

nor impaired by, any medication or drug, and that Respondent fully recognizes Respondent's right to appear before the Board for an evidentiary hearing on the allegations made against Respondent. Respondent hereby voluntarily waives Respondent's right to a hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions of this *Consent Order*. Respondent acknowledges that Respondent has read and understood the terms and conditions stated herein and has either had the counsel and advice of Respondent's attorney or has waived the right to an attorney.

PARTIES' AGREEMENT AND STIPULATIONS

The State of Oklahoma, Respondent, and Board staff stipulate and agree as follows:

FINDINGS OF FACT

1. Respondent **KYLE L. HUMPHRIES** ("Respondent") is a licensed Funeral Director and Embalmer with license numbers 2852FD and 3236 EM at the time of the conduct giving rise to this complaint.
2. The Board exercises jurisdiction over Respondent pursuant to 59 O.S. Section 396.2a(9) and (11).
3. On or about December 31, 2019, Respondent submitted to the Oklahoma Funeral Board a 2020 Renewal Application for Funeral Director and/or Embalmer's Licenses containing a Continuing Education ("CE") Certification dated December 28, 2019, for completion of a total of five (5) hours of continuing education on December 30, 2019. The continuing education was provided by "Elite" which offers online training. The online training included one (1) hour of Ethics, but although the application contended the Ethics was in-person, the Respondent subsequently confirmed it was not provided in-person. OAC 235:235:10-10(a) requires at least one (1) of the six (6) required hours to be

in-person. Further, Respondent did not have any carry over hours from 2018 that could be applied to the 2019 year.

4. On January 15, 2020, Board staff filed a complaint with the Oklahoma Funeral Board, and notice was subsequently provided to the Respondent by letter dated January 15, 2020. On January 22, 2020, Respondent submitted a response acknowledging that he failed to complete the in-person sixth hour of 2019 CE due to only working part-time in the funeral industry and being busy with his other business. He acknowledged that he needs to complete the Board's CE requirements.

5. There exists sufficient evidence which if introduced into evidence would constitute clear and convincing evidence that the violations alleged above occurred.

6. This matter was presented to the Board on February 13, 2020, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondent. A formal charging Complaint was filed and the Respondent served with the Complaint and Notice of Hearing. Rather than respond to the Complaint the Respondent has entered into this Consent Order.

CONCLUSIONS OF LAW

1. Regarding continuing education requirements, 59 O.S. Section 396.5b provides:

- A. [A]s a condition of renewal or reactivation of a license, each licensee shall submit to the Oklahoma Funeral Board evidence of the completion of clock hours of continuing education courses approved by the Board within twelve (12) months immediately preceding the term for which the license is issued. The number of hours, or its equivalent, required for each licensed term shall be determined by the Board and promulgated by rule. Each licensee shall be required to complete and include as part of the continuing education provision a certain number of required subjects as provided by rule.

- D. The Board shall not issue an active renewal license or reactivate a license unless the continuing education requirement set forth in this section is satisfied within the prescribed time period.

2. In addition to the penalties available under Title 59 O.S. Section 396.5b, Title 59 O.S. Section 396.12c provides that the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license for:

- (5) Violation of any of the provisions of the Funeral Services Licensing Act;
- (8) Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;
- (15) Failing to comply with any applicable provisions of the Funeral Services Licensing Act at the time of issuance or renewal; and
- (16) Improper issuance or renewal of a license or registration.

3. Oklahoma Administrative Code (“OAC”) 235:10-7-2 provides that “[t]he following prohibited acts shall constitute grounds for the suspension or revocation of any license or registration issued by the Board”:

- (18) Failure to comply with Licensing Act. Failure to comply with any applicable provisions of the Funeral Services Licensing act at the time of issuance or renewal or improper issuance or renewal of a license or registration.

4. Regarding continuing education (“CE”) requirements, OAC 235:10-13-

10(a) and (c) provide:

- (a) **Applicants for renewal of a funeral director or embalmer license in Oklahoma, shall submit the renewal fee and documentation as prescribed by the Board of each continuing education course the licensee attended during the year. Every licensed funeral director, and/or licensed embalmer, shall obtain a minimum of six (6) contact hours during each calendar year before their annual license renewal. One (1) contact hour shall be construed as 50 minutes of learning activity. In at least one (1) hour of this continuing education, the Licensee shall be physically present at the location of the Presentation. One (1) hour of the required continuing education shall cover Ethics.**

(c) A licensee may not receive credit for repeating the same course during the same calendar year. A maximum of six (6) hours may be carried over and applied to the required hours for the following year.

