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**BEFORE THE DIVISION OF DIVISION OF OCCUPATIONAL AND PROFESSIONAL
LICENSING OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSES OF
CARVER MORTUARY SERVICE, LLC,
TO OPERATE AS A FUNERAL
SERVICES ESTABLISHMENT, TANNER
J. CARVER TO PRACTICE AS A
FUNERAL DIRECTOR, AND SHANE
ADAM WESTMORELAND TO
PRACTICE AS A FUNERAL DIRECTOR**

Respondents.

EMERGENCY ORDER

DOPL Case No. 2017-609

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "Division") initiated an Emergency Adjudicative Proceeding pursuant to Utah Code Ann. § 63G-4-502, the Utah Administrative Procedures Act; Utah Code Ann. § 58-1-108(2), the Division of Occupational and Professional Licensing Act; and Utah Administrative Code R151-4-111, the Department of Commerce Administrative Procedures Act Rules. The Division initiated the Emergency Adjudicative Proceeding upon evidence that the continued practice of Carver Mortuary Service, LLC, as a licensed funeral service establishment, and Tyler Carver, and Shane Westmoreland as licensed funeral service directors represent an immediate and significant danger to the public health, safety, and welfare; and that the threat requires immediate action by the agency.

Before taking this action, the Chair of the Board of Funeral Service appointed a four-member committee to review with the Division the proposed action in this matter, pursuant to Utah Code Ann. § 58-1-108(2).

Pursuant to the Open and Public Meetings Act, Utah Code Ann. § 52-4-202, the Division provided notice of the meeting of the committee for **9:00 a.m. on November 2, 2017** at the Heber Wells Building located at 160 East 300 South, Salt Lake City, Utah. Notice of the Emergency Hearing was placed in the lobby of the Heber Wells Building on and the DOPL/public information website on October 31, 2017. The committee convened at the appointed date and time. The Emergency Hearing was closed pursuant to Utah Code Ann. § 52-3-205(1)(a) to discuss the facts and circumstances related to the character and competency of the Respondents. The presiding committee member affirmed under oath that the meeting was closed for that purpose. The committee reviewed the Division's proposed action and considered information in the form of testimony and exhibits. The Division, having considered the committee's recommendations, makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Carver Mortuary Service, LLC, ("Carver Mortuary") was licensed as a funeral service establishment on February 14, 2008, license number 6909835-0901. Carver Mortuary also operates under the name of Intermountain Cremation Group, LLC. That entity is unlicensed.
2. Respondent Tanner J. Carver was licensed as a funeral service director on April 20, 2010, license number 6910189-0902.
3. Shane Adam Westmoreland ("Westmoreland") was licensed as a funeral service director on March 10, 2014, license number 8192818-0902.
4. Respondents are in the business of operating a funeral service establishment that has

contracts for cremation services for deceased persons with other funeral service establishments, hospitals, including but not limited to, Intermountain Medical Center, the Utah Office of the Medical Examiner, and Salt Lake County.

5. Respondents regularly employ persons to remove deceased persons from residences, nursing or assisted living facilities, hospitals and the medical examiner's office.
6. Beginning in February 2017, Respondents employed a person named Robert Shawn Price. Mr. Price does not hold any licenses under the Funeral Services Licensing Act, Utah Code Ann. § 59-9-101 et seq.
7. Mr. Price was hired as a removal assistant whose duties included removing deceased persons from various locations, acting under the instruction of Respondents Tanner Carver and Westmoreland.
8. Shortly after Mr. Price was employed, he was instructed to sew up a deceased person who had been the subject of an autopsy.
9. Shortly after being hired, Mr. Price was instructed to perform cremations. Over the course of his employment from February 20, 2017 to May 4, 2017, Mr. Price performed cremation service for approximately 50 deceased persons.
10. Mr. Price testified that numerous other individuals, including Michael Jones, were not licensed and that cremations were performed regularly by unlicensed individuals.
11. Mr. Price's supervisors were Respondents Tanner Carver and Westmoreland. Both were aware that Mr. Price and others were not licensed to perform cremation services.
12. Mr. Price testified that unidentified human remains would left for funeral services at Carver Mortuary premises.
13. Mr. Price observed both Respondents Tanner Carver and Westmoreland placing fetal remains or infants in the same retort as a deceased adult person. This occurred on a

regular basis throughout the time Mr. Price was employed.

