

Administrative Penalty Order**In the Matter of the Administrative Penalty Order Issued to Estes Funeral Chapel, Inc.
License Number 1224****Estes Funeral Chapel,
Ms. April Estes
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 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 establishment in Minneapolis, Minnesota that is licensed through the Department. Initially, Estes was located at 2210 Plymouth Avenue North, Minneapolis, Minnesota 55411. However, in 2018, Estes applied for, and was issued on October 10, 2018, a license, License Number 1224, to operate at its new funeral establishment—2201 Plymouth Avenue North, Minneapolis, Minnesota 55411.
2. Mr. Tracy Wesley is a mortician who is employed at Estes. [REDACTED] is a staff member at Estes.
3. On May 7, 2019, following a January 4, 2019 complaint, the Department issued a notice of investigation and began investigating whether Estes’ staff was engaged in unprofessional conduct and the unlicensed practice of mortuary science.
4. The Department’s investigation confirmed that Estes had operated a funeral establishment without possessing a valid license to operate a funeral establishment issued by the Department when it provided mortuary and funeral services at its 2201 Plymouth Avenue North, Minneapolis, Minnesota 55411 location on October 4, 2018, and on October 9, 2018. Estes also advertised that it could provide mortuary and funeral services from this location before receiving a license to operate a funeral establishment from this location.
5. The Department’s investigation also confirmed that since Mr. Wesley failed to submit a renewal application to the Department by December 3, 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.

6. From February 1, 2019, (when his license lapsed), until the date he renewed his license, (March 4, 2019), Estes allowed Mr. Wesley to continue to hold himself out to the public-at-large as a mortician, continued to practice mortuary science at Estes without a valid license, allowed Mr. Wesley to charge Estes' consumers for the mortuary and funeral services he rendered, and failed to display Mr. Wesley's license to practice mortuary science. 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.

7. The Department learned that, from January through March 2019, 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.

8. The Department established that despite [REDACTED] not possessing a license issued by the Department to practice mortuary science, Estes hired [REDACTED] as a funeral director assistant in January 2015 and titled him as funeral director assistant on its webpage.

9. On August 14, 2019, the Department interviewed Mr. Wesley, who admitted that mortuary and funeral services were held at Estes on October 4 and 9, 2018—when Estes did not have licenses issued by the Department to operate a funeral establishment. Mr. Wesley confirmed that [REDACTED] was the individual recorded in a video, dated January 16, 2019, preparing a dead human body for final disposition in Estes' preparation and embalming room without a license to practice mortuary science and a licensed mortician supervising and directing his work. Mr. Wesley further stated that Estes' November 2018 through January 2019 monthly funeral home calendars are used to indicate daily activities performed and "typically" the names of staff completing the work. Mr. Wesley admitted that [REDACTED]'s name appears on the monthly calendars, showing that

█ █ had practiced mortuary science without possessing a valid license to do so.

10. The Department's review of Estes' November 2018 through January 2019 monthly funeral home calendars, showing its daily operations, confirmed Mr. Wesley's admission that the unlicensed practice of mortuary science had occurred at Estes.

11. On August 14, 2018, the Department interviewed █, who admitted that he practiced mortuary science without a valid mortuary science license issued by the Department at Estes. 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 without a licensed mortician supervising and directing the work, █ stated that the individual in video preparing a dead human body for final disposition in Estes' preparation and embalming room was him.

ESTES' PREVIOUS VIOLATIONS OF CHAPTER 149A CITED BY THE DEPARTMENT

1. On March 29, 1996, after determining that Mr. Wesley had practiced mortuary science without a valid license issued by the Department in violation of Minn. Stat. § 149A.01, subd. 2, the Department issued a Stipulation and Consent Order to Estes.

2. On November 9, 2004, after determining, yet again, that Mr. Wesley was performing mortuary and funeral services and signing statements of funeral goods and services without a valid license in violation of Minn. Stat. §§ 149A.01, subd. 2, and 149A.71, subd. 2(f), the Department issued another Stipulation and Consent Order to Estes.

3. After a routine inspection, which uncovered that Estes was failing to complete removal certificates, embalming authorizations, failing to maintain embalming records, and was overall deficient in retaining records in violation of Minn. Stat. §§ 149A.90, subs. 4-5; 149A.91, subd. 4; and 149A.93, subd. 2(a), the Department issued a Correction Order to Estes on August 14, 2013.

