of MCL 339.604(l).

Agent Colborn testified that Olszewski produced records related to T.H. (Petitioner Exhibit 7) that were stored at Compassion Funeral Home. The records indicate that, Leniear Funeral Services, LLC acted as the Funeral Home and Funeral Director for T.H. Petitioner Exhibit 8 establishes that Leniear Funeral Services, LLC did not hold a Funeral Home License. While CFH's possession of a record from Leniear Funeral Services LLC showing a funeral provided for a body which CFH sent to TCS for cremation raises many questions of impropriety (and possible criminality), it does not by itself establish aiding and abetting Leniear in the practice of mortuary science. No evidence of the specific business relationship between CFH and Leniear was presented at hearing. However, per Colborn's report, D.H.'s remains were sent to TCS for cremation by Ruffin on March 22, 2019. D.H.'s remains "were paid for and picked up on/or around October 2, 2019. The cremains were released to Corey Lamont Leniear because he paid for the services, i.e., the cremation on the behalf of Bishop Ruffin." (Petitioner Exhibit 1 p 3). This report passage, which was not refuted by Respondents, shows that CFH, through Ruffin, sent a body for cremation on behalf of Leniear. Accordingly, it is estimated that that CFH aided and abetted Leniear in the unlicensed practice of mortuary science, in violation of Section 1810(1)(d) and Section 604(l). The allegations in paragraph 45 of the Complaint are established.

Allegations Against Olszewski

Petitioner's First Superseding Formal Complaint lists allegations of violations under the Act against Respondent Olszewski in paragraphs 47-66. The following are this tribunal's conclusions for each allegation.

Paragraph 46 of the Complaint states:

As Compassion Funeral Home's designated manager, Olszewski is responsible for the operation and management of Compassion Funeral Home, including ensuring its compliance with all applicable laws under the Occupational Code. MCL 339.1809 and Mich Admin Code R 339.18937.

Section 1809 requires that a funeral home have a designated manager, who shall ensure that *the funeral establishment complies with all applicable laws*. This section also requires that a manager reside within 75 miles of the home, and places restrictions on when a designated manager can manage more than one home. Additionally, Mich Admin Code, R 339.18937(2), states a manager shall be employed on a full-time basis and shall be available at all times for funeral-related purposes. It therefore follows that the designated manager is responsible for violations by the funeral home of applicable laws. A majority of the allegations below against Olszewski are based on this imputed responsibility.

47. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's fraud, deceit, or dishonesty in the practice of an occupation, in violation of MCL 339.604(b).

The allegation in paragraph 32 against CFH involving the repeated tendering of checks without sufficient funds to TCS establishes deceit or dishonesty in the practice of an occupation, in violation of MCL 339.604(b) against CFH. As the licensee and designated manager of CFH, these violations are also imputed against Olszewski. Accordingly, the allegations in paragraph 47 of the Complaint are established.

48. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's gross negligence in the practicing of an occupation, in violation of MCL 339.604(e).

The allegation in paragraph 33 against CFH involving its gross negligence in failing to provide the required authorizations for five bodies to be cremated are established. Accordingly, this same violation is imputed against Olszewski as CFH's designated manager and licensee. Therefore, a violation of MCL 339.604(e), as alleged in paragraph 33 of the Complaint, is established.

49. By failing to remain actively engaged in the daily activities and management of Compassion Funeral Home and by allowing a resident trainee, Ruffin, to engage in the unlicensed practice of mortuary science without the required supervision, Olszewski committed acts of gross negligence in the practice of an occupation, in violation of MCL 339.604(e).