14. Mr. Price observed that the retort would not be fully emptied after a deceased person was cremated. Mr. Price testified that he took a photograph of the retort showing that the retort was not fully emptied from a previous cremation. This occurred on a regular basis throughout the time Mr. Price was employed.
15. Mr. Price testified that ashes that remained in the retort or that otherwise could not be identified were thrown away.
16. Mr. Price testified that deceased persons were cremated without identification or without records documenting the identity of the deceased or paperwork necessary to determine whether the cremation had been authorized.
17. Mr. Price testified Respondent Carver Mortuary maintained a cremation log, setting forth a coin number, the deceased person's name, the identity of the mortuary or other source of the deceased person, the date and time of cremation. The log also included initials of the person responsible for initiating the cremation process and the person removing and processing the cremated remains.
18. Mr. Price testified that the log was frequently incomplete. Mr. Price testified that he altered the log to complete information.
19. Mr. Price testified that coins were often separated from cremated remains that were in the cremation processing room.
20. Mr. Price testified that the refrigerator room maintained by Carver Mortuary was often over-filled. On occasion, unembalmed bodies were left outside of the refrigeration room for periods of a day or more.
21. There was sometimes a long delay between the receipt of a deceased person and the cremation of that person.

22. Mr. Price testified that Respondent Carver Mortuary was unsanitary. In particular, the embalming room was rarely cleaned, and the appliances, tools, and surfaces were not thoroughly cleansed. Often, one body would be removed from an embalming table and another body placed on the table with no cleaning in between the embalming procedures.
23. Mr. Price testified that Respondent Carver Mortuary instructed its employees to take supplies (body bags, gloves, sheets, pillows and pillow cases) from hospitals, funeral service establishments, and other locations.
24. Mr. Price testified that it was a regular practice at Respondent Carver Mortuary to separate gold and precious metals from human cremains and that gold and precious metals were retained by Respondent Carver Mortuary who then sold that gold and precious metals and retained the proceeds. The proceeds from the sale of gold and precious metals was a significant amount.
25. Mr. Price testified that it was a regular practice at Respondent Carver Mortuary to keep jewelry, watches, rings and other personal property and not deliver those items to the decedents' family or other authorized representative.
26. In March 2017, Mr. Erin Christensen was hired by Respondent Carver Mortuary as a removal assistant. He was employed by Respondent Carver Mortuary until August 2017 when he was involuntarily discharged. Mr. Christensen does not hold any licenses under the Funeral Services Licensing Act, Utah Code Ann. § 59-9-101 et seq.
27. Mr. Christensen was hired as a removal assistant whose duties included removing deceased persons from various locations, acting under the instruction of Respondents Carver and Westmoreland.
28. Mr. Christensen testified that unidentified human remains would left for funeral services

at Carver Mortuary premises. Mr. Christensen testified that in at least one instance unidentified human remains were placed in the crematory room without any identification with directions to cremate the unidentified body.

29. Mr. Christensen testified that he refused to perform the cremation described in paragraph 25. Mr. Christensen testified that the body was subsequently cremated, and he had no knowledge of whether identification was ever supplied.

30. Shortly after being hired, Mr. Christensen was instructed to perform cremations. Over the course of his employment from March 2017 until August 2017. Mr. Christensen performed cremation service for three to four individuals each 12-hour shift that he worked.

31. Mr. Christensen testified that numerous other individuals, including Michael Jones, were not licensed and that cremations were performed regularly by unlicensed individuals.

