

Administrative Penalty Order

**In the Matter of the Administrative Penalty Order Issued to Tracy E. Wesley, License M-3819
2201 Plymouth Avenue North
Minneapolis, Minnesota 55411**

AUTHORITY

The Minnesota Department of Health, Mortuary Science Section, (“the Department”), is authorized, pursuant to Minnesota Statutes section 149A.03, to license funeral establishments and morticians. The Department also, pursuant to Minnesota Statutes sections 149A.03–.11, enforces state laws relating to the removal, preparation, transportation, and disposition of dead human bodies. Pursuant to Minnesota Statutes section 149A.06, the Department has the authority to conduct inspections of licensed funeral establishments, and if the Department determines that a licensee has violated a provision of Chapter 149A, it has the authority to order corrections and to assess administrative penalties in an amount up to \$10,000.00 per violation of Chapter 149A. If the Department determines that a violation of Chapter 149A has occurred, and the violation is a serious or a repeat violation, the Department has the authority, under Minnesota Statutes section 149A.06, subdivision 4, to make an administrative penalty non-forgivable.

FINDINGS OF FACT

1. Mrs. April Estes owns and operates Estes Funeral Chapel, (“Estes”), a funeral home in Minneapolis, Minnesota that is licensed by the Department. Mr. Tracy Wesley is a mortician who is employed at Estes. [REDACTED] is a staff member at Estes.
2. On May 7, 2019, following a January 4, 2019 complaint, the Department issued a notice of investigation and began investigating whether Mr. Wesley was engaged in unprofessional conduct and the unlicensed practice of mortuary science.

3. The Department's investigation confirmed that since Mr. Wesley failed to submit a renewal application to the Department by December 31, 2018, his license to practice mortuary science expired on January 1, 2019, and then lapsed on February 1, 2019. On March 4, 2019, Mr. Wesley renewed his license to practice mortuary science.

4. From February 1, 2019, (when his license lapsed), until the date he renewed his license, (March 4, 2019), Mr. Wesley continued to hold himself out to the public-at-large as a mortician, continued to practice mortuary science at Estes without a valid license, and charge Estes' consumers for the mortuary and funeral services he rendered. During this time-period, Mr. Wesley performed the mortuary and funeral services for thirteen dead human bodies. Mr. Wesley's name appears on all thirteen death records and his signature appears on all thirteen funeral home documents, statements of funeral goods and services, certificates of removal, and embalming authorizations.

5. The Department also learned that from January through March of 2019, Mr. Wesley failed to complete the following forms: seventeen certificates of removal, five embalming authorizations, nine statements of funeral goods and services, and one cremation authorization.

6. On August 14, 2019, the Department interviewed Mr. Wesley, who admitted that while [REDACTED] was supposed to be under Mr. Wesley's direction and supervision, [REDACTED] practiced mortuary science at Estes despite not holding a valid license to practice mortuary science in Minnesota from 2017 through 2019. Mr. Wesley confirmed that [REDACTED] was the individual recorded in a video, dated January 16, 2019, who prepared a dead human body for final disposition in Estes' preparation and embalming room without a valid license to practice mortuary science and without a licensed mortician supervising and directing his work. Mr. Wesley further stated that Estes' monthly funeral home calendars dated from November 2018 through January 2019 were used to indicate daily activities performed and "typically" record the names of staff completing the work. Mr. Wesley admitted that

██████████'s name appears on the monthly calendars, showing that ██████████ had practiced mortuary science without possessing a valid license to do so.

7. The Department's review of Estes' monthly funeral home calendars, showing its daily operations from November 2018 through January 2019, confirmed Mr. Wesley's admission that ██████████, an unlicensed individual, was allowed to practice mortuary science at Estes under Mr. Wesley's direction and supervision.

8. On August 14, 2018, the Department interviewed ██████████, who admitted that he practiced mortuary science—under the direction and supervision of Mr. Wesley—without a valid mortuary science license issued by the Department. When presented with a video, dated January 16, 2019, depicting an individual who was preparing a dead human body for final disposition in Estes' preparation and embalming room, ██████████ confirmed that the individual in the video preparing a dead human body for final disposition in Estes' preparation and embalming room without a licensed mortician supervising and directing the work was him.

SPECIFIC PROVISIONS OF CHAPTER 149A

1. "In Minnesota, no person shall, without being licensed by the commissioner of health: (1) "take charge of or remove from the place of death a dead human body; (2) prepare a dead human body for final disposition, in any manner; or (3) arrange, direct, or supervise a funeral, memorial service, or graveside service." Minn. Stat. § 149A.01, subd. 2.

2. "[A]ny person who takes charge of or removes from the place of death a dead human body, or prepares a dead human body for final disposition in any manner, or arranges, directs, or supervises a funeral, memorial service, or graveside service must possess a valid license to practice mortuary science issued by the commissioner." *Id.* § 149A.20, subd. 1.

