



*Protecting, maintaining and improving the health of all Minnesotans*

**Minnesota Department of Health  
ADMINISTRATIVE PENALTY ORDER**

David John Thorsell  
2347 Heath Avenue North  
Oakdale, Minnesota 55128

*I. Authority*

The Minnesota Department of Health is authorized, pursuant to Minn. Stat. §149A.06, to order corrections and assess administrative penalties in an amount up to \$10,000.00 per violation for violations of Minnesota Statutes, Chapter 149A.

*II. Findings of Fact*

1. On September 21, 2017, the Minnesota Department of Health received a complaint alleging David John Thorsell, former owner and licensee of Maple Oaks Phalen Park Funeral Home located at 2585 Stillwater Road, Maplewood, Minnesota of misappropriation of prepaid burial funds.
2. The Minnesota Department of Health, Mortuary Science Section investigated Maple Oaks Phalen Park Funeral Home and found six known individual burial insurance accounts that contained completed or partially completed insurance applications written by the funeral home. Records show money was collected on the six accounts in the form of a check payment from each consumer applying for insurance. Further discovery indicates that each of the checks have been recorded in each file as received and/or cashed. In each of the six accounts, the insurance applications and consumer's payment was never submitted to the insurance company for processing.
3. In addition to the six known burial insurance accounts, there is a seventh preneed account where excess funds were not spent from the pre-paid burial account. Maple Oaks Phalen Park Funeral Home withheld those funds and did not provide Ramsey County Assistance Program the balance of those funds for a decedent who died under medical assistance guidelines.
4. These actions occurred between December 1997 and February 2017 and included a total of seven known account records totaling a monetary value of \$ 43,722.32 in misappropriated funds.
5. Records also indicate that Maple Oaks Phalen Park Funeral Home falsified interest statements on a pre-paid trust account a consumer arranged and funded on October 1, 1998. The funeral home did not provide the consumer upon request accurate interest statements from the bank. Maple Oaks Phalen Park Funeral Home provided the consumer with falsified interest statements created on the funeral home letterhead paper. The bank has no record that a trust account was created in the name of the consumer.

6. The Minnesota Department of Health, Mortuary Science Section called and spoke to David John Thorsell the morning of February 14, 2018. At that time an appointment to meet with Mr. Thorsell was scheduled and confirmed for 9:00 AM on March 6, 2018. After he did not show for his appointment on March 6, 2018, a second call was placed to him that same morning and a second appointment was scheduled and confirmed for 9:00 AM on April 3, 2018. David John Thorsell did not show for second appointment.
7. On February 16, 2018, a certified letter was mailed To David John Thorsell to confirm his appointment with the Minnesota Department of Health, Mortuary Science Section scheduled on March 6, 2018. On March 23, 2018, a second certified letter was mailed to notify David John Thorsell of a second and final attempt to meet with him on April 3, 2018. Each attempt delivery was denied. The Minnesota Department of Health, Mortuary Science section received both certified letters back from the post office after several attempts to deliver.

## **II. Violation Reference**

### **Minn. Stat. § 149A.63, Professional Cooperation states:**

A licensee, clinical student, practicum student, intern, or applicant for licensure under this chapter that is the subject of or part of an inspection or investigation by the commissioner or the commissioner's designee shall cooperate fully with the inspection or investigation. Failure to cooperate constitutes grounds for disciplinary action under this chapter.

### **Minn. Stat. § 149A.70, subd.4. Solicitation of business states:**

No licensee shall directly or indirectly pay or cause to be paid any sum of money or other valuable consideration for the securing of business or for obtaining the authority to dispose of any dead human body.

### **Minn. Stat. § 149A.70, subd.7 (6) & (7) states:**

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.

### **Minn. Stat. § 149A.97, subd.1 Purpose and intent states:**

It is the intent of the legislation that this section be construed as a limitation upon the manner in which a funeral provider is permitted to accept funds in prepayment of funeral services or burial site services to be performed in the future or in prepayment of funeral or burial goods to be used in connection with the final disposition of human remains. It is further intended to allow members of the public to arrange and pay for funeral goods, funeral services, burial site goods, or burial site services for themselves and their families in advance of need while at the same time providing all possible safeguards so that the prepaid funds cannot be dissipated, whether intentionally or not, so as to be available for the payment of the services and goods selected.

#### ***IV. Conclusion***

1. Former owner and licensed mortician David John Thorsell was involved in deceptive and misleading practices. During the Minnesota Department of Health's investigation it was determined that under his ownership there was evidence of falsification of burial insurance documents and misrepresentation of burial insurance funds in violation of Minn. Stat. § 149A.70, subd.7 (6) & (7).
2. David John Thorsell as owner and operator of the funeral establishment business at Maple Oaks Phalen Park Funeral Home failed to manage, properly handle, and safeguard consumer's burial insurance funds in violation of Minn. Stat. § 149A.97, subd.1.