32. Mr. Christensen's supervisors were Respondents Tanner Carver and Westmoreland. Both were aware that Mr. Christensen and others were not licensed to perform cremation services.

33. Mr. Christensen observed both Respondents Tanner Carver and Westmoreland placing fetal remains or infants in the same retort as a deceased adult person. This occurred on a regular basis throughout the time Mr. Christensen was employed.

34. Mr. Christensen observed that the retort would not be fully emptied after a deceased person was cremated. Mr. Christensen testified that he took a photograph of the retort showing that the retort was not fully emptied from a previous cremation. This occurred on a regular basis throughout the time Mr. Christensen was employed.

35. Mr. Christensen testified that ashes that remained in the retort or that otherwise could

not be identified were thrown away.

36. Mr. Christensen testified that deceased persons were cremated without identification or without records documenting the identity of the deceased or paperwork necessary to determine whether the cremation had been authorized.

37. Mr. Christensen testified Respondent Carver Mortuary maintained a cremation log, setting forth a coin number, the deceased person's name, the identity of the mortuary or other source of the deceased person, the date and time of cremation. The log also included initials of the person responsible for initiating the cremation process and the person removing and processing the cremated remains.

38. Mr. Christensen testified that the log was frequently incomplete. Mr. Christensen did not alter or change the log.

39. Mr. Christensen testified that coins were often separated from cremated remains that were in the cremation processing room. Mr. Christensen took a photo of the cremation room showing cremains and coins separated from one another.

40. Mr. Christensen testified that no coins were employed or used for fetal demise or infant cremations.

41. Mr. Christensen testified that the refrigerator room maintained by Respondent Carver Mortuary was often over-filled. On occasion, unembalmed bodies were left outside of the refrigeration room for periods of a day or more.

42. Mr. Christensen testified that Respondent Carver Mortuary was unsanitary. In particular, the embalming room was rarely cleaned, and the appliances, tools, and surfaces were not thoroughly cleansed. Often, one body would be removed from an embalming table and another body placed on the table with no cleaning in between the embalming procedures.

43. Mr. Christensen testified that it was a regular practice at Respondent Carver Mortuary to keep jewelry, watches, rings and other personal property and not deliver those items to the decedents' family or other authorized representative and to convert those items to their own use.
44. Mr. Christensen had also testified that he personally witnessed Respondent Carver Mortuary employees wearing jewelry, watches, and rings that had belonged to persons entrusted to Respondent Carver Mortuary for funeral services.
45. Mr. Christensen testified that Respondent Carver Mortuary instructed its employees to take supplies (body bags, gloves, sheets, pillows and pillow cases) from hospitals, funeral service establishments, and other locations.
46. Mr. Christensen testified that he personally observed Respondent Carver Mortuary employees taking items from hospitals, funeral service establishments, and other locations for use by Respondents and their staff.
47. The Division obtained cremation log records from Respondent Carver Mortuary. Those records revealed a pattern of coin tracking and coin reassignment issues. Some coins initially assigned to a deceased person have been designated as lost and then the coin reappears attached to another deceased person. The regular pattern is that coins are routinely reassigned.
48. Files maintained by Respondent Carver Mortuary reflect that dates and times of cremation do not match the cremation log. There is no notation or explanation contained in the files for these discrepancies.

CONCLUSIONS FROM THE FACTS

The following conclusions are made based on the facts evidenced above:

1. That the Respondents have engaged in conduct which constitutes gross

incompetence, gross negligence or a pattern of incompetency or negligence as set forth in Utah Code Ann. § 58-1-501(2)(g).

