

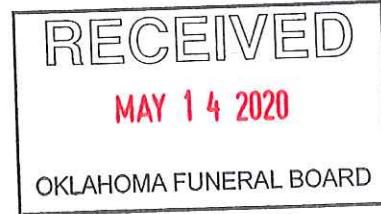
BEFORE THE OKLAHOMA FUNERAL BOARD

IN THE MATTER OF THE COMPLAINT )  
AGAINST: )

SMITH-GALLO FUNERAL HOME, LLC, )  
Establishment Lic. # 1590ES, )  
Location: 220 N. 1st Street, )  
Guthrie, OK 73044, )

Owner: )  
SMITH-GALLO FUNERAL HOME, LLC, )  
Gary W. Derrick c/o )  
Derrick & Briggs, LLP )  
100 N. Broadway Ave, 28<sup>th</sup> Floor, )  
Oklahoma City, OK 73102 )  
A Licensed Funeral Establishment, and )

JOHN B. GALLO, )  
Licenses: 2734FD, 3117EM, )  
Address: 621 Hamill Lane, )  
Guthrie, OK 73044 )  
A Licensed Funeral Director, a Licensed )  
Embalmer, and the Funeral Director in Charge of )  
SMITH-GALLO FUNERAL HOME, LLC, )



Complaint No. 20-33

CONSENT ORDER

COMES NOW the State of Oklahoma, ex rel., the OKLAHOMA FUNERAL BOARD ("Board"); and SMITH-GALLO FUNERAL HOME, ("FUNERAL HOME"), a licensed establishment with establishment license number 1590ES, and JOHN B. GALLO, ("GALLO"), a licensed funeral director with license number 2734FD and embalmer's license number 3117EM, and hereby enter into this *Consent Order* pursuant to the Rules and Regulations of the Oklahoma Funeral Board found in the *Oklahoma Administrative Code* section 235:10-9-3. For the purposes of the entry of this *Consent Order*, the Board alleges violations of provisions of the *Funeral Services Licensing Act*,

*Okla. Stat. tit, 59, § 395.1, et seq.*, ("Act") and Rules and Regulations of the Oklahoma Funeral Board found in the *Oklahoma Administrative Code* section 235:10-1-1, *et seq.*, ("Rules") in the manner set forth below.

#### **AGREEMENT AND ACKNOWLEDGMENT BY RESPONDENTS**

By voluntarily submitting to jurisdiction and entering into this *Consent Order*, Respondents admit the allegations alleged as to Respondents in the Complaint (hereinafter referred to as "Complaint"), as set forth herein below.

Respondents state that they are of sound mind and not under the influence of, nor impaired by, any medication or drug, and that they fully recognize their rights to appear before the Board for an evidentiary hearing on the allegations made against them. Respondents hereby voluntarily waive their right to a hearing, submit to the jurisdiction of the Board and agree to abide by the terms and conditions of this *Consent Order*. Respondents acknowledge that they have read and understand the terms and conditions stated herein and have had the opportunity to obtain the counsel and advice of their attorney(s).

#### **PARTIES' AGREEMENT AND STIPULATIONS**

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

##### **A. FINDINGS OF FACT**

1. Respondent **SMITH-GALLO FUNERAL HOME, LLC.**, ("Funeral Home"), with establishment license number 1590ES is located at 220 N. 1st Street, Guthrie, OK 73044, was at all times relevant owned by **SMITH-GALLO FUNERAL HOME, LLC.**, Gary W. Derrick, Registered Agent, c/o Derrick & Briggs, LLP., 100 N. Broadway

Ave., 28<sup>th</sup> Floor, Oklahoma City, OK 73102, and as such, **SMITH-GALLO FUNERAL HOME, LLC.**, is liable for any administrative penalty and costs imposed.

2. Respondent **JOHN B. GALLO**, (“GALLO”), is a licensed Funeral Director and embalmer with license numbers 2734FD and 3117EM and was the Funeral Director in Charge (“FDIC”) of the Funeral Home at all times relevant in this Complaint, and as the FDIC was responsible for the establishment’s legal and ethical operation pursuant to 59 O.S. Section 396.2(12).