3. “Upon the lapse of a license, the person to whom the license was issued is no longer licensed to practice mortuary science in Minnesota.” *Id.* § 149A.40, subd. 6.
4. “Only a person holding a valid license to practice mortuary science issued by the commissioner may use the title of mortician, funeral director, or any other title implying that the licensee is engaged in the business or practice of mortuary science.” *Id.* § 149A.70, subd. 1.
5. “Except as otherwise provided in this chapter, a licensed funeral establishment may not employ unlicensed personnel to perform the duties of a funeral director or mortician. A licensee may be personally assisted by a nonlicensed employee when removing a dead human body from the place of death and in the lifting of a dead human body at the funeral establishment. The nonlicensed employee must be in the immediate physical presence of the licensee in charge at all times. The funeral establishment and the individual licensee are responsible for compliance and training of the nonlicensed employee outlined in sections 149A.90, subdivision 6, and 149A.92, subdivisions 7 and 10, and shall be fully accountable for all actions of the nonlicensed employee.” *Id.* § 149A.70, subd. 6.
6. “No licensee or intern shall engage in or permit others under the licensee’s or intern’s supervision or employment to engage in unprofessional conduct. Unprofessional conduct includes, but is not limited to: . . . (6) intentionally misleading or deceiving any customer in the sale of any goods or services provided by the licensee; (7) knowingly making a false statement in the procuring, preparation, or filing of any required permit or document; or (8) knowingly making a false statement on a record of death.” *Id.* § 149A.70, subd. 7.

7. “Funeral providers must give an itemized written statement, for retention, to each consumer who arranges an at-need funeral or other disposition of human remains at the conclusion of the discussion of the arrangements. The itemized written statement must be signed by the consumer selecting the goods and services as required in section 149A.80. If the statement is provided by a funeral establishment, the statement must be signed by the licensed funeral director or mortician planning the arrangements.” *Id.* § 149A.71, subd. 2(f).

8. “No dead human body shall be removed from the place of death by a mortician or funeral director or by a noncompensated person with the right to control the dead human body without the completion of a certificate of removal and, where possible, presentation of a copy of that certificate to the person or a representative of the legal entity with physical or legal custody of the body at the death site.” *Id.* § 149A.90, subd. 4.

9. “No person shall be permitted to be present in the preparation room while a dead human body is being embalmed, washed, or otherwise prepared for final disposition, except: (1) licensed morticians; (2) registered interns or students as described in subdivision 6; (3) public officials or representatives in the discharge of their official duties; and (4) licensed medical personnel.” *Id.* § 149A.91, subd. 2.

10. “No dead human body shall be embalmed without written authorization. Written authorization to embalm a dead human body must be obtained from the individual lawfully entitled to custody of the body or the individual's legal designee as soon as is practicable following the death.” *Id.* § 149A.91, subd. 4.

CONCLUSION

After the investigation, the Department found that Mr. Wesley violated Minnesota Statutes Chapter 149A. Specifically, the Department concluded that:

1. Mr. Wesley allowed [REDACTED] to prepare a dead human body for final disposition and allowed Mr. [REDACTED] to engage in the practice of mortuary science without a valid license issued by the Department and without the direction and supervision of a licensed mortician in violation of Minn. Stat. §§ 149A.01, subd. 2; 149A.20, subd. 1; 149A.70, subd. 6; and 149A.91, subd. 2
2. Mr. Wesley failed to ensure that Mr. Wesley was duly licensed to practice mortuary science and continued to practice mortuary science under an expired license from January 1, 2019, to January 31, 2019, as well as under a lapsed license from February 1, 2019 to March 3, 2019, in violation of Minn. Stat. §§ 149A.01, subd. 2; 149A.20, subd. 1; 149A.40, subd. 6; 149A.70, subds. 1, 6, and, 7; and 149A.91, subd. 2
3. Mr. Wesley failed to complete the certificates of removal for seventeen dead human bodies; failed to complete embalming authorizations for five dead human bodies; failed to complete nine statements of funeral goods and services; and failed to complete a cremation authorization for one dead human body in violation of Minn. Stat. §§ 149A.71, subd. 2(f), 149A.90, subd. 4; and 149A.91, subd. 4.