2. That Respondents have engaged in a pattern of commingling cremains and failing to comply with the procedures set forth in Utah Code Ann. § 58-9-610(4)(a).
3. There is a high risk that deceased bodies and cremated remains are being misidentified due to the lack of care required by Utah Code Ann. §§ 58-9-607 and 58-9-610.
4. That Respondents have failed to maintain accurate records required by Utah Code Ann. § 58-9-608.
5. That Respondents have operated a funeral services establishment that is not sanitary as required by Utah Admin. Code R156-9-401 of the rules promulgated under the Funeral Services Licensing Act
6. The Respondents have failed to comply with the ethical standards of the profession that require all deceased persons to be treated with the highest respect and dignity and to transport, prepare and shelter the remains in a professional, caring and conscientious manner as required by R156-9-502(1) supports a conclusion that Respondents' continued practice as licensees under the Utah Funeral Services Act provides a significant and immediate danger to the public.
7. That Respondents have failed to cooperate with Division inspectors when records were requested from Respondents in violation of Utah Code Ann. § 58-9-506 which presents an immediate and significant threat to the public health, safety, and welfare.
8. That the fact that Respondents have engaged in a pattern of misconduct and committed multiple offenses over long period of time is an aggravating circumstance pursuant to Utah Admin. Code R-156-1-102(c) and (d) supports the

conclusion that Respondent Carver Mortuary's continued operation as a licensed funeral services establishment poses a significant and immediate threat to the public. This conduct also supports a conclusion that Respondents Tanner Carver's continued licensure as funeral service director and Westmoreland's continued licensure as funeral service directors pose a significant and immediate threat to the public.

9. That Respondents have failed to cooperate with Division inspectors when records were requested from Respondents in violation of Utah Code Ann. § 58-9-506 which is an aggravating circumstance pursuant to Utah Admin. Code R156-1-102(e).
10. The fact that Respondents continue to operate in a manner that exploits vulnerable deceased adults and their families, Salt Lake County, IMC hospital, the Utah Medical Examiner, and other funeral service establishments, is another aggravating circumstance pursuant to Utah Admin. Code R156-1-102(2)(h) and supports a conclusion that Respondents' continued practice as licensees under the Utah Funeral Services Act provides a significant and immediate danger to the public.
11. Based on the above, the Division finds that, pursuant to Utah Code Ann. § 63G-1-401(2)(a), there is a factual basis to conclude that the Respondents have engaged in unprofessional conduct, that Respondents pose an immediate and significant danger/threat to the public health, safety, and welfare; and that the Division should take immediate action to suspend and/or revoke the Respondents' professional licenses.

CONCLUSIONS OF LAW

1. The Division has jurisdiction and authority to act in this matter and has followed appropriate statutory procedures regarding the initiation of emergency

adjudicative actions.

2. Utah Code Ann. § 63G-4-502 provides:
 - (1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:
 - (a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety or welfare exists; and
 - (b) the threat requires immediate action by the agency.
 - (2) In issuing its emergency order, the agency shall:
 - (a) Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
 - (b) Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and
 - (c) Give immediate notice to the persons who are required to comply with the order.
 - (3) If the emergency order under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.
3. That the actions of the Respondents constitute an immediate and significant danger to the public health, safety and welfare.
4. That the Respondents have engaged in unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b), (g), and (i).
5. That the Respondents, by continuing to engage in acts and practices that violate the Utah Funeral Services Act and the rules promulgated thereunder should be immediately disciplined due to the immediate and significant danger to the public and the aggravating circumstances associated with their misconduct pursuant to Utah Admin. Code R156-1-102(c), (d), and (h).
6. That this Order is necessary to prevent an immediate and significant harm to the

public pending a formal adjudication of the matters addressed in this proceeding.