5. Regarding verification of continuing education attendance OAC 235:10-13-13 provides:

- (a) Each licensee shall obtain from the continuing education provider proof of attendance at the approved continuing education program which shall include: name of attendee, provider name and provider number, event number, event date, program title, and contact hours attended. The licensee shall maintain such documentation for a period of not less than two (2) years.
- (b) The Board or its authorized representative may monitor, inspect, or review any approved continuing education activity, and upon evidence of significant variations in the program presented to the program approved, may disapprove any or all of the approved hours granted to the activity.

6. Regarding additional sanctions available to be imposed by the Board for non-compliance with continuing education requirements, OAC 235:10-13-14 provides:

The Board shall not renew a licensee's funeral director or embalmer license if the licensee has not complied with the continuing education requirements, until the required fees, late fees, and continuing education requirements are met unless waived by the Board.

7. None of the statutory CE exemptions apply to Respondent. Regarding continuing education exemptions, 59 O.S. Section 396.5b(E) provides:

- E. The provisions of this section shall not apply:
 - 1. During the period the licensee is on inactive status;
 - 2. To a nonresident licensee licensed in this state if the licensee is not engaged in funeral service or embalming practice in Oklahoma; and
 - 3. To classes of licensees exempted by rules [OAC: 235:10-13-12] of the Board

8. None of the CE exemptions provided for in OAC 235:10-13-12 apply to Respondent.

9. Respondent's failure prior to December 31, 2019, to complete the one (1) in-person hour of the 6-hour continuing education requirement for the year 2019 to be reported on the 2019 renewal application constitutes a violation of 59 O.S. §396.5b and OAC 235:10-13-10(a).

10. Respondent is subject to disciplinary proceedings by the Board under Title 59 O.S. §396.12c(5), (8), (15) and/or (16) which provide that the Board may revoke or suspend any license for violation of any rules of the Board, violation of the Funeral Services Licensing Act, and/or improper issuance or renewal of a license or registration.

11. There exists sufficient evidence which if introduced into evidence would constitute clear and convincing evidence that the violations alleged above occurred.

POTENTIAL PENALTIES WHICH FUNERAL BOARD MAY IMPOSE

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. *See* 59 O.S. §§ 396.12c, 396.12d and 396.12e.

2. 59 O.S. § 396.12d provides the types of discipline which may be imposed:

Any person who violates any of the provisions of the Funeral Services Licensing Act or rule or regulation promulgated or order issued pursuant thereto, after notice and hearing pursuant to Article II of the Administrative Procedures Act, shall be subject to any of the following penalties and liabilities authorized by the Funeral Services Licensing Act:

1. License or certificate of apprenticeship revocation, denial, suspension or nonrenewal;

2. Administrative fines;
3. Injunctive proceedings; and
4. Other disciplinary action.

3. Potential administrative penalties identified in 59 O.S.2011, § 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

PRIOR DISCIPLINARY HISTORY

Respondent has no prior disciplinary history.

ORDER

IT IS THEREFORE ORDERED by the Oklahoma Funeral Board as follows:

1. The Board *en banc* hereby adopts the agreement of the parties in this *Consent Order*.

2. Pursuant to this *Consent Order*, Respondent **KYLE L. HUMPHRIES** agrees to the following terms and conditions which are hereby imposed by the Board:

A. Respondent agrees to pay to the Oklahoma Funeral Board an **Administrative Penalty** in the total amount of **Three Hundred and 00/100 Dollars (\$300.00)**, to be paid in full on or before **March 12, 2020**; and

B. Respondent must on or before **December 31, 2020**, complete the missing 2019 **ONE (1) in-person hour** of Continuing Education, which hour is over and above the annual Continuing Education already required to be completed during 2020.

3. Respondent shall pay **Two Hundred and 00/100 Dollars (\$200.00)** towards the costs of this action as authorized by law, including without limitation, legal fees and investigation costs pursuant to *Okla. Stat. tit. 59, §396.12e(B)*, which shall be paid to the Oklahoma Funeral Board on or before ~~March 12, 2020~~.