4. Following the issuance of the August 14, 2013 Correction Order, the Department conducted a re-inspection of Estes on September 20, 2013. During the site inspection, the Department found that Estes had failed to correct the deficiencies noted in the August 14, 2013 Correction Order.

5. Following a routine inspection, which uncovered that Estes was not providing signatures on statement of funeral goods and services, was not completing removal certificates, was not completed embalming authorization forms, and was not obtaining signatures on cremation authorizations in violation of Minn. Stat. §§ 149A.71, subd. 2(f); 149A.90, subd. 4; 149A.91, subd. 4, and 149A.95, subd. 4, the Department cited Estes for incomplete paperwork on April 1, 2016.

6. On October 4, 2018, the Department cited Estes for failing to complete removal certificates and for failing to obtain signatures on statement of funeral goods and services and cremation authorizations in violation of Minn. Stat. §§ 149A.71, subd. 2(f); 149A.90, subd. 4; and 149A.95, subd. 4.

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. “Each license to practice mortuary science must be conspicuously displayed at all times in the holder’s place of business. Conspicuous display means in a location where a member of the general public within the holder’s place of business will be able to observe and read the license.” *Id.* § 149A.20, subd. 10.

4. “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.
5. “[N]o person shall maintain, manage, or operate a place or premise devoted to or used in the holding, care, or preparation of a dead human body for final disposition, or any place used as the office or place of business for the provision of funeral services, without possessing a valid license to operate a funeral establishment issued by the commissioner of health.” *Id.* § 149A.50, subd. 1.
6. “Each license to operate a funeral establishment must be conspicuously displayed in the funeral establishment at all times. Conspicuous display means in a location where a member of the general public within the funeral establishment will be able to observe and read the license.” *Id.* § 149A.50, subd. 5.
7. “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.
8. “Only the holder of a valid license to operate a funeral establishment issued by the commissioner may use the title of funeral home, funeral chapel, funeral service, or any other title, word, or term implying that the licensee is engaged in the business or practice of mortuary science.” *Id.*
9. “A funeral establishment . . . shall not do business in a location that is not licensed as a funeral establishment . . . and shall not advertise a service that is available from an unlicensed location.” *Id.* § 149A.70, subd. 2.
10. “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.” *Id.* § 149A.70, subd. 6.

11. “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.

12. “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).

13. “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.

14. “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.

15. “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. [] The original written authorization to embalm shall be maintained in the records of the funeral establishment that causes the embalming to be performed and a copy of the authorization must be delivered to the person who has legal right to control the disposition or that person's legal designee.”
Id. § 149A.91, subd. 4.

CONCLUSION

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

1. Estes allowed [REDACTED] an unlicensed individual, to engage in the unlicensed practice of mortuary science in violation of Minn. Stat. §§ 149A.01, subd. 2; 149A.20, subd. 1; 149A.70, subd. 6; and 149A.91, subd. 2.
2. Estes failed to ensure that Mr. Wesley was duly licensed to practice mortuary science and allowed Mr. Wesley to continue 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, allowed him to use the title mortician, and failed to display Mr. Wesley’s license to practice mortuary science at its funeral establishment in violation of Minn. Stat. §§ 149A.01, subd. 2; 149A.20, subds. 1 and 10; 149A.40, subd. 6; 149A.70, subd. 1, 6, and, 7; and 149A.91, subd. 2
3. Estes failed to ensure that Mr. Wesley. was properly completing removal certificates, embalming authorizations, statements of funeral goods and services, and cremation authorizations in violation of Minn. Stat. §§ 149A.71, subd. 2(f); 149A.90, subd. 4; 149A.91, subd. 4.

4. Estes improperly advertised for funeral and mortuary science services before receiving a license to operate a funeral establishment from the Department in violation of Minn. Stat. §§ 149A.50, subds. 1 and 5, and 149A.70, subds. 1 and 2.

5. Estes allowed funeral and mortuary services to be held, and provide for, at its funeral establishment before receiving a license from the Department to do so, in violation of Minn. Stat. §§ 149A.50, subds. 1 and 5 and 149A.70, subds. 1 and 2.

THE FOLLOWING CORRECTIVE ACTIONS ARE REQUIRED BY THIS ORDER:

1. Estes shall create and implement a written process that ensures that all Estes' licensed morticians hold a valid license issued by the Department to practice mortuary science in Minnesota. This written process must be approved by the Department and must ensure that all unlicensed practice of mortuary science at Estes is ceased immediately.