Section 604(e) subjects a licensee to penalties for an act of gross negligence in practicing an occupation. As previously discussed, the evidence establishes that Olszewski failed to remain actively engaged in the daily activities and management of CFH. Instead, he allowed Ruffin, who was unlicensed and unqualified to do so, to run the day-to-day operations of the funeral home and thereby practice mortuary science without a license. Olszewski cannot be faulted for becoming ill. However, his failure to either suspend operations, or find someone properly licensed and qualified to temporarily perform the designated manager duties was grossly negligent on his part. He had a duty to Ruffin to supervise him, and a duty to the public not to allow an unlicensed individual to practice as a funeral director and mortician. Further, to initially allow Ruffin to run the business, when he knew that he was unlicensed and unqualified to do so, demonstrated a reckless disregard for the laws and rules applicable to the practice of mortuary science and the safety of the public. Moreover, allowing Ruffin to continue running CFH after numerous problems came to Olszewski's attention also demonstrated a reckless disregard for the laws and rules applicable to the practice of

mortuary science and the safety of the public. Olszewski's gross negligence has been established, as are the allegations in paragraph 49 of the Complaint.

50. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's incompetence in the practice of an occupation, in violation of MCL 339.604(g).

As previously established regarding paragraph 34 of the Complaint, CFH committed acts of incompetence by sending bodies to TCS without proper authorizations resulting in months-long delays in achieving final disposition for at least five bodies and by failing to provide the cremated remains of T.S. to her family. Olszewski acknowledged in his testimony that if this occurred, it would constitute incompetence, and as Compassion Funeral Home's sole owner and designated manager, responsibility is imputed to Olszewski for CFH's acts of incompetence. It is no defense to blame others who do not carry a mortuary license. The allegations in paragraph 50 of the Complaint are established.

51. By failing to remain actively engaged in the daily activities and management of Compassion Funeral Home and by allowing a resident trainee, Ruffin, to engage in the unlicensed practice of mortuary science without the required supervision, Olszewski engaged in incompetence in the practice of an occupation, in violation of MCL 339.604(g).

Along with the imputed incompetence discussed above regarding paragraph 50, Olszewski himself engaged in incompetence by allowing a resident trainee to run the home and engage in the unlicensed practice of mortuary science. Again, doing so placed the public at risk. As it is prohibited by the Code, "it is a departure from, or a failure to conform to minimal standards of acceptable practice for an occupation." MCL 604(g). Further, by failing to provide supervision of Ruffin and by absenting himself from CFH, thus abdicating his responsibility as sponsor to supervise Ruffin, Olszewski again departed from, or failed to conform to, minimal standards of acceptable practice for an occupation. Incompetence under the Code is established, as are the allegations in paragraph 51 of the Complaint.

52. Olszewski failed to remain actively connected to Compassion Funeral Home while supervising resident trainee Ruffin, contrary to MCL 339.1808(4), in violation of MCL 339.604(h).

Section 1808(4) of the Code requires the supervisor for a trainee to be "actively connected" with the funeral establishment. As established above, Olszewski was not involved in the day-to-day operations of CFH and was rarely present. He was the designated manager in name only and he failed to supervise Ruffin. Therefore,

Olszewski was not actively connected to Compassion Funeral Home. A violation of Section 1808 subjects a licensee to sanctions under Section 604(h) of the Code. Accordingly, the allegations contained in paragraph 52 of the Complaint are established.

53. As Compassion Funeral Home's designated manager, Olszewski allowed Compassion Funeral Home to be managed by an individual who was not the holder of a license for the practice of mortuary science, contrary to MCL 339.1809(1)(a), in violation of MCL 339.604(h).

Under Section 339.1809(1)(a) of the Code, a funeral establishment shall be managed by an individual who is the holder of a license for the practice of mortuary science. As already discussed, CFH was being managed by Ruffin. Ruffin was not the holder of a license to practice mortuary science. Rather, he was a trainee. (Petitioner Exhibit 10) Therefore, CFH was managed by an individual who was not the holder of a license to practice mortuary science. As CFH's sole owner and designated manager, Olszewski is responsible for allowing Compassion Funeral Home to be managed by an individual who was not a holder of a license to practice mortuary science. The allegations in paragraph 53 of the Complaint are established.

54. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's failure to maintain a properly equipped preparation room, contrary to MCL 339.1809(6), in violation of MCL 339.604(h).

