## STATE OF IOWA BEFORE THE BOARD OF MORTUARY SCIENCE

| IN THE MATTER OF:      | ) | Case No. MS 08-011                        |
|------------------------|---|---|
| RAYMOND RALPH BERTRAND | ) | Settlement Agreement and Consent<br>Order |
| License No. 02600      | ) |   |

COMES NOW the Iowa Board of Mortuary Science (Board) and Raymond Ralph Bertrand (Respondent), and hereby enter into this Settlement Agreement and Consent Order (Agreement and Order) pursuant to Iowa Code sections 17A.10(2), 272C.3(4), and chapter 645 Iowa Administrative Code (IAC) rule 12.1.

- Respondent Raymond Ralph Bertrand is an Iowa funeral director. He was issued license no. 02600 on November 22, 1995. The license is currently active and will next expire June 15, 2010.
  - 2. The Board has jurisdiction under Iowa Code chapters 17A, 156, and 272C.
  - On September 21, 2009, the Board charged Respondent in three counts:
  - a. <u>Count One</u> failing to present a Statement of Funeral Goods and Services in violation of the FTC Funeral Rule, pursuant to 16 C.F.R. § 453.2(a) and (b)(5); Iowa Code sections 147.55(3) and (9), and 272C.10(3) (practice harmful or detrimental to the public); and 645 Iowa Administrative Code 100.7(1) and (2), and 103.3(8)(b);
  - b. <u>Count Two</u> failing to secure a signature on Statement of Funeral Goods and Services in violation of Iowa Code sections 147.55(3) and (9), and 272C.10(3) (practice harmful or detrimental to the public); and 645 Iowa Administrative Code 100.7(2); and,
  - c. <u>Count Three</u> withholding of cremated remains pending payment, which constitutes a practice harmful or detrimental to the public, an unethical act, professional incompetence, and negligence, in violation of Iowa Code sections 147.55(2), (3), and (9) and 272C.10(2) and (3); and 645 Iowa Administrative Code 103.3(2) and 103.3(7)(a).

## SETTLEMENT AGREEMENT AND CONSENT ORDER

- This Settlement Agreement and Consent Order constitutes the resolution of a disciplinary contested case proceeding.
- 5. By entering into this Agreement and Order, Respondent voluntarily waives any rights to a contested case hearing on the allegations contained in the Notice of Hearing, and voluntarily waives any objections to the terms of the Agreement and Order, including the right to appeal.
- 6. This Agreement and Order is voluntarily submitted by Respondents to the Board for consideration.
- 7. Respondent acknowledges his right to be represented by counsel in this matter and affirmatively states he is represented by counsel.
- 8. Respondent agrees that counsel for the State may present this Agreement and Order to the Board.
- 9. This Agreement and Order is subject to approval of the Board. If the Board fails to approve this Agreement and Order it shall be of no force or effect to either party.
- 10. This Agreement and Order shall be part of the Respondent's permanent record and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violation.
- 11. In the event Respondent violates or fails to comply with any of the terms of this Settlement Agreement and Consent Order, the Board may initiate appropriate action to revoke or suspend Respondent's license or to impose other licensee discipline in accordance with Iowa Code section 272C.3(2)(a).

- 12. This Agreement and Order is a public record available for inspection and copying upon execution of the Agreement and Order in accordance with the requirements of Iowa Code chapter 22 and 272C.
- 13. The Board's approval of this Agreement and Order shall constitute a FINAL ORDER of the Board.
- 14. Respondent does not admit the allegations of the Notice of Hearing, but agrees the evidence, if presented at hearing, could support a disciplinary order on Counts One and Two. With respect to Count Three, Respondent agrees with the Board that a funeral director should never withhold remains or cremated remains based solely on nonpayment of fees. Respondent further states that he will be especially careful into the future to assure that he does not make any statements that give the impression he may or would withhold remains or cremated remains based solely on nonpayment of fees.

## IT IS THEREFORE ORDERED:

- A. Reprimand. Respondent is reprimanded for failing to present completed and signed Statements of Funeral Goods and Services at the conclusion of consultation.
- B. Future Action. Respondent shall in the future abide by all laws and rules applicable to the practice of mortuary science, including but not limited to the FTC Funeral Rule and related Board rules concerning the presentation and execution of Statements of Funeral Goods and Services, and shall not withhold remains or cremated remains based solely on nonpayment of fees.

- C. Civil Penalty. Respondent is assessed a civil penalty in the total amount of \$1,000.00, which shall be paid to the Board within 30 days of the date this Order is signed by all parties.
- D. Education. Respondent shall complete a course on Federal Trade Commission requirements. The course shall be pre-approved by the Board and shall be at least 2 hours in length. The course shall not apply to the continuing education required for license renewal and shall be completed by September 1, 2010. Confirmation of course completion shall be provided to the Board no later than September 10, 2010. Respondent shall in no event be released from probation until the course has been successfully completed.
- E. Probation. Respondent's funeral director's licenses shall be placed in probationary status for one year from the date this Order is signed by all parties. During the term of probation:
  - (1) Respondent shall file monthly reports with the Board on the tenth day of each month covering the preceding calendar month. Each monthly report shall contain, on forms provided by the Board, information including, but not limited to the following:
    - (a) the dates on which Respondent has contracted for, provided, and/or invoiced any funeral services or merchandise to any purchaser; and,
    - (b) the dates on which Respondent has executed any Statement of Funeral Goods and Services, the date of the decedent's death, the decedent's name, the parties to the purchase contract, whether the decedent was cremated, and such additional information as will identify the transaction to the Board.
  - (2) Respondent shall attach to the first monthly report a true copy of the General Price List and form for Statement of Funeral Goods and Services, and shall thereafter provide the Board with any changes to either form.

- (3) Respondent shall attach to each monthly report a copy of all Statements of Funeral Goods and Services listed in each report, reflecting all signatures obtained.
- (4) Respondent shall supply the Board within 10 days of written request such additional documents as the Board reasonably requests to monitor compliance.
- (5) Failure to file timely, complete and accurate reports shall be a violation of this Order. The Board may randomly audit the reports to verify compliance.
- (6) Upon full compliance with all terms of probation and this Consent Order, Respondent's license shall be restored to full privileges free and clear of all probationary restrictions.
- (7) Pursuant to 645 Iowa Admin. Code 101.5(2)(b), Respondent shall not act as a preceptor for five years from the date this Agreement and Order is signed.

Wherefore, the terms and conditions of this Settlement Agreement and Consent Order are agreed to and accepted by the Iowa Board of Mortuary Science and the Respondents.

This settlement agreement and final order is approved by the board on April 20, 2010.