3. The Board exercises jurisdiction over Respondents pursuant to 59 O.S. Section 396.2a(9) and (11).

4. On or about January 17, 2020, the Board staff conducted an inspection of Respondent establishment and determined that the establishment did not have a complete and up-to-date Body Intake Log, as follows:

- Not all bodies were listed in the Log and the last entry was made November 25, 2019.
- Approximately 11 bodies were missing from the log.

5. On or about January 22, 2020, Board staff filed a complaint against Respondents regarding the lack of a complete and up-to-date Body Intake Log. By letter dated January 22, 2020, the complaint was sent to the Respondents by certified mail and received by Respondents on January 27, 2020.

6. On or about February 1, 2020, the Respondents submitted a response submitting corrections to the General Price List and providing an updated Body Intake Log.

7. This matter was presented to the Board for a probable cause determination on March 12, 2020, and the Board found probable cause to file a formal complaint. A

Complaint and Notice of Hearing was issued and served on Respondents. Instead of responding to the Complaint, the Respondents are entering into this Consent Order.

8. The prosecution has sufficient evidence which if presented to the Board at an evidentiary hearing would constitute clear and convincing evidence that the Respondents did not maintain a complete and up-to-date Body Intake Log.

### B. CONCLUSIONS OF LAW

1. The Funeral Services Licensing Act, 59 O.S., §396.12c(5), and (8) provide that a license issued by the Board may be suspended or revoked for any of the following:

(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...;

2. The Oklahoma Funeral Board Rules which became effective September 14, 2018, at OAC 235:10-3-2(5)(A)(vii) provided as follows:

#### **(5) Preparation room.**

(A) The establishment shall have a preparation room. Such preparation room shall meet the following minimum requirements:

...

(vii) Body Intake Log. Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. **The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the name, signature, and license number of the embalmer(s) and apprentice(s). If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.**

3. Thus, Respondents **SMITH-GALLO FUNERAL HOME, LLC.**, and **JOHN B. GALLO** violated OAC 235:10-3-2(5)(A)(vii) by not maintaining a complete and updated Body Intake Log containing all required decedent information.

4. As the Funeral Director in Charge, **JOHN B. GALLO**, is responsible for the legal and ethical operations of the establishment and is accountable to the Board under 59 O.S. Section 396.2(12).

59 O.S. Section 396.12(C). "Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge."

59 O.S. Section 396.2(12). The "'Funeral director in charge' means an individual licensed as both a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board."

5. Respondents are subject to disciplinary action by the Board pursuant to 59 O.S. 2011, §§ 396.2a(9), 396.12c(5) and (8), 396.12d and 396.12e.

6. The prosecution has sufficient evidence which if presented to the Board at an evidentiary hearing would constitute clear and convincing evidence that the Respondents in violation of OAC 235:10-3-2(5)(A)(vii) did not maintain a complete and up-to-date Body Intake Log.

**C. 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. Sections 396.12c, 396.12d and 396.12e.

2. 59 O.S. Section 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, Section 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 ACTION**

The Respondents have 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, Respondents **SMITH-GALLO FUNERAL HOME**, and **JOHN B. GALLO** agree to the following terms and conditions which are hereby imposed by the Board:
  - A. Respondents agree to jointly pay to the Oklahoma Funeral Board an **Administrative Penalty** in the total amount of **Two Hundred and Fifty and 00/100 Dollars (\$250.00)**, to be paid in full on or before **May 19, 2020**.
  - B. Respondents' licenses are not being suspended or placed on probation.
3. Respondents shall pay a total of **Two Hundred and Fifty and 00/100 Dollars (\$250.00)** 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)*. Said sum shall be paid in full on or before **May 19, 2020**.
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*.

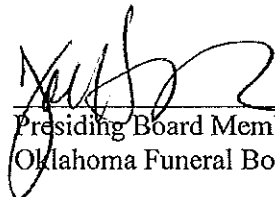
5. Respondents understand and agree that, subject to Paragraph 6 below, should any separate, independent, and future instance be brought to the attention of the Board in which a Respondent is alleged to have violated the Rules and Regulations of the Oklahoma Funeral Board, the Board reserves the right 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 20-33**. The Board reserves jurisdiction regarding any other potential complaints, if any, arising from circumstances other than that alleged in **Complaint 20-33**.