2. Estes must create and implement a written procedure for completing certificates of removal of dead human remains, embalming authorizations, cremation authorizations, and statements of funeral goods and services that complies with Chapter 149A. The written procedure must also include a process for tracking the completion of removal certificates, embalming authorizations, statements of funeral goods and services, and cremation authorizations. If Estes already has such a procedure, it must review the procedure and revise it as necessary to ensure compliance with Chapter 149A. Estes' written procedure for completion and tracking shall be submitted to the Department for approval. By November 15, 2021, Estes must submit to the Department a copy of its revised procedure for review and approval.

3. Estes must also provide a written contingency plan, which shall be delivered to the Department by, or on, November 15, 2021. The contingency plan must include the following:

- (a) ongoing training and supervision of all licensed activities at Estes;
- (b) a detailed record log that shows all licensed activities and names of licensed personnel performing the licensed work. Such records shall be detailed and precise so the Department can verify that illegal practices have ceased and the Department is assured that actions have been taken by Estes to correct the violations noted in this Administrative Penalty Order (“APO”); and
- (c) a showing that Estes, is able to complete all licensed activities with the current licensed staff. If this is not possible, the Department shall require Estes to hire additional licensed morticians or contract through a third-party trade service to assist with licensed practices.

This contingency plan shall be updated monthly and the updated monthly report shall be submitted to the Department by, or on, the 15th of each month.

PENALTY ASSESSED

Estes is assessed a non-forgivable penalty of \$60,000.00. In setting this penalty amount, the Department considered:

1. The Department’s statutory ability to asses up to \$10,000.00 for each specific violation identified in an inspection, investigation, or compliance review.
2. The willfulness of the violations. Estes allowed Mr. Wesley to provide mortuary and funeral services 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. Estes continued in, and further aggravated the violations by allowing Mr. Wesley to not only hold himself out as mortician but also allowed Mr. Wesley to perform the mortuary and funeral services for thirteen dead human bodies during this time-period. Estes also failed to make sure that Mr. Wesley was properly completing the certificates of removal for seventeen dead human bodies; the embalming authorizations for five dead human

bodies; nine statements of funeral goods and services; and a cremation authorization for one dead human body. In continuing with its willful violations of Chapter 149A, Estes not only allowed [REDACTED] a non-licensed individual, to perform the duties of a licensed mortician but also hired [REDACTED] as funeral director assistant. Furthermore, Estes not only provided mortuary and funeral services from an unlicensed funeral establishment but it also advertised that it could perform mortuary and funeral services from this unlicensed location. Estes' 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 the economic benefit Estes gained in allowing these violations to continue at its funeral establishment. Estes' conduct violated multiple provisions of Chapter 149A, which favors the imposition of a \$60,000.00 penalty. Additionally, the gravity of Estes' conduct is severe. Estes allowed an unlicensed individual to practice mortuary science and perform mortuary and funeral services without proper supervision by a mortuary science licensee; allowed its mortician to not only practice mortuary science without a license but also failed to ensure that this individual was properly completing legal mandated and necessary paperwork; and failed to post Mr. Wesley's license to practice mortuary science. The gravity of Estes' violations is further exacerbated by the fact that it performed, and advertised that it could perform, mortuary and funeral services from an unlicensed funeral establishment. Finally, Estes' consumers were misled not only from Mr. Wesley's and [REDACTED]'s violative conduct but also Estes' violative conduct of performing mortuary and funeral services from an unlicensed funeral establishment.

4. Estes' history of past violations, which showed multiple instances of Estes allowing Mr. Wesley to practice mortuary science without a license, and Estes failing to complete statutorily mandated documents in the past also justified the \$60,000.00 penalty.

HOW TO PAY THE PENALTY ASSESSED

1. Estes shall either pay the \$60,000.00 assessed civil penalty within sixty-days after receiving this APO or it can make monthly installment payments, which shall not exceed six-months. If Estes chooses to make monthly payments, it must notify the Department IN WRITING within thirty-days of receipt of the APO about its intentions, including how many installments it intends to make, in what amount, and over what time period. Estes must send this information to:

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

2. Each monthly payment, if Estes 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 Program, 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, Estes may prepay at any time.

3. If fourteen calendar days pass between the established due date of a monthly payment and when Estes 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 Estes without further notice or proceeding.

REQUEST FOR A HEARING

Estes 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 Program, 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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