May 14 TS

4. In the event that it is alleged that a Respondent has violated any terms of this *Consent Order*, a hearing will be held regarding the alleged violation. The violation of any term(s) of this *Consent Order* may result in further disciplinary action against the offending Respondent including revocation of the offending Respondent's licenses. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this *Consent Order*.

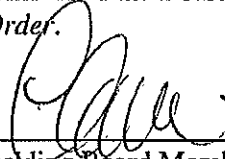
5. Respondent understands and agrees that, subject to Paragraph 6 below, should any separate, independent, and future instance be brought to the attention of the Board in which a Respondent is alleged to have violated the Rules and Regulations of the Oklahoma Funeral Board, the Board reserves the right to prosecute such violations and, should the board first determine that any violation has occurred, the Board reserves the right to consider this *Consent Order* as a factor in determination of any sanctions and penalties, if any, should be imposed.

6. The parties agree that this *Consent Order* is intended to resolve only violations arising out of the facts alleged in **Complaint 20-30**. The Board reserves jurisdiction regarding any other potential complaints arising from circumstances other than that alleged in **Complaint 20-30**.

Public Record

Respondent acknowledges that, once adopted by the Board, this *Consent Order* and all associated documentation becomes a matter of public record and may be released in accordance with the *Oklahoma Open Records Act*.

On ^{May 14 TS}~~March 12~~, 2020, all participating members of the Board in open session voted "Aye," approving the above forgoing *Consent Order*.

A handwritten signature in cursive script, appearing to read "C. Allen", written over a horizontal line.

Presiding Board Member
Oklahoma Funeral Board

CONSENT AND APPROVAL BY RESPONDENT

State of Oklahoma)
) ss
County of Oklahoma)

I, **KYLE L. HUMPHRIES**, individually, being first duly sworn upon oath, state that I have read the above *Consent Order* regarding **Complaint No. 20-30**. I understand that by its terms I waive certain rights accorded me under Oklahoma Law. I have either been represented by my attorney in this matter and have had the advice of my attorney and am satisfied with that advice, or I have knowingly and voluntarily waived the right to an attorney. I knowingly and voluntarily agree to the above *Consent Order* and request that it be entered by the Board.

I understand that the *Consent Order* will not be submitted for Board consideration until it has been agreed to and executed by me. The *Consent Order* will not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

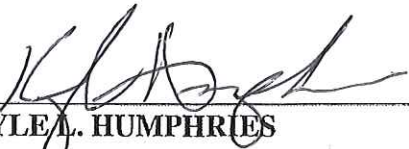
This *Consent Order* shall be presented to the Board with a recommendation by Board staff for approval by the Board at the ~~March 12, 2020~~ ^{May 19, 2020} meeting of the Board. I understand that the Board is free to accept or reject this *Consent Order* and, if rejected by the Board, a formal disciplinary hearing on the complaint against me will be set for hearing.

If the *Consent Order* is not accepted by the Board, it shall be regarded as null and void. Admissions by me in the *Consent Order* will not be regarded as evidence against me at the subsequent disciplinary hearing. I will be free to defend myself and no inferences will be made from my willingness to have entered into this agreement. It is agreed that neither the presentation of the *Consent Order* nor the Board's consideration of the *Consent Order* will be deemed to have unfairly or illegally prejudiced the Board or its individual members and therefore I hereby agree to waive any rights I might have to challenge the impartiality of the Board to hear the disciplinary complaint, if after review by the Board, this *Consent Order* is rejected.

I am fully aware of my rights to contest the charges pending against me. These rights include: representation by an attorney at my own expense; the right to a public hearing on any charges or allegations filed; the right to confront and cross-examine witnesses called to testify against me; the right to present evidence on my own behalf; the right to compulsory process to secure attendance of such witnesses; the right to testify on my own behalf; the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the complaint and the right to obtain judicial review of the Board's decision. In exchange for the Board's acceptance of this *Consent Order*, I voluntarily waive all of these rights.

This *Consent Order* is contingent upon my fulfillment of the agreed order, and upon my payment of the administrative penalties and legal expenses in the amounts and on the dates scheduled above, or the agreement at the option of the Board may be declared null and void.

Dated this 30 day of March, 2020.



KYLE L. HUMPHRIES
Respondent



Subscribed and sworn to by **KYLE L. HUMPHRIES** before me on this 30 day of March, 2020.



Notary Public

My Commission Expires: ~~Dec 31 2020~~ 1-21-2021
My License No.: ~~285268~~ 09000737