#### ***V. Corrective Order***

It is ordered that, before the 31<sup>st</sup> day after David John Thorsell receives this order, he must demonstrate, IN WRITING, that the corrective actions specified herein have been taken or that he has taken appropriate steps toward correcting the violation and that he has a plan for full compliance.

If David John Thorsell fails to demonstrate that the corrective actions specified below have been taken or appropriate steps toward correction of the violation specified above have been taken, within the 30-day period, the forgivable penalty assessed will become due and payable as described in section VI.

David John Thorsell shall develop a plan to correct the violation within the 30-day period. The plan must be approved by the Department. Failure to comply with the approved plan shall be cause for subsequent enforcement action.

#### **The following corrective actions are required by this order:**

On or before July 15, 2018, David John Thorsell must complete an extensive review of all pre-need insurance plans written during his ownership at Maple Oaks Phalen Park Funeral Home.

1. David John Thorsell must contact the Minnesota Department of Health, Mortuary Science Section to arrange for a meeting to review all pre-need insurance documentation produced under his ownership.
2. David John Thorsell shall provide an accounting of all pre-need burial insurance funds for each account written under his ownership including the six known mentioned accounts and any other accounts removed intentionally or not intentionally from the premises on or before the date of ownership change.
3. In addition, David John Thorsell shall arrange for a meeting with the current owners to provide an accurate record of any misappropriated funds and work with the current owners in the reconciliation of each account. David John Thorsell must provide the Minnesota Department of Health with a written summary that outlines actions taken to bring each account current. The written summary must be submitted to the Minnesota Department of Health, Mortuary Science Section on or before August 15, 2018.

## ***VI. PENALTY ASSESSMENT***

### **Forgivable Penalty Assessment**

David John Thorsell is assessed a FORGIVABLE administrative penalty of \$5,000.00 for the violation described in Sections II and III.

If David John Thorsell demonstrates, IN WRITING, within 30 days of receipt of this order, that the corrective actions have been taken, or that appropriate steps have been taken toward correcting the violation, which may include the development of a plan for correction, this penalty will be forgiven. If David John Thorsell fails to demonstrate that the corrective actions have been taken, or that appropriate steps have been taken toward correcting the violation, the assessed penalty becomes DUE AND PAYABLE on the 31st day after this order was received. A plan to correct the violation may be developed within the 30-day time period for corrective action. The plan must be approved by the Department. Failure to comply with the approved plan shall be cause for subsequent enforcement action.

### **Non-forgivable Penalty Assessment**

David John Thorsell is also assessed a NONFORGIVABLE penalty of \$30,000.00 for the violations described in Sections II and III.

The penalty shall be paid by certified check or money order payable to "Treasurer, State of Minnesota." The payment must be submitted to the Minnesota Department of Health, Mortuary Science Section within 30 days of the date of receipt of this order.

1. Licensee may pay the \$30,000.00 civil penalty in monthly installments of up to six months after the effective date of this action. If licensee chooses to make installments, he must notify MDH in writing about his intentions, including how many installments he intends to make, in what amount, and over which time period. Licensee must send this information to: Investigation and Enforcement Unit, Mortuary Science Program, MDH, PO Box 64882, Saint Paul, MN 55164-0882.
2. Each payment must be made by check or money order payable to "Treasurer, State of Minnesota" and mailed to; Investigation and Enforcement Unit, Mortuary Science Section, MDH, PO Box 64882, Saint Paul, MN 55164-0882. Each payment is due by the last day of each month; however, licensee may prepay at any time.
3. The penalty may be referred to the Minnesota Department of Revenue (MDOR), or any other source of collection, if the debt is 14 days past the established due date. When this determination for a penalty becomes public and MDH refers the matter to MDOR, MDOR is authorized by Minnesota Statutes, section 16D.17 to obtain a judgement against licensee without further notice or proceeding.

## ***VII. REQUEST FOR HEARING***

You may appeal this order by requesting a hearing. The hearing request must be in writing and delivered to the Department of Health by certified mail within 20 days after you receive this order. The request must state the specific reasons for seeking a review of the order. The Minnesota Department of Health will initiate a hearing within 30 days of receiving a request for a hearing.

SO ORDERED this 13<sup>th</sup> day of June.



Susan Winkelmann  
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Health Regulation Division  
Minnesota Department of Health  
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Direct correspondence and any appeals to: Catherine Lloyd, Manager of the Mortuary Science Section,  
Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882.