7. That this Order is the least restrictive action necessary to prevent or avoid the danger to the public health, safety, or welfare because nothing short of suspension of licensure of the Respondents will sufficiently prevent or avoid the ongoing danger to the public health, safety, or welfare of the violations referenced herein;
8. The Respondents may challenge the Order pursuant to Utah Admin. Code R151-4-111 as follows:

Unless otherwise provided by statute or rule:

- (1) A division shall schedule a hearing to determine whether an emergency order shall be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if: the division has previously commenced an emergency adjudicative proceeding in the matter; and issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and the affected party timely submits a written request for a hearing. A hearing under this rule shall be conducted in conformity with Section 63G-4-206.
- (2) Upon request for a hearing under this rule, the Division shall conduct a hearing as soon as reasonably practical but no later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

ORDER

The license of Carver Mortuary Service LLC to engage in business as funeral services establishment in the State of Utah, license number 6909835-0901, the license of Tanner J. Carver to engage in practice as a licensed funeral service director in the State of Utah, license number 6910189-0902, and the license of Shane Adam Westmoreland to engage in practice as a licensed funeral service director in the State of Utah, license number 6871509-0902, are immediately suspended pending any hearing that may be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin Code Rule R151-4-111 that issues a contravening order.

Respondents will make immediate arrangements for another licensed funeral establishment or establishments to take custody and control of all human bodies and cremains under Respondents' current possession and control under the supervision of DOPL. DOPL personnel will supervise all transfer of all human bodies and cremains to other licensed funeral establishments.

Respondents shall inventory and preserve all records, physical materials, and other information or evidence. The inventory shall be provided to DOPL as soon as is practicable. Respondents shall grant immediate access to DOPL personnel to the premises, records, and other evidentiary materials.

Respondents shall, upon receipt of this Emergency Order, cease from any further operations, including, but not limited to, acceptance of human bodies and/or remains, embalming, and cremating.

Respondents shall, upon receipt of this Emergency Order, immediately secure the premises of Respondent Carver Mortuary, including changing all access, locks and other means of entry. Respondents will provide the new information and/or means of entry to DOPL personnel. Respondents shall grant immediate access to DOPL personnel to the premises upon request.

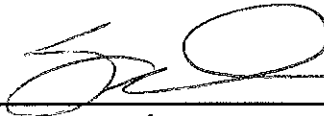
Respondents shall immediately inform all hospitals, other funeral services establishments, the Utah Medical Examiner, Salt Lake County and other contractual entities that utilize Respondents' services. Respondents shall also notify clients with pending funeral services of the status of those funeral services.

The Division will commence a formal adjudicative hearing with a notice of agency action in accordance with the normal administrative procedures of Utah Code Ann. § 63G-4-501 et seq. to address final disciplinary action in this matter.

RIGHT TO REVIEW

1. In accordance with Utah Admin. Code R151-4-111, the Division will schedule a hearing upon receipt of a written request from the Respondents or any one of the Respondents as to that Respondent. At the hearing, it will be determined whether this Emergency Order should be affirmed, set aside, or modified, based on the standards set forth in Utah Code Ann. § 63G-4-206.
2. Upon receipt of a written request for hearing pursuant to Utah Admin. Code R151-4-111-2(b), the Division will conduct a hearing as soon as reasonably practical, but not later than twenty days from receipt of a written request, unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

DATED this 2 day of November 2017. 5:45 PM



Stephen Duncombe
Presiding Officer
Division of Occupational and Professional Licensing

CERTIFICATE OF SERVICE

I hereby certify that on the 2 day of November, 2017, a true and correct copy of the foregoing EMERGENCY ORDER has been served on the parties of record in this proceeding by mailing a copy thereof, properly addressed by certified mail with postage prepaid, to the following:

CARVER MORTUARY SERVICE LLC
847 WEST 2500 SOUTH
SALT LAKE CITY UT 84119

TANNER J CARVER
847 WEST 2500 SOUTH
SALT LAKE CITY UT 84119

SHANE WESTMORELAND
443 NORTH MAIN STREET
MAPLETON UT 84664


and caused a copy to be electronically mailed to:

Carver Mortuary Service LLC
(carver.tanner@gmail.com)

Tanner J Carver
(carvermortuary@gmail.com)

Shane Westmoreland
(swestmoreland@sisna.com)

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