

**STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES  
BUREAU OF HEARINGS**

In the matter of

Docket No. 2002-618

Bureau of Commercial Services,  
Petitioner

Agency No. 45-01-4920-00

v

Agency: Bureau of Commercial  
Services

Beams of Heaven Funeral Home, Inc.,  
Respondent

Case Type: Sanction

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**Issued and entered  
this 3<sup>rd</sup> day of October 2002  
by Gregory Holiday  
Administrative Law Judge**

**HEARING REPORT**

**PROCEDURAL HISTORY**

This proceeding was commenced with the issuance of a Notice of Hearing upon a Formal Complaint dated January 29, 2002. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA), Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing. The Notice of Hearing scheduled the contested case to commence on Wednesday, June 19, 2002 at 9:00 a.m., at the Bureau of Hearings of the Department of Consumer and Industry Services, Cadillac Place, 2nd Floor Annex, Room 2-700, 3026 West Grand Boulevard, Detroit, Michigan. Further, the notice informed Respondent that if Respondent failed to appear at the hearing as scheduled, a

default may be entered pursuant to Section 78 of the APA. On June 13, 2002, Beverly I. Douglas, Esq., filed a request for adjournment of the hearing on behalf of Respondent for the reason that she was recently retained and had a conflict with another scheduled proceeding. With no objection by Petitioner, the hearing was postponed to Tuesday, August 6, 2002 at 9:00 a.m. The hearing commenced at about 9:35 a.m. Gregory Holiday presided as Administrative Law Judge. Larry Jensen, Esq., appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Consumer and Industry Services (Petitioner). Vincent Burch testified for Petitioner. Bernice Shannon, Administrator arrived at 9:40 a.m. and appeared on behalf of Beams of Heaven Funeral Home, Inc (Beams of Heaven or Respondent). Beverly Douglas, Esq., arrived at 10:15 a.m., and took over representation of Respondent. Mamie Coleman testified for Respondent. Bernice Shannon testified as an adverse witness for Petitioner.

### **ISSUES AND APPLICABLE LAW**

The general issue presented is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.*, with respect to the operation of a funeral establishment. The specific issues are whether or not Respondent violated rules 1991 AACS, R 339.18937(2), 1991 AACS, R 339.18941(5) and 1991 AACS, R 339.18947(3)(b) and (c) and Sections 601(1), 604(c), 604(h), 1806(2) and 1810(1)(k) of the Code, which provide in pertinent part:

**Sec. 601. (1) 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.

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**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:

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

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

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**Sec. 1806(2)** The practice of mortuary science shall be practiced at a fixed place. A person shall not open or maintain a place for practice, or hold itself out as engaging in the practice of mortuary science unless an establishment license is granted by the department. The license is issued for a specific location only. The holder of a license for the practice of mortuary science may conduct a funeral in another licensed funeral establishment, or at a church, home, public hall, lodge room, or other fixed place or establishment owned by the person conforming to section 1809.

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**Sec. 1810. (1)** A person shall be subject to the penalties of article 6 if the person commits 1 of the following:

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**(k) Obtaining possession or embalming a dead human body without first being expressly directed or authorized to do so by a relative of the deceased person or a person entitled to custody.**

**Rule 37...(2) A [mortuary science licensee] manager shall be employed on a full-time basis and shall be available at all times for funeral-related purposes.**

**Rule 41...(5) A funeral establishment shall not do business in a location which is not licensed as a funeral establishment and shall not advertise a service as available from an unlicensed location.**

**Rule 47...(3) At the time funeral arrangements are made and before the time of rendering the service or providing the merchandise, a licensee shall have available, to give to the person who makes the arrangements, a written statement which is duly signed by a licensee of the funeral establishment and which lists all of the following:**

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**(b) The amount of money involved for each of the items for which the licensee will advance money as an accommodation to the family, insofar as any of the items can be specified at that time.**

**(c) The agreed upon method of payment.**

## **EXHIBITS**

Petitioner offered the following exhibits for consideration at the hearing:

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
1	Copy of 7/18/01 Receipt for \$1,000.00 from Leslie Holmes with Copy of Breakdown of \$1,000.00 charges

