**IN THE MATTER OF LOUISIANA STATE BOARD**

 **OF EMBALMERS AND**

**BOYD MOTHE, JR. FUNERAL DIRECTORS**

**AND THE**

**ENTITY OPERATING AS**

**MOTHE FUNERAL HOME, LLC**

**NEW ORLEANS, LOUISIANA**

**FILED:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **CLERK**

**FINDINGS of FACT and DECISION of the BOARD**

 This matter came before the Louisiana State Board of Embalmers and Funeral Directors for hearing on January 8, 2019.

 Present:

**CHANEL R. DEBOSE**, Prosecuting Attorney, for and on behalf of the Louisiana State Board of Embalmers and Funeral Directors.

**DIANNE T. ALEXANDER,** General Counsel, for and on behalf of the Louisiana State Board of Embalmers and Funeral Directors.

**HARRY VORHOFF,** Hearing Officer, Special Counsel for and on behalf of the Louisiana Department of Justice.

**DANIEL A. RANSON**, Attorney, for and on behalf of Boyd Mothe, Jr., and the entity Mothe Funeral Home

After considering the law, the evidence, the testimony of the witnesses and the entire record of these proceedings, and made a part of the record before the Board on January 8, 2019:

**FINDINGS of FACT**

That **BOYD MOTHE, JR.** (E-1896) is a licensed Funeral Director/Embalmer, as well as,the registered agent and owner of the entity known as **Mothe Funeral Home**, LLC (#141, 487, 2309) New Orleans, Louisiana and, therefore, subject to the jurisdiction of this Board; That evidence contained within the record of these proceedings, together with the testimony of the witnesses made within the presentation, reflects the Board was unable to conclude **Mothe Funeral Home** was guilty of violating LA R.S. 37:848 (A) and (D) (1) because the Board determined ambiguity in the language of LA R.S. 37:844 (A) which governs how and when a license is considered renewed or delinquent made the status of Mr. Alvaro Berrios, the former employee of Mothe Funeral Home, license at the time of the alleged violations unclear.

**CONCLUSIONS**

Because LA. R.S. 37:844 (A) provides: Every certificate holder under this Chapter who continues the practice of the science of embalming, the practice of funeral directing, or continues to operate a funeral establishment in this state shall renew its license by paying to the secretary of the board on or before December thirty-first of each year the renewal fee set forth by rule in accordance with [R.S. 37:845](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS37%3a845&originatingDoc=N5BB52FC0771C11E783EBFAD922F6D935&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)). Any certificate holder whose renewal fee is not received by the board by December thirty-first shall be deemed delinquent. A notice of delinquency shall be sent via certified mail to the certificate holder by the board. The notice shall state that the deadline for payment has lapsed and that if the certificate holder intends to renew, payment of the renewal fee shall be submitted to the board within five business days of receipt of the notice. No penalties, reinstatement fees, or late fees shall be assessed and no reinspection shall be required if the certificate holder submits payment of the renewal fee within five business days of receipt of the notice. If the board does not receive the renewal fee within the five business days provided for by this Subsection, such certificate holder shall be subject to any penalty, reinstatement fees, or late fees authorized by law.

Though the Board mailed the notice of delinquency to Mr. Berrios as required by LA. R.S. 37:844 (A), the notice was returned to the Board by the United States Postal Service as undeliverable, thus it had not technically been received by Mr. Berrios in accordance with the statute. The Board concluded because the delinquency period created by LA. R.S. 37:844 (A), between the mailing of the notice by the Board and the receipt by the licensee, is not clearly defined and seems indefinite, thus making it unclear whether the license of the employee at issue in the matter was delinquent or lapsed. The alleged violations of LA. R.S. 37:848 (A) and (D) (1), allowing a non-licensed person to act as a Funeral Director or Embalmer, by **Mothe Funeral Home, LLC** grew out of the status of Mr. Berrios’ license. Therefore, the Board concluded the alleged violations by **Mothe Funeral Home, LLC** were not clear and certain.

**DECISION of the BOARD**

Accordingly, for the reasons as stated and as noted herein above;

 The Board determined there had been no apparent violations by **Mothe Funeral Home, LLC** and dismissed the matter.

 BY ORDER OF THE BOARD

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METAIRIE, LOUISIANA

February 8, 2019