***Public Record***

Respondents acknowledge 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, 2020**, all participating members of the Board in open session voted "Aye," approving the above *Consent Order*.

  
\_\_\_\_\_  
Presiding Board Member  
Oklahoma Funeral Board



**CONSENT AND APPROVAL BY RESPONDENT**

State of Oklahoma            )  
  ) ss  
County of Oklahoma         )

I, **JOHN B. GALLO**, individually, being first duly sworn upon oath, state that I have read the above *Consent Order* regarding **Complaint No. 20-33**. 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 waived my right to be represented by 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 **May 14, 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.

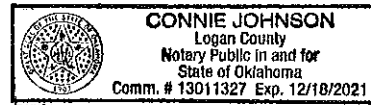
If the *Consent Order* is not accepted by the Board, it shall be regarded as null and void. Admissions by me in the *Consent Order* will not be regarded as evidence against me at the subsequent disciplinary hearing. I will be free to defend myself and no inferences will be made from my willingness to 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, with the exception of the right to an attorney, which I understand that I may exercise at any time should I choose to do so.

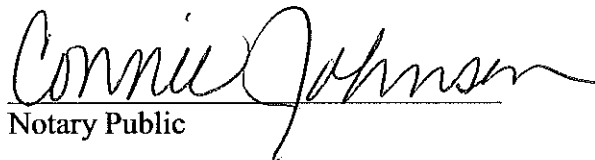
This *Consent Order* is contingent upon my fulfillment of the agreed order, and upon my payment of the administrative penalties and legal expenses in the amounts and on the dates scheduled above, or the agreement may at the option of the Board be declared is null and void.

Dated this 30<sup>th</sup> day of April, 2020.

  
**JOHN B. GALLO**  
Respondent



Subscribed and sworn to by **JOHN B. GALLO** before me on this 30<sup>th</sup>  
day of April, 2020.

  
Notary Public

My Commission Expires: 12/18/2021  
My License No.: 13011327

**CONSENT AND APPROVAL BY RESPONDENT**

State of Oklahoma                    )  
   ) ss  
 County of Oklahoma                 )

I, John B. Gallo (name of person executing this *Consent Order*), as the Member/Manager/DFC (state the title of the person signing this *Consent Order*) for SMITH-GALLO FUNERAL HOME, ("Funeral Home"), being first duly sworn upon oath, state that I have read the above *Consent Order* regarding **Complaint No. 20-33** and have been authorized by Funeral Home to sign it. I understand that by its terms the Funeral Home waives certain rights accorded it under Oklahoma Law. Funeral Home either has been represented by its attorney in this matter and has had the advice of its attorney and is satisfied with that advice, or it has waived the right to an attorney. Funeral Home knowingly and voluntarily agrees to the above *Consent Order* and requests that it be entered by the Board.

Funeral Home understands that the *Consent Order* will not be submitted for Board consideration until it has been agreed to and executed by me on behalf of Funeral Home. 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 **May 14, 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 Funeral Home 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 Funeral Home in the *Consent Order* will not be regarded as evidence against it at the subsequent disciplinary hearing. Funeral Home will in that event be free to defend itself and no inferences will be made from its 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 Funeral Home hereby agrees to waive any rights it 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.


Funeral Home is fully aware of its rights to contest the charges pending against it. These rights include: representation by an attorney at Funeral Home's 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 it; the right to present evidence on its own behalf; the right to compulsory process to secure attendance of such witnesses; the right to testify on its 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*, in these proceedings Funeral Home voluntarily waives all of these rights, with the exception of the right to an attorney, which right it is free to exercise at any time.

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

Dated this 30 day of April, 2020.

**SMITH-GALLO FUNERAL HOME**  
**Respondent**

By:   
(Signature)

John B. Gallo Member/Manager/FDIC  
(Printed name and title of person signing)

Subscribed and sworn to by John B. Gallo before me on  
this 30 day of April, 2020.

  
Notary Public

My Commission Expires: 12/18/2021  
My License No.: 13011327