2 Copy of 2<sup>nd</sup> Statement of Goods and Services Selected document totaling \$2,725.00 for Venus Burch and signed by Vincent Burch and Bernice Shannon, Administrator

3 Certificate of Licensure History for Beams of Heaven Funeral Home Inc. as of 11/9/01 from the Michigan Board of Prepaid Regulation

Respondent offered the following exhibit for consideration at the hearing:

1 Duplicate Original of 1<sup>st</sup> Statement of Goods and Services Selected document totaling \$4,160.00 for Venus Burch signed by Vincent Burch and Bernice Shannon, Administrator

**FINDINGS OF FACT**

When Vincent Burch's mom, Venus Burch, passed on about July 14, 2001, he first consulted with Rev. Hinkle (whose church the family attended) whom he gave permission to have the body picked up and delivered to Beams of Heaven. Mr. Burch was directed by his aunt to contact Beams of Heaven since it had done other family funerals in the past. After the body was delivered to Respondent's establishment, he went to Beams of Heaven on July 16, 2001 to discuss arrangements. Mr. Burch dealt only with Bernice Shannon who showed him caskets and went over required and optional services. Ms. Shannon serves as Administrator of Beams of Heaven. She also works as its secretary. In connection with her positions, she answers calls, describes available services, itemizes charges, negotiates agreements, orders caskets and other services, and attends funerals. While Tracy E. Davis is shown as the Director of Beams of Heaven, she is, and has been, at best a part-time manager of the facility.

Mr. Burch signed a promise to pay Beams of Heaven \$4,160.00 in accordance with the Statement of Goods and Services (Respondent Exhibit 1). When he disclosed to Ms. Shannon during this same visit that there were no insurance or other proceeds to cover the costs, and that the family needed a less expensive memorial, Ms. Shannon agreed to revise the charges down to \$2,725.00. Both she and Mr. Burch then signed another Statement of Goods and Services Selected (Petitioner Exhibit 2) to reflect the lower costs. After that, Ms. Shannon began processing the Burch transaction and had Mr. Burch sign paperwork for a death certificate and an authorization to embalm. According to Mr. Burch, Ms. Shannon told him that although he was signing an authorization to embalm, his mother was already embalmed. No signed authorization to embalm was presented in this proceeding. Mamie Coleman, aunt of the deceased, lives in Inkster and occasionally volunteers her time at Beams of Heaven. She was aware that Beams of Heaven was to handle the arrangements for her niece and that Tracy Davis was to embalm her.

After leaving Beams of Heaven, Mr. and Mrs. Burch decided to call around and try to get a better price. They found a better price (by several hundred dollars) at Swanson Funeral Home and advised Ms. Shannon that they had decided to change funeral homes. Ms. Shannon consented but advised Mr. Burch that he would be responsible for certain costs incurred. Ms. Shannon quoted \$1,000.00 as the costs incurred and required payment before Venus Burch's body would be released. At his request, a representative of Swansons paid the \$1,000.00 to Beams of Heaven who then agreed to release the body to Swansons. The charges of \$1,000.00 were broken down as:

\$375 for Transfer of Remains to the Funeral Home

\$495 for Embalming

\$130 for Funeral Home Service

(See Petitioner Exhibit 1, Page 2<sup>1</sup>). The actual agreed charges for transferring of remains was \$125.00 and for embalming was \$225.00. The higher charges apparently come from the standard prices shown on the first Statement of Goods and Services Selected, plus \$130.00 for Funeral Home Services. Beams of Heaven's claim that \$375.00 transfer charge actually consisted of the \$200.00 plus a \$175.00 charge for three days of body storage appears more an after-thought than believable testimony. None of the documents presented show any charge for body storage.

Mr. Burch repaid Swansons the \$1,000.00 and also paid Swansons to handle arrangements from that point forward. He seeks restitution for the amounts paid to Beams of Heaven.

Beams of Heaven was not licensed as a funeral establishment in July 2001 or thereafter. Beams of Heaven has not possessed a current funeral establishment license since about October 1999 when the license lapsed.