As discussed above regarding paragraph 36 of the Complaint, CFH's embalming room did not have working embalming machines and there was no embalming fluid on premises. Therefore, CFH failed to equip its embalming room with every necessary instrument or supply for the preparation and embalming of a dead human body. As CFH's sole owner and designated manager, Olszewski is responsible for Compassion Funeral Home's failure to maintain a properly equipped preparation room. Accordingly, this violation of MCL 339.1809(6) is imputed to Olszewski. The allegations in paragraph 54 of the Complaint are established.

55. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home allowing or permitting a capper, steerer, or solicitor to obtain funeral directing or embalming for a licensed person or funeral establishment, contrary to MCL 339.1810(1)(b), in violation of MCL 339.604(h).

As discussed above in reference to paragraph 37 of the Complaint, Petitioner has not established that CFH engaged the services of a capper, steerer, or solicitor to obtain funeral directing or embalming for a licensed person or funeral establishment.

Accordingly, there is no violation of Section 1810(1)(b) that can be imputed to Olszewski. Further, no evidence was presented in relation to Leniear which directly connects this unlicensed funeral home to Olszewski. Accordingly, the allegations in paragraph 55 of the Complaint have not been established.

56. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home sending at least five bodies to the crematory without the required burial transit permits or authorizations for final disposition, contrary to MCL 339.1810(1)(h) and MCL 333.2848(1), in violation of MCL 339.604(h).

As held regarding paragraph 39 of the Complaint, CFH violated MCL 333.2848(1) by transporting at least five bodies to TCS for cremation without the required burial permits or authorizations for final disposition. As CFH's sole owner and designated manager, responsibility for CFH's violation of state law is imputed to Olszewski. The allegations in paragraph 56 of the Complaint are established.

57. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's failure to secure a permit for removal or burial of a dead human body before interment or disposal, contrary to MCL 339.1810(1)(j) in violation of MCL 339.604(h).

As held above regarding paragraph 28 of the Complaint, CFH sent five bodies to TCS for cremation, without the accompanying burial transit permit. As Compassion Funeral Home's sole owner and designated manager, Olszewski is responsible for Compassion Funeral Home's failure to secure burial transit permits contrary to MCL 339.1810(1)(j) and subject to sanctions under MCL 339.604(h). The allegations in paragraph 57 of the Complaint are established.

58. By stating on D.H.'s death certificate that she was buried at Gethsemane Cemetery after sending the body to the crematory, Olszewski willfully and knowingly made a false statement in a vital record, contrary to MCL 339.1810(1)(h) and MCL 333.2894(1)(b), in violation of MCL 339.604(h).

As held above regarding paragraph 40 of the Complaint, Petitioner has not proven that Olszewski willfully and knowingly made a false statement in a vital record. From the evidence presented, it is apparent that Olszewski did not know what was going on in day-to-day operations. It is more likely that he signed the death certificate referred to in paragraph 40 without knowledge of whether it was true or not. It is noteworthy that the death certificate for D.H. does not have a jurat for the mortuary science licensee. Unlike the signature block for the physician, there is no language indicating that the mortuary

science licensee is certifying the truth of the contents in the certificate. Again, while this conduct is far from exemplary, it does not establish a violation of Section 2894 of the Code. The allegations in paragraph 58 of the Complaint are therefore not established.

59. By stating on D.H.'s death certificate that she was buried at Gethsemane Cemetery after sending the body to the crematory, Olszewski, engaged in fraud, deceit, or dishonesty in the practice of an occupation, in violation of MCL 339.604(b).

Although it is established that Olszewski signed D.H.'s death certificate (Petitioner Exhibit 18), which falsely states that D.H. was buried at Gethsemane Cemetery when in fact, CFH (apparently) transported D.H.'s body to TCS in March of 2019 for cremation, Petitioner has not established that Olszewski engaged in fraud, deceit, or dishonesty in the practice of mortuary science. Fraud, deceit, and dishonesty require a *knowingly* false statement. While the statement in the death certificate appears to be false, Petitioner has not established that Olszewski knew it was false.⁷ Accordingly, paragraph 59 of the Complaint has not been established.

60. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's failure to keep its embalming room in a clean and sanitary condition, contrary to Mich Admin Code, R 339.18931(3), in violation of MCL 339.604(c).

As held above regarding paragraph 41 of the Complaint, CFH failed to keep its embalming room in a clean and sanitary condition as required by Mich Admin Code, R 339.18931(3). Again, this failure by CFH is imputed to Olszewski as designated manager. While Olszewski testified that he told Ruffin to clean up the room, Olszewski cannot avoid a violation because of Ruffin's failure to follow through. Accordingly, the allegations in paragraph 60 of the Complaint are established.

61. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's failure to equip its embalming room with a porcelain or stainless-steel embalming table, the instruments necessary to embalm a body, and a means of sterilizing equipment, such as an autoclave, a gas sterilizer, or an instrument solution sterilizer that is large enough to accommodate a normal, adult-sized trocar, contrary to Mich Admin Code, R 339.18931(5), in violation of MCL 339.604(c).

⁷ It is noteworthy that the Administrative Law Examiner in *Ansell v Dept. of Commerce, Board of Examiners of Mortuary Science*, 222 Mich App 347; 564 NW2d 519 (1997), also determined that an unlicensed petitioner did not violate MCL 339.604(b) holding that the state failed to prove petitioner employed fraud, deceit, or dishonesty while practicing as a licensed mortician. *Id.*, footnote 7. The decision was affirmed.

As held above regarding paragraph 42 of the Complaint, CFH failed to properly equip its embalming room with the instruments necessary to embalm a body. Specifically, at time of investigation the embalming room had an inoperative embalming machine and no embalming fluid. Again, this violation by CFH is imputed to its designated manager. Accordingly, the allegations in paragraph 61 of the Complaint are established.

62. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home's use of its embalming room as a storage area, contrary to Mich Admin Code, R 339.18931(6), in violation of MCL 339.604(h).

As established above concerning paragraph 43 of the Complaint, CFH violated Mich Admin Code, R 339.18931(6) and MCL 339.604(h) by using the embalming room as a storage area. Again, the violation is also imputed to Olszewski as CFH's designated manager. Therefore, the allegations in paragraph 62 of the Complaint are established.

63. As designated manager of Compassion Funeral Home, Olszewski was not employed on a full-time basis and not available at all times for funeral-related purposes, contrary to Mich Admin Code, R 339.18937(2), in violation of MCL 339.604(c) & (h).

Rule 339.18937(2) of the applicable administrative rules states a manager shall be employed on a full-time basis and shall be available at all times for funeral-related purposes. Mich Admin Code, R 339.18937(2). "Full-time" is defined in Michigan Admin Code, R 339.18901(b) to mean "not less than 40 hours per week." Section 604(c) of the Code subjects a licensee to sanctions who violates a rule of conduct of an occupation. Based on Agent Colborn's testimony and Petitioner Exhibit 1, Olszewski was hardly, if ever, present at Compassion Funeral Home in 2019. Thus, Olszewski was present less than 40 hours per week. Olszewski also testified that he was too sick to go to the funeral home since the spring of 2018. Therefore, Olszewski was not employed on a full-time basis and was not available at all times for funeral-related purposes. As Olszewski did not comply with Rule 37, he is in violation of Section 604(c) and (h) of the Code. Therefore, the allegations in paragraph 63 of the Complaint are established.

64. Olszewski aided and abetted Ruffin in the unlicensed practice of mortuary science, contrary to MCL 339.1810(1)(d), in violation of MCL 339.604(h) & (l).

As established relative to paragraph 44 of the Complaint, Ruffin managed CFH's day-to-day operations, performed embalming, conducted funeral services, and held himself out as a funeral director in Olszewski's absence. Those activities constitute the practice of mortuary science as defined under the Code. Despite being aware of Ruffin's

unlicensed activity and being the designated manager and sole owner of CFH, Olszewski did nothing to stop it and continued to allow Ruffin to engage in the unlicensed practice of mortuary science. Therefore, Olszewski aided and abetted Ruffin in the unlicensed practice of mortuary science. The allegations in paragraph 64 of the Complaint are established.

65. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home aiding or abetting Ruffin in the unlicensed practice of mortuary science, contrary to MCL 339.1810(1)(d), in violation of MCL 339.604(h) & (l).

In addition to directly violating Section 1810(d), violations are also imputed to Olszewski by CFH's aiding and abetting Ruffin in his unlicensed practice of mortuary science. The allegations in paragraph 65 of the Complaint are therefore established.

66. As Compassion Funeral Home's designated manager, Olszewski is responsible for Compassion Funeral Home aiding or abetting Corey Leniear, Sr. and Leniear Funeral Services, LLC in the unlicensed practice of an occupation, contrary to MCL 339.1810(1)(d), in violation of MCL 339.604(l).

Per the establishment of the allegations in paragraph 45 above, CFH aided and abetted Corey Leniear, Sr. and Leniear Funeral Services, LLC in the unlicensed practice of an occupation, contrary to MCL 339.1810(1)(d), in violation of MCL 339.604(1). While Olszewski told Agent Colborn that he was not familiar with Leniear, his lack of familiarity is not a defense to actions taken by CFH. As its designated manager, CFH's violation as alleged in paragraphs 45 and 66 are imputed to Olszewski. The allegations in paragraph 66 of the Complaint are therefore established.

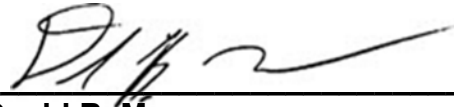
Summary

In summary, this tribunal concludes that Petitioner has established violations against Respondent Compassion Funeral Home & Cremation Services, LLC in paragraphs 33, 34, 35, 36, 38, 39, 41, 42, 43, 44, and 45, and has not established violations in paragraphs 37 and 40. Violation of MCL 333.2848(1), MCL 333.2894(1)(b), MCL 339.604(b), MCL 339.604(c), MCL 339.604(e), MCL 339.604(g), MCL 339.604(h), MCL 339.604(l), MCL 339.1809(1)(a), MCL 339.1809(6), MCL 339.1810(1)(d), MCL 339.1810(1)(h), MCL 339.1810(1)(j), and Mich Admin Code, R 339.18931(3), R 339.18931(5), and R 339.18931(6) have been established as to Respondent Compassion Funeral Home & Cremation Services, LLC.

Further, this tribunal concludes that Petitioner has established violations against John N. Olszewski Jr. in paragraphs 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 60, 61, 62, 63, 64, 65, and 66. Petitioner's allegations in paragraph 55, 58, and 59 have not been established. Violation of 333.2848(1), MCL 333.2894(1)(b), MCL 339.604(b), MCL 339.604(c), MCL 339.604(e), MCL 339.604(g), MCL 339.604(h), MCL 339.604(i), MCL 339.1808(4), MCL 339.1809(1)(a), MCL 339.1809(6), 339.1810(1)(d), MCL 339.1810(1)(h), MCL 339.1810(1)(j), and Mich Admin Code, R 339.18931(3), R 339.18931(5), R 339.18931(6), and R 339.18937(2) have been established as to Respondent John N. Olszewski, Jr.

Recommendation as to Sanction

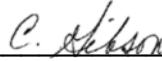
Petitioner did not make a recommendation as to specific sanctions during the June 21, 2022 hearing, or in its written Closing Argument submitted on July 12, 2022. Based on the above findings of fact and conclusions of law, the undersigned recommends that the Board impose a sanction or sanctions as it deems appropriate against each Respondent in accordance with MCL 339.602.



David B. Marmon
Administrative Law Judge

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 23rd day of August 2022.



C. Gibson
**Michigan Office of Administrative
Hearings and Rules**

Via First Class-Electronic Mail:

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