THE FOLLOWING CORRECTIVE ACTIONS ARE REQUIRED BY THIS ORDER:

1. On, or before, November 15, 2021, Mr. Wesley must attend, and complete, a total of sixteen continuing education units, (“CEUs”), in the areas of Funeral Regulation and Ethics, Body Preparation, Care and Handling, Professional Practices, and Federal Trade Commission, (“FTC”), Funeral Rule. Four of sixteen CEUs must be on FTC Rule. The CEUs must be conducted by a provider that is approved by the Department.
2. Mr. Wesley must identify upcoming CEUs that would satisfy the above requirements and must submit to the Department for the Department’s approval, a written outline of the course(s) that includes the course(s) content and objectives; an overall number of CEUs allowed for the course(s); and the name and title of the instructor with contact information. After approval of the proposed CEUs by the Department, Mr. Wesley must attend the CEUs.
3. In the event that Mr. Wesley is, by November 15, 2021, after reasonable inquiry, unable to identify CEUs that meet the above requirements; or there are no CEUs that meet the above requirements which is offered on, or before, November 15, 2021, he shall submit to the Department, a written request for an extension of time.
4. Within five working days after attending the approved course(s), Mr. Wesley. must submit to the Department a copy of the completion certificate(s), the name of the CEUs, the number of the CEUs received, and the date and time that the course(s) were held.

PENALTY ASSESSED

Mr. Wesley is assessed a non-forgivable penalty of \$30,000.00. In setting this penalty amount, the Department considered:

1. The Department's statutory ability to assess up to \$10,000.00 for each specific violation identified in an inspection, investigation, or compliance review.
2. The willfulness of the violations. Mr. Wesley practiced mortuary science under an expired license from January 1, 2019 to January 31, 2019, as well as under a lapsed license from February 1, 2019, to March 3, 2019. Mr. Wesley continued in, and further aggravated, the violations of Chapter 149A by not only presenting himself as a licensed mortician to the public-at-large but also performing those duties during this time-period. In continuation of his willful violation of Chapter 149A, Mr. Wesley allowed [REDACTED] to engage in the practice of mortuary science without a valid license issued by the Department and without the direction and supervision of a licensed mortician. Furthermore, Mr. Wesley failed to complete necessary and legally mandated paperwork. Mr. Wesley's willful violative conduct goes against the very principal of ensuring public health and protecting the public-at-large inherent in properly treating dead human bodies and engaging with consumers in a fair and forthright manner.
3. The number of violations, the gravity of the violations, and economic benefit gained by Mr. Wesley in violating Chapter 149A. Mr. Wesley's conduct violated multiple provision of Chapter 149A, which favors the imposition of a \$30,000.00 penalty. Additionally, the gravity of Mr. Wesley's violative conduct is severe. Mr. Wesley not only practiced mortuary science without being dully licensed and held himself out to the public-at-large as being a licensed mortician, but Mr. Wesley also allowed [REDACTED], an unlicensed individual, to practice mortuary science under his direction and supervision and allowed [REDACTED] to prepare a dead human body for final disposition without Mr. Wesley being in physical proximity. The gravity of Mr. Wesley's violations is further exacerbated by the fact he failed to complete necessary and legally mandated

paperwork. Lastly, Mr. Wesley was charging for services rendered when he performed mortuary and funeral services during the time-period he was not licensed to practice mortuary science and so, Mr. Wesley gained an economic benefit in violating Chapter 149A.

HOW TO PAY THE PENALTY ASSESSED

1. Mr. Wesley shall either pay the \$30,000.00 assessed civil penalty within sixty-days after receiving this Administrative Penalty Order, (“APO”), or he can make monthly installment payments, which shall not exceed six-months. If Mr. Wesley chooses to make monthly payments, he must notify the Department IN WRITING within thirty-days of receipt of the APO about his intentions, including how many installments he intends to make, in what amount, and over which time-period. Mr. Wesley must send this information to:

Minnesota Department of Health
Mortuary Science Section
PO Box 64975
St. Paul, MN 55164-0975

2. Each monthly payment, if Mr. Wesley chooses to make monthly payments, must be made by check or money order to the “Minnesota Department of Health,” and mailed to the Mortuary Science Section, P.O. Box 64975, St. Paul, MN 55164-0975, please indicate that the payment is for an administrative civil penalty either in the memo line of the check or money order. Each payment is due by the last day of each month; however, Mr. Wesley may prepay at any time.

3. If fourteen calendar days pass between the established due date of a monthly payment and when Mr. Wesley pays, the penalty may be referred to the Minnesota Department of Revenue, (“MNDOR”), or any other source for collection. When this determination for a penalty becomes public and the Department refers the matter to MNDOR, MNDOR is authorized by Minn. Stat. § 16D.17 to obtain a judgement against Mr. Wesley without further notice or proceeding.

REQUEST FOR A HEARING.

Mr. Wesley may appeal this APO by requesting a hearing. The hearing request must be **IN WRITING** and delivered to the Department by certified mail within twenty-days from the date of this APO. Certified mail should be directed to the Minnesota Department of Health, Mortuary Science Section, P.O. Box 64975, St. Paul, MN 55164-0975. The request must state the specific reasons for seeking a review of the APO. The Department will initiate the hearing process within thirty-days of receiving a request for a hearing in accordance with Minn. Stat. § 149A.06, subd. 6.

SO ORDERED this 24 day of November, 2021.

Martha Burton Santibanez

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Date: 2021.11.24 15:43:05 -06'00'

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