### **CONCLUSIONS OF LAW**

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) § 60.48, page 230. The

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<sup>1</sup> Oddly, Dorthea C. Boykin is shown on the July 18, 2001 document as Manager/Director, though she was not a full-time licensee manager at that time.

burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of disciplinary sanctions upon Respondent. 1990 AACRS, R 339.1763.

**Violation of Section 601(1) of the Code**

By this charge, Petitioner asserts that Respondent engaged in licensed activity as a funeral home establishment without a license in violation of Section 601(1) of the Code.

Because Beams of Heaven has not possessed a current funeral establishment license since October 1999, including when it did business with Mr. Burch in July 2001, it engaged in licensed activity without a license in violation of Section 601(1) of the Code.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Section 601(1) of the Code.

**Violation of Section 604(c) of the Code**

By this charge, Petitioner asserts that Respondent violated Rules 339.18937(2), 339.18941(5) and 339.18947(3)(b) and (c), thereby violating Section 604(c) of the Code.

Rule 339.18937(2) requires that a funeral home have in its direct employment a mortuary science licensee manager who is employed on a full-time basis.

This record establishes that the only licensee associated with Respondent's business, Tracy E. Davis, participates in Respondent's operations on, at most, a casual, on-call basis. Having Ms. Davis participate on-call does not comply with the rule. While Doreatha C. Boykin was listed as Manager/Director on page 2 of Petitioner Exhibit 1, none



of the evidence presented could support a finding that Ms. Boykin was a full-time manager licensee in July 2001. The failure to engage a full-time mortuary science license manager violates Rule 339.18937(2).

Rule 339.18941(5) prohibits a funeral establishment from doing business at a location which is not licensed. This rule generally applies to licensed funeral establishments that elect to do business from other locations. The rule requires that the other locations be licensed. To the extent that this is a charge that Beams of Heaven was operating at an unlicensed location, it duplicates earlier charges and can't form the basis for any separate violation or sanction.

Rules 339.18947(3)(b) and (c) require that at the time funeral arrangements are made, a written statement signed by a licensee must be provided which itemizes the costs to be advanced and the agreed upon method of payment. In this case, while Ms. Shannon provided a Statement of Goods and Services Selected, the fact that she is not a licensee means that the statement she provided to Mr. Burch did not meet the requirements of Rule 339.18937(2) and 339.18947(3)(b) and (c).

Respondent's violation of Rules 339.18937(2) and 339.18947(3)(b) and (c) constitute a violation of Section 604(c) of the Code.

**Violation of Section 604(h) of the Code**

By this charge, Petitioner asserts that Respondent violated a provision of the Code for which a penalty is not otherwise prescribed. This is not a separate violation in and

of itself. This charge may read in conjunction with Sections 601(1), 1806(2) and 1810(1)(k) of the Code, which are described and discussed separately.

**Violation of Section 1806(2) of the Code**

By this charge, Petitioner asserts that Respondent maintained a place for practice of a mortuary science without a license.

Even without having contracted with Mr. Burch, Respondent's conduct in holding itself out as a funeral establishment violates Section 1806(2) of the Code.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Section 1806(2) of the Code.

**Violation of Section 1810(1)(k) of the Code**

By this charge, Petitioner asserts that Respondent embalmed Venus Burch's body without express permission/authorization to do so.

There was apparently a "Permission to Embalm" document executed which was not made a part of this record. Even so, Mr. Burch's signature on the Statement of Goods and Services constituted express permission to embalm his mother's body. While Ms. Shannon may have told Mr. Burch that the body was already embalmed at the time he signed either or both of the Statements of Goods and Services Provided, the evidence does not show that she was in a position to know when the body was embalmed. The evidence is insufficient to support this charge.

Accordingly, Petitioner has not proven any violation of Section 1810(1)(k) of the Code.

When Beams of Heaven described the fees it was charging Mr. Burch to cancel the arrangements, it was obligated to describe those fees fairly. Mr. Burch should have been charged the agreed amounts for transfer and for embalming. He should have been charged \$225.00 and not \$495.00 for embalming. He should have been charged \$125.00 and not \$375.00 for transfer of remains. The \$130.00 charge for Funeral Home Service would be appropriate.<sup>2</sup>

### **DECISION AND RECOMMENDED SANCTIONS**

It is the decision of this Administrative Law Judge that Respondent has violated Rules 339.18937(2) and 339.18947(3)(b) and (c) and Sections 601(1), 604(c), and 1806(2), subjecting Respondent to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include a civil fine of \$1,000.00 on each proven charge, restitution to Vincent Burch in the amount of \$1,000.00 and suspension of any license held by Respondent until the fine and restitution have been paid and until all other licensure requirements have been met. Mr. Burch is not entitled to a full refund of monies paid to Beams of Heaven.

It is recommended that the Board include the following as sanctions in this matter:

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<sup>2</sup> It is recognized that Beams of Heaven, an unlicensed entity, is not entitled to charge anything for its services. This discussion concerns what restitution, if any, Mr. Burch is entitled to. The absence of a license does not mean that Mr. Burch is entitled to a full refund of any monies paid. The ramifications of such a ruling would be enormous.

1. Payment of a civil fine in the amount of \$4,000.00 for violation of Sections 601(1), 604(c) [Rules 339.18937(2) and 339.18947(3)(a) and (b)] and 1806(2) of the Code.
2. Payment of restitution to Vincent Burch in the amount of \$520.00 representing the \$1,000.00 paid to Beams of Heaven less \$225.00 for embalming, 125.00 for transfer of remains and \$130.00 for funeral home services.
3. Suspension of any mortuary science licenses and no new or renewal licenses should be issued until the civil fine and restitution have been paid and all licensure requirements have been met.

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**Gregory Holiday**  
**Administrative Law Judge**

**STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
BOARD OF EXAMINERS IN MORTUARY SCIENCE**

In the matter of:

**BEAMS OF HEAVEN FUNERAL HOME, INC.  
Mortuary Science Establishment  
License No. 45-02-003349**

**Docket No. 2002-618  
Complaint No. 45-01-4920-00;  
50345**

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**FINAL ORDER**

**WHEREAS, this matter having come before the Board of Examiners in Mortuary Science, hereafter the "Board", on March 20, 2003 and**

**WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Gregory Holiday, Administrative Law Judge, dated October 3, 2002,**

**WHEREAS, the Board having received the Hearing Report under MCL 339.514 and Beams of Heaven Funeral Home, Inc., Licensed Mortuary Science Establishment, License No. 45-02-003349, hereafter "Respondent", having been found in violation of Sections 601(1); 604(c) and 1806(2) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.601(1); MCL 339.604(c) and MCL 339.1806(2) and Rules 37(2); 47(3)(b) and 47(3)(c) of the Board of Examiners in Mortuary Science General Rules, *promulgated hereunder*, being 1991 AACCS, R 339.18937(2); 1991 AACCS, R 339.18947(3)(b) and 1991 AACCS, R 339.18947(3)(c) and**

**WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,**

**IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:**

- 1. Respondent shall pay a FINE in the amount of Five Thousand Dollars and 00/100 Cents (\$5,000.00), said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the mailing date of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 45-01-4920-00 clearly indicated on the check or money order, made payable to the State of Michigan and sent to the Department of Consumer & Industry Services, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.**

- 2. Respondent shall make RESTITUTION to Vincent Burch in the amount of Five Hundred Twenty Dollars and 00/100 Cents (\$520.00) by certified check made payable to Vincent Burch and mailed to Vincent Burch, 13833 Saratoga, Detroit, MI 48205. Restitution shall be paid not later than sixty (60) days from the mailing date of this Final Order.**
  
- 3. Respondent's failure to comply with each and every condition of this Final Order shall suspend any and all Article 18 licenses held by Respondent, including Beams of Heaven Funeral Home, Inc., Mortuary Science Establishment, License No. 45-02-003349. No application for licensure, relicensure, reinstatement or renewal shall be considered by the Department until full compliance is made with the terms of this Final Order..**
  
- 4. Respondent shall submit in writing to the Michigan Department of Consumer & Industry Services, Bureau of Commercial Services, Audit Unit, P.O. Box 30018, Lansing, Michigan 48909, proof in a form acceptable to the Department of compliance with each and every requirement of